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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JOSE LUIS VELASQUEZ, on behalf of all
others similarly aggrieved,

Plaintiffs,

vs.

WATER DAMAGE RESCUE, INC., a
California corporation, ORI LAZAROVITS,
an individual, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 21STCV46033

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: February 6, 2024
Time: 8:30 a.m.

Judge: Hon. Holly J. Fujie
Dept.: 56

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	4
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	6
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	7
	A. Class Counsel Conducted a Thorough Investigation	8
	B. The Parties Settled At Mediation	8
	C. Class Counsel is Experienced in Similar Litigation	9
	D. The Settlement Class Responded Positively to the Settlement	9
	E. The Gross Settlement Amount is Fair and Reasonable	9
	F. The Strength of Plaintiff's Case and Risks of Continued Litigation	12
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	15
VII.	CONCLUSION	15

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TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1150-51.....	6
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	12
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	14
9	<i>Brinker</i>	
10		12
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	12
13	<i>Browning v. Yahoo!, Inc.</i>	
14	2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007).....	13
15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	12
17	<i>Dunk v. Ford Motor Co.</i>	
18	(1996) 48 Cal.App.4th 1794, 1801.....	6-7
19	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
20	(9th Cir. 2000) 213 F.3d 454, 459.....	10-11
21	<i>Duran v. U.S. Bank National Association</i>	
22	(2014) 59 Cal.4th 1, 31.....	12, 14
23	<i>Glass v. UBS Fin. Servs.</i>	
24	2007 WL221862.....	12
25	<i>Hanlon v. Chrysler Corp.</i>	
26	(9th Cir. 1998) 150 F.3d 1011, 1026.....	14
27	<i>Hopson v. Hanesbrands Inc.</i>	
28	2009 U.S. Dist. LEXIS 33900 at * 1, 9, 19-20 (N.D. Cal. 2009).....	13, 15
	<i>Huens v. Tatum</i>	
	(1997) 52 Cal.App.4th 259, 265.....	6
	<i>In re Austrian & German Bank Holocaust Litigation</i>	
	(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	9
	<i>In re Newbridge Networks Sec. Litig.</i>	
	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	11
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 128-129.....	7, 10
	<i>Laskey v. Int'l Union</i>	
	(6th Cir. 1981) 638 F.2d 954.....	9
	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	11
	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	14
	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9 th Cir. 2021) 999 F.3d 668.....	12, 14
	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
	(1980) 103 Cal.App.3d 573, 578-579.....	6

1	<i>McKenzie v. Fed. Express Corp.</i>	
2	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
3	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
4	(2010) 186 Cal.App.4th 399, 408.....	7
5	<i>O’Conner v. Uber Technologies, Inc.</i>	
6	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	12, 14
7	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
8	(9th Cir. 1982) 688 F. 2d 615, 625.....	7
9	<i>Rebney v. Wells Fargo Bank</i>	
10	(1990) 220 Cal.App.3d 1117, 1138.....	7
11	<i>Stoetznner v. U.S. Steel Corp.</i>	
12	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
13	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
14	2015 U.S. Dist. LEXIS 78671, at * 12.....	10
15	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
16	38 Cal.3d 488, 499-500 (1985).....	10
17	<i>Tien v. Tenet Healthcare Corp.</i>	
18	(2012) 209 Cal.App.4th 1077, 1088.....	12
19	<i>Viceral v. Mistras Grp., Inc.</i>	
20	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	11
21	<i>Wershba v. Apple Computer</i>	
22	(2001) 91 Cal.App.4th 224, 245-246, 250, 2246.....	6, 10

RULES, CODES, AND STATUTES

15	<i>Cal. Bus. and Prof. Code</i> §§ 17200.....	3
16	<i>Cal. Lab. Code</i> §§ 2698 et seq.....	3
17	<i>Code of Civ. Proc.</i> § 877.6.....	10

SECONDARY SOURCES

18	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91	
19		6

I. INTRODUCTION

Plaintiffs JOSE LUIS VELASQUEZ and MARVIN GLENN HOLLOWAY (hereinafter “Plaintiffs”) seek final approval of the Class and PAGA Action Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 323 Participating Class Members employed by Defendant WATER DAMAGE RESCUE, INC. (hereinafter “Defendant”).

In an order dated September 6, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On November 2, 2023, the Settlement Administrator delivered notice of the proposed settlement to the Class. Declaration of Madely Nava (“APEX Dec.”), ¶ 7.

The Class greeted news of the Settlement with unanimous approval, as all 323 Class Members chose to participate in the Settlement. There are zero opt-outs and zero objections to the Settlement. APEX Dec., ¶¶ 11-13. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

An objective evaluation of the proposed settlement of Six Hundred Forty Thousand Dollars and Zero Cents (\$640,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Steven Serratore, Esq., an experienced mediator of wage and hour class and representative actions. After deducting any Court-approved attorneys’ fees and costs, class representative service payments, settlement administration expenses, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement amount shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendants during the Class Period. JCL Dec., ¶ 10.

This Settlement provides substantial recovery to Class Members. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$341,666.67**.

¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 This will result in an average Individual Class Payment of \$1,077.81, with the estimated highest
2 gross payment being \$7,049.13. Aggrieved Employees will receive an estimated average gross
3 payment of \$26.69, with the estimated highest gross payment being \$94.97. JCL Dec., ¶ 11; APEX
4 Dec., ¶¶ 14-15, 17.

5 The relief offered by the Settlement is immediate and is particularly impressive when viewed
6 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
7 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
8 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and
9 uncertain litigation. JCL Dec., ¶ 12.

10 As discussed below, the proposed Settlement satisfies all criteria for final settlement approval
11 under California law and falls well within the range of reasonableness. Accordingly, the Class
12 Representative and Class Counsel respectfully request this Court grant final approval of the
13 Agreement and entry of the proposed Final Approval Order and Judgment. JCL Dec., ¶ 13.

14 **II. OVERVIEW OF THE LITIGATION**

15 Defendant Water Damage Rescue, Inc. is an emergency service restoration company with
16 branches in Canoga Park, La Jolla and San Jose, California. Defendant Ori Lazarovits is its CEO
17 and owner. This action asserts claims on behalf of Defendant Water Damage Rescue, Inc.'s current
18 and former non-exempt employees employed in California. Plaintiff Velasquez was employed by
19 Defendants as a non-exempt employee performing mitigation and remediation services from
20 November 2020 to September 2021. Plaintiff Holloway was employed by Defendants as a non-
21 exempt employee performing similar mitigation and mediation services from July 2021 to October
22 2021. At all times during their employment, Plaintiffs earned hourly wages, were entitled to legally
23 compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked.
24 Throughout their employment, Plaintiffs were subject to Defendants' written policies and
25 procedures. JCL Dec., ¶ 14.

26 Generally, Plaintiffs claim that Defendants failed to pay Plaintiffs for all hours worked, failed
27 to provide legally compliant meal and rest periods, failed to reimburse for required business
28 expenses, failed to provide itemized wage statements and failed to pay all wages due upon

1 separation of employment, among other claims. Defendants forcefully deny liability for each of
2 Plaintiffs' claims. Further, Defendants assert that they fully complied with all applicable
3 employment laws and raised several other significant defenses to Plaintiffs' claims, including but
4 not limited to, facially compliant meal and rest period policies and proper payment of all wages.
5 JCL Dec., ¶ 15.

6 On October 8, 2021, Plaintiff Velasquez served Defendant Water Damage Rescue, Inc. and
7 the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA
8 Notice"). On March 4, 2022, Plaintiff Holloway served Defendant Water Damage Rescue, Inc. and
9 the LWDA with a PAGA Notice. Plaintiffs' PAGA Notices set forth the facts and theories
10 supporting Defendant Water Damage Rescue, Inc.'s alleged violations of various provisions of the
11 California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and
12 of their intent to pursue claims under California Labor Code Private Attorneys General Act, Cal.
13 Lab. Code Sections 2698 et seq ("PAGA"). JCL Dec., ¶ 16.

14 On December 17, 2021, Plaintiff Velasquez filed a representative action complaint in this
15 Court, alleging a single cause of action against Defendants for (1) Violation of the Private Attorneys
16 General Act, Labor Code §§ 2698, *et seq.* On May 10, 2022, Plaintiff Holloway filed a class action
17 complaint in Sacramento County Superior Court, alleging claims for: (1) Unfair Competition in
18 Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum
19 Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Required Meal Periods; (5)
20 Failure to Provide Required Rest Periods; (6) Failure to Provide Accurate Itemized Wage
21 Statements; (7) Failure to Provide Wages When Due; (8) Failure to Reimburse Employees for
22 Required Expenses; (9) Failure to Provide Personnel Files; and (10) Violations of the Private
23 Attorney General Act at Lab. Code §§ 2698 *et. seq.* JCL Dec., ¶ 17.

24 Plaintiffs commenced written discovery early on in their respective actions. Shortly after
25 several meet and confer discussions regarding discovery, potential law and motion, and other case
26 management issues, the Parties ultimately agreed to mediate the actions. To prepare for mediation,
27 the Parties agreed to informally exchange relevant documents and data points subject to the
28 mediation privilege. Pursuant to that agreement, Defendants produced a sample of the Class

Members’ time and payroll data along with itemized wage statements and relevant policies applicable to Class Members. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 18.

On May 18, 2023, the Parties participated in a full day mediation with highly regarded wage and hour mediator Steven Serratore, Esq. After arms-length negotiations and bargaining, with the mediator’s assistance, the Parties reached an agreement to settle based on a Mediator’s proposal. After reaching an agreement in principle, the Parties negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 19.

On September 6, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On November 2, 2023, the Settlement Administrator mailed Notice Packets to all 323 Class Members. APEX Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. APEX Dec., ¶¶ 11-13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Six Hundred Forty Thousand Dollars and Zero Cents (\$640,000.00) based on a total of an estimated 17,509 workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy the Plaintiffs’ Service Payments; (3) to satisfy the Class Counsel Fees Payment and Litigation Expenses Payment; (4) to satisfy the PAGA Penalties; and (5) to satisfy the Administration Expenses incurred in this action. JCL Dec., ¶ 20.

Defendants will fund the Settlement as follows: 50% of the Gross Settlement Amount (\$320,000.00) no later than thirty (30) days after Final Approval (the “First Installment”), and the remaining 50% of the Gross Settlement Amount (\$320,000.00) no later than one hundred twenty (120) days after Final Approval (the “Second Installment”). Simultaneously with funding each Installment, Defendants shall also fund all amounts necessary to pay the employer-side payroll taxes due on the Individual Class Payments to be made from each Installment. Agreement, ¶ 4.3.

1 Individual Class Payments and Individual PAGA Payments shall be mailed by regular First-Class
2 U.S. Mail to Participating Class Members' and/or Aggrieved Employees' last known mailing
3 address no later than ten (10) days after Defendants fund each Installment. Agreement, ¶ 4.4. The
4 Settlement Administrator will calculate Individual Class Payments by adding up the total number
5 of Workweeks for all Class Members. The Settlement Administrator will then divide the respective
6 Workweeks for each member of the Settlement Class by the total Workweeks for the entire
7 Settlement Class, resulting in a Payment Ratio for each Class Member. Each Participating Class
8 Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each
9 estimated Individual Class Payment. Agreement, ¶ 3.2.4. The estimated average Individual Class
10 Payment is approximately **\$1,077.81**. JCL Dec., ¶ 21.

11 In exchange for the valuable consideration, as of the funding of the Gross Settlement
12 Amount, the Participating Class Members will release the Released Parties from the Released Class
13 Claims that accrued during the Class Period. The Aggrieved Employees, the LWDA, and the State
14 of California will release the Released Parties from the Released PAGA Claims for the PAGA
15 Period. Agreement at ¶¶ 5.2, 5.3.

16 APEX Class Action, LLC was appointed as the Settlement Administrator for the Class.
17 Administration Expenses include those expenses of effectuating and administering the Settlement,
18 i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the
19 costs of administering and disbursing the Individual Class Payments, and the fees of the Settlement
20 Administrator approved for reimbursement by the court. The Settlement Administrator expenses
21 are **\$10,000**. APEX Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount.
22 Agreement, ¶ 3.2.3.

23 Subject to Court approval, Class Counsel shall seek an award in the amount of \$238,333.33,
24 comprised of Attorneys' Fees equal to one-third of the Gross Settlement Amount estimated to be at
25 least \$213,333.33 and up to \$25,000.00 for actually incurred Attorneys' Fees. Plaintiffs' counsel
26 is to split the fees 50% to the Law Offices of J. Kirk Donnelly, APC, 25% to the JCL Law Firm,
27 APC, and 25% to the Zakay Law Group, APLC. The Agreement also provides for Service Payments
28 in the amount of \$10,000.00 each in consideration of Plaintiffs' time, risk, and efforts as the Class

Representative on behalf of the Settlement Class. Agreement, ¶ 3.2.1

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class and absence of any objections to the Settlement and the average Individual Class Payment of \$1,077.81. APEX Dec., ¶ 15; JCL Dec., ¶ 22.

IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS

Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran. v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation”).

“[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court must decide whether the proposed settlement falls within the range of reasonable settlements, considering that settlements are compromises between the parties reflecting subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”). In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the Court rejected this argument and held that “the merits of the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The

1 presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel
2 and the court to act intelligently; (2) the settlement is reached through arm's-length bargaining; (3)
3 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48
4 Cal.App.4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41,
5 pp. 11-91. Here, all of these factors support a presumption of fairness.

6 The essential evaluation is whether, given the risks of litigation and the range of probable
7 results, the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. Here,
8 the facts and circumstances compel the conclusion that the proposed settlement satisfies that
9 standard.

10 V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

11 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
12 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *see also Officers for Justice v. Civil Service*
13 *Com'n* (9th Cir. 1982) 688 F. 2d 615, 625. The purpose of the requirement is “the protection of
14 those class members, including the named plaintiffs, whose rights may not have been given due
15 regard by the negotiating parties.” *Dunk, supra*, at 1801.

16 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v.*
17 *Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial
18 court should consider in evaluating the reasonableness of a class action settlement agreement
19 include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
20 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
21 the extent of discovery completed and the stage of the proceedings, the experience and views of
22 counsel, the presence of a governmental participant, and the reaction of the class members to the
23 proposed settlement.’ [Citations.]” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
24 128; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
25 408.

26 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
27 Due regard should be given to what is otherwise a private consensual agreement between the parties.
28 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the

1 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
2 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
3 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate
4 balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.* These factors are
5 analyzed seriatim below and all support final approval of the class action settlement before this
6 Court.

7 **A. Class Counsel Conducted a Thorough Investigation.**

8 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
9 the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class
10 Counsel assessed the value of the claims using data and documents provided by Defendants through
11 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
12 regarding the number of Class Members, workweeks, and average rate of pay to assess damages
13 before mediation. Class Counsel retained BCG to analyze Defendants’ time and payroll data to
14 formulate damage models estimating Defendants’ liability exposure. Class Counsel’s investigation,
15 research, experience, and damage models informed and guided the mediated negotiations that
16 resulted in this settlement. Accordingly, Class Counsel fully understood the strengths and
17 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 23-28.

18 **B. The Parties Settled At Mediation.**

19 On May 18, 2023, the Parties conducted a full-day mediation with Steven Serratore, Esq., an
20 experienced mediator of wage and hour class and representative actions. Mr. Serratore helped to
21 manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to
22 both sides. The Parties made substantial progress with Mr. Serratore’s assistance. Namely, the
23 Parties exchanged information regarding their respective claims and defenses, including their
24 respective evaluations of the damages. After arms-length negotiations and bargaining, with the
25 mediator’s assistance, the Parties reached an agreement to settle based on a Mediator’s proposal.
26 No action would likely have been taken by Class Members individually, and no compensation
27 would have been recovered for them, but for Plaintiffs’ services on behalf of the Class. JCL Dec.,
28 ¶ 29.

1 **C. Class Counsel is Experienced in Similar Litigation.**

2 Class Counsel in this matter has extensive class action experience in multiple fields and has
3 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar
4 wage and hour class actions involving similar claims. Class Counsel has been approved as class
5 counsel in similar wage and hour class actions throughout the State of California. As such, courts
6 throughout the California have deemed Class Counsel experienced and knowledgeable in this area
7 of law. Class Counsel has participated in every aspect of the settlement discussions and has
8 concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL
9 Dec., ¶¶ 30-36; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3; Declaration of J. Kirk Donnelly
10 (“Donnelly Dec.”), ¶¶ 11-14.

11 **D. The Settlement Class Responded Positively to the Settlement.**

12 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
13 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
14 member with the terms of the Settlement, including the specific estimated Individual Class
15 Payments, none of the 323 members of the Settlement Class has opted-out of the Settlement.
16 Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to
17 participate in the Settlement. JCL Dec., ¶ 10; APEX Dec., ¶¶ 11-13.

18 The unanimous approval by the Settlement Class strongly supports a finding that the
19 Settlement is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust*
20 *Litigation* (S.D.N.Y. 2000) 80 F.Supp.2d 164, 175 (“If only a small number of objections are
21 received, that fact can be viewed as indicative of the adequacy of the settlement.”); *Stoetznner v. U.S.*
22 *Steel Corp.* (3d. Cir. 1990) 897 F.2d 115, 118-119 (29 objections out of 281 member class “strongly
23 favors settlement”); *Laskey v. Int’l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109
24 class members objected to the proposed settlement should be considered when determining fairness
25 of settlement.). Consequently, Class Counsel respectfully request the Court to follow the high
26 approval of the Settlement Class and grant final approval of the Settlement.

27 **E. The Gross Settlement Amount is Fair and Reasonable.**

28 The Gross Settlement Amount of Six Hundred Forty Thousand Dollars and Zero Cents

1 (\$640,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
2 court acknowledged that “as the court does when it approves a settlement as in good faith under
3 Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement
4 is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-*
5 *Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

6 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
7 provides a sizeable recovery to the Participating Class Members and need not necessarily obtain
8 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
9 Cal.App.4th at 250. While the Gross Settlement Amount of Six Hundred Forty Thousand Dollars
10 and Zero Cents (\$640,000.00) represents a discount on Defendants’ potential exposure if Plaintiffs
11 established liability on all claims and was awarded the full amount of the estimated damages at trial,
12 this compromise is reasonable because (1) the formidable defenses raised by Defendants presented
13 a risk that could award significantly less in damages than Plaintiffs’ estimate and (2) any theoretical
14 post-trial recovery may require many more years of litigation, resulting in added fees and costs
15 without any guarantee of recovery for the Class. JCL Dec., ¶ 37.

16 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
17 reasonable considering the nature and magnitude of the claims being settled and the various
18 potential impediments to recovery. Class Counsel developed varied economic damages models
19 measuring Defendants’ liability exposure while accounting for the uncertainties of continued
20 litigation. The various models were informed by Class Counsel’s investigation, including the
21 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
22 preliminary approval process, Class Counsel projected a range of Defendants’ liability exposure for
23 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents a
24 significant percentage of Defendants’ potential exposure. JCL Dec., ¶ 38.

25 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
26 Court for the Northern District of California granted final approval in a wage and hour
27 misclassification action and found that the Gross Settlement Amount representing 10% of the
28 estimated trial award was within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego*

1 *Fin. Corp. Sec. Litig.*) (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement
2 representing “roughly one-sixth of the potential recovery.” Given the amount of the settlement here
3 as compared to potential value of the claims, particularly the strength of Plaintiffs’ action, the
4 settlement is clearly fair and reasonable.²

5 The calculation methodology used to compensate the Participating Class Members for the
6 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology
7 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks
8 each Participating Class Member worked for Defendants during the Class Period. The number of
9 Workweeks for the Participating Class Members is established through Defendants’ data and
10 documented compensation records. The Settlement Administrator is responsible for calculating the
11 Individual Class Payments by multiplying the Payment Ratio for each Participating Class Member
12 by the Net Settlement Amount. The Settlement Administrator will calculate the Payment Ratio by
13 dividing the total number of Workweeks for each Participating Class Member by the total number
14 of Workweeks for all Participating Class Members. This process establishes an objectively fair and
15 reasonable procedure to compensate the Settlement Class. Agreement, ¶¶ 3.2.4, 7.4.2.

16 The Settlement also provides significant relief to the Participating Class Members. After
17 deductions for the Attorneys’ Fees and Attorneys’ Expenses, Administration Expenses, the PAGA
18 Settlement, and the Service Payments, the Net Settlement Amount is currently estimated to be
19 **\$341,666.67**. The average settlement payment is approximately **\$1,077.81**. APEX Dec., ¶¶ 14, 15.
20 This average net recovery is on par with many wage and hour class action settlements approved by
21 California state and federal courts. JCL Dec., ¶ 39. Additionally, Defendants must separately fund
22 its share of any employer side payroll taxes. Agreement, ¶ 3.1.

23 Clearly the goal of this litigation to obtain redress for the class has been met by this
24

25 ² See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7
26 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or
27 approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-
28 00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of
the estimated total liability); see also *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724,
at *2 (“Courts have not identified a precise numerical range within which a settlement must fall in order to be deemed
reasonable; but an agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing
further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the
targeted range of reasonableness.”).

1 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length
2 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore
3 entitled to final approval. JCL Dec., ¶ 40.

4 **F. The Strength of Plaintiffs' Case and Risks of Continued Litigation**

5 Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to
6 ignore the asserted defenses. If successful on any one its defenses, Defendants could defend the
7 action or, at least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 41. As the federal court in
8 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to
9 those in this litigation:

10 *In light of the above-referenced uncertainty in the law, the risk,*
11 *expense, complexity, and likely duration of further litigation*
12 *likewise favors the settlement.* Regardless of how this Court might
13 have ruled on the merits of the legal issues, the losing party likely
14 would have appealed, and the parties would have faced the expense
and uncertainty of litigating an appeal. The expense and possible
duration of the litigation should be considered in evaluating the
reasonableness of [a] settlement.

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
16 the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
17 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and
18 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
19 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
20 *O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
21 hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th
22 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*
23 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might
24 not take their breaks were predominantly individualized questions of fact not susceptible to class
25 treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
26 certification because employees' declarations attesting to having taken meal and rest breaks
27 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*
28 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying

1 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
2 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
3 certification of driver meal and rest period claims based on the predominance of individual issues).
4 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
5 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
6 risk factor favoring settlement. JCL Dec., ¶ 42.

7 Although Plaintiffs are confident about the strength of his claims, Plaintiffs nevertheless
8 recognize that Defendants have factual and legal defenses that, if successful, would potentially
9 defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour
10 litigation can drastically affect the value of Plaintiffs' claims and, in fact, already has. JCL Dec., ¶
11 43.

12 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,
13 2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class
14 action settlement and explained:

15 **Plaintiffs may have a strong case, but the risks inherent in**
16 **continued litigation are great.** Defendants strongly deny liability for
17 Plaintiffs' principal claim that full-time Service Associates were
18 misclassified as exempt. In addition to the uncertainties raised by
19 Defendants at the preliminary stage regarding Plaintiffs' chance of
20 success in this case, Defendants notes that the question of an
21 employer's duty to provide rest and meal periods is an open one,
22 signaling even less certainty for Plaintiffs.....[T]he Total Settlement
23 **amount and the Class Members' expected net recovery, after fees**
24 **and other costs are deducted, appear to be a reasonable**
25 **compromise, in light of the risks of litigation.**

26 *See also Browning v. Yahoo!, Inc.*, 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In
27 considering the strength of Plaintiffs' case, legal uncertainties at the time of settlement - particularly
28 those which go to fundamental legal issues - favor approval.").

As recognized in a federal decision approving settlement of an overtime wage class action:

29 **The potential complexity and possible duration of trial also weigh**
30 **in favor of granting final approval.** Plaintiffs acknowledge the
31 difficulties of proving damages, recognize the uncertainty of
32 outcome, and believe defendant would appeal in the event of adverse
33 judgment. A post-judgment appeal would require many years to
34 resolve and delay payment to class members. Plaintiffs believe the

benefits of a guaranteed recovery today outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees, the actual recovery confers substantial benefits on the class that outweigh the potential recovery through full adjudication.

Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009); see also *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).

In sum, while other cases have approved class certification in wage and hour claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.)

As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post a bond and appeal. A post-judgment appeal by Defendants would have required many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 44.

Class Representative and Class Counsel recognize the expense and length of a trial against Defendants through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 45.

1 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
2 **ARE REASONABLE**

3 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
4 indication that this amount was the result of self-interest at the expense of class members,” such
5 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
6 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
7 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
8 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942,
9 at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express*
10 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)
11 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of
12 the total settlement).

13 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$30,000.00
14 which is approximately 4.7% of the Gross Settlement Amount. As illustrated above, this amount
15 falls well within the range of approved PAGA Settlements. Seventy-five percent (75%) of the
16 PAGA Settlement (\$22,500.00) will be paid to the LWDA (“LWDA Payment”) with the remaining
17 twenty-five percent (25%) to be distributed to the Aggrieved Employees, which is within the range
18 of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 45.

19 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
20 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
21 with the LWDA. JCL Dec., ¶¶ 5-6, 47. By not registering an objection with either Class Counsel
22 or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

23 **VII. CONCLUSION**

24 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness
25 established in California law and should therefore be finally approved as fair, reasonable, and
26 adequate and requests entry of the Final Approval Order and Judgment submitted herewith.

27 DATED: January 11, 2024

28 **JCL LAW FIRM APC**
By: 
Jean-Claude Lapuyade