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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TYRA TOLER, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

TOTAL TESTING SOLUTIONS, LLC, a
California limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 21STCV38452

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

Date: May 1, 2023

Time: 10:00 a.m.

Judge: Hon. Elihu M. Berle

Dept.: 6

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	5
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	6
	A. Class Counsel Conducted a Thorough Investigation	7
	B. The Parties Settled At Mediation	8
	C. Class Counsel is Experience in Similar Litigation	8
	D. The Settlement Class Responded Positively to the Settlement	8
	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	14
VII.	CONCLUSION	15

///

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, 1150-1151.....	5-6
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).....	13
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>Contreras v. United Food Group, LLC</i>	
18	Case No. BC389253 (L.A. County Super. Ct.).....	11
19	<i>Doty v. Costco Wholesale Corp.</i>	
20	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007).....	11
21	<i>Dunk v. Ford Motor Co.</i>	
22	(1996) 48 Cal.App.4th 1794, 1801.....	5-7
23	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
24	(9th Cir. 2000) 213 F.3d 454, 459.....	10
25	<i>Duran v. U.S. Bank National Association</i>	
26	(2014) 59 Cal.4th 1, 31.....	12, 14
27	<i>Fukuchi v. Pizza Hut</i>	
28	Case No. BC302589 (L.A. County Super. Ct.).....	11
29	<i>Glass v. UBS Fin. Servs.</i>	
30	2007 WL221862.....	12
31	<i>Gomez v. Amadeus Salon, Inc.</i>	
32	Case No. BC392297 (L.A. Super. Ct.).....	11
33	<i>Hanlon v. Chrysler Corp.</i>	
34	(9th Cir. 1998) 150 F.3d 1011, 1026).....	14
35	<i>Hopson v. Hanesbrands Inc.</i>	
36	2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009).....	13-15
37	<i>Huens v. Tatum</i>	
38	(1997) 52 Cal.App.4th 259, 265.....	5
39	<i>In re Austrian & German Bank Holocaust Litigation</i>	
40	(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	9
41	<i>In re Newbridge Networks Sec. Litig.</i>	
42	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	10
43	<i>Jack v. Hartford Fire Ins. Co.</i>	
44	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
45	<i>Kullar v. Foot Locker Retail, Inc.</i>	
46	(2008) 168 Cal.App.4th 116, 128-29.....	7, 9
47	<i>Laskey v. Int'l Union</i>	
48	(6th Cir. 1981) 638 F.2d 954.....	9

1	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
2	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	10
3	<i>Lim v. Victoria’s Secret Stores, Inc.</i>	
4	Case No. 04CC00213 (Orange County Super. Ct.).....	11
5	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
6	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	13
7	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
8	(9 th Cir. 2021) 999 F.3d 668.....	12, 14
9	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
10	(1980) 103 Cal.App.3d 573, 578-579.....	6
11	<i>McKenzie v. Fed. Express Corp.</i>	
12	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
13	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
14	(2010) 186 Cal.App.4th 399, 408.....	7
15	<i>O’Conner v. Uber Technologies, Inc.</i>	
16	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	12, 14
17	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
18	(9 th Cir. 1982) 688 F. 2d 615, 625.....	6
19	<i>Palencia v. 99 Cents Only Stores</i>	
20	No. 34-2010-00079619.....	11
21	<i>Rebney v. Wells Fargo Bank</i>	
22	(1990) 220 Cal.App.3d 1117, 1138.....	6-7
23	<i>Ressler v. Federated Department Stores, Inc.</i>	
24	Case No. BC335018 (L.A. County Super. Ct.).....	11
25	<i>Sorenson v. PetSmart, Inc.</i>	
26	Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.).....	11
27	<i>Stoetzner v. U.S. Steel Corp.</i>	
28	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
29	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
30	2015 U.S. Dist. LEXIS 78671.....	10
31	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
32	38 Cal.3d 488, 499-500 (1985).....	9
33	<i>Tien v. Tenet Healthcare Corp.</i>	
34	(2012) 209 Cal.App.4th 1077, 1088.....	12
35	<i>Viceral v. Mistras Grp., Inc.</i>	
36	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	10
37	<i>Wershba v. Apple Computer</i>	
38	(2001) 91 Cal.App.4th 224, 245-46, 250.....	6, 9

RULES, CODES, AND STATUTES

39	<i>Cal. Bus. and Prof. Code</i> §§ 17200.....	3
40	<i>Cal. Code of Civ. Proc.</i> § 877.6.....	9
41	<i>Cal. Lab. Code</i> § 201.....	3
42	<i>Cal. Lab. Code</i> § 202.....	3
43	<i>Cal. Lab. Code</i> § 203.....	3
44	<i>Cal. Lab. Code</i> § 226.....	3
45	<i>Cal. Lab. Code</i> §226.2.....	3
46	<i>Cal. Lab. Code</i> § 226.7.....	3
47	<i>Cal. Lab. Code</i> § 510.....	3

1	<i>Cal. Lab. Code</i> § 512.....	3
2	<i>Cal. Lab. Code</i> § 1194.....	3
3	<i>Cal. Lab. Code</i> § 1197.....	3
4	<i>Cal. Lab. Code</i> § 1197.1.....	3
5	<i>Cal. Lab. Code</i> § 2698 et seq.....	3
6	<i>Cal. Lab. Code</i> § 2802.....	3

SECONDARY SOURCES

7	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992)	
8	§11.41, pp. 11-91.....	6

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I. INTRODUCTION

Plaintiff TYRA TOLER (hereinafter “Plaintiff”) seeks final approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 314 Settlement Class Members employed by Defendant TOTAL TESTING SOLUTIONS, LLC (hereinafter “Defendant”) during the Class Period.

In an order dated January 3, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On February 1, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Nicole Bench (“ILYM Dec.”), ¶ 7. *As of the filing of this motion, the Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, all 314 Class Members chose to participate in the Settlement.*² There are zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 4.

An objective evaluation of the proposed settlement of One Hundred Sixty Thousand Dollars and Zero Cents (\$160,000.00) (“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 Kelly Knight, Esq., a wage and hour class action mediator. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$61,666.67**. This will result in an average Individual Class Payment of **\$196.39**, and a high payment of **\$866.19**.

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. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

² As of the filing date of this Motion, 2 Notices were deemed undeliverable. ILYM Dec. at ¶¶ 10.

Aggrieved Employees will receive an estimated average gross payment of **\$3.98** and a high payment of **\$17.11**. JCL Dec., ¶ 9; ILYM Dec. at ¶ 14.

The relief offered by the Settlement is immediate and is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. JCL Dec., ¶ 10.

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

II. OVERVIEW OF THE LITIGATION

Defendant provides medical diagnostic services throughout California, including in Los Angeles County where Plaintiff worked. This action asserts claims on behalf of Defendant's non-exempt employees who are or previously were employed in California. Plaintiff worked for Defendant in California from January of 2021 to April of 2021. At all times during her employment, Plaintiff was denied legally compliant meal and rest periods, and minimum wages and overtime compensation. Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Total Testing Solutions Employee Handbook." JCL Dec., ¶ 12; Declaration of TYRA TOLER ("Toler Dec."), ¶¶ 2-4.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 13.

1 On August 12, 2021, Plaintiff served Defendant and the Labor and Workforce Development
2 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
3 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
4 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to
5 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
6 2698 *et seq* (“PAGA”). JCL Dec., ¶ 14.

7 On October 19, 2021, Plaintiff filed a class action complaint in the Los Angeles County Superior
8 Court, Case No. 21STCV38452 (“Action”). The Action alleged nine causes of action against Defendant
9 for: (1) Unfair Competition in violation of Bus. and Prof. Code §§ 17200; (2) Failure to Pay Overtime
10 Wages in Violation of California Labor Code §§ 510; (3) Failure to Pay Minimum Wages in Violation
11 of California Labor Code §§ 1194, 1197, and 1197.1.; (4) Failure to Provide Required Meal Periods in
12 Violation of California Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in
13 Violation of California Labor Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for Required
14 Expenses in Violation of California Labor Code § 2802; (7) Failure to Provide Accurate Itemized Wage
15 Statements in Violation of California Labor Code §§ 226 and 226.2; (8) Failure to Provide Wages When
16 Due in Violation of California Labor Code §§ 201, 202, and 203; and (9) Violation of PAGA. JCL Dec.,
17 ¶ 15.

18 After Plaintiff commenced written discovery, the Parties agreed to mediate this action. To prepare
19 for mediation, the Parties agreed to informally produce additional documents and data points subject to
20 the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll
21 data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting
22 Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 16.

23 On June 7, 2022, the Parties participated in a full day mediation with highly regarded wage and
24 hour and PAGA mediator Kelly Knight, Esq. The mediation concluded with a settlement after both
25 sides agreed to a Mediator’s proposal which was subsequently memorialized in the form of a
26 Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement
27 agreement, which is the subject of the instant motion. JCL Dec., ¶ 17.

1 On January 3, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
2 On February 1, 2023, the Settlement Administrator mailed Notice Packets to all 314 Settlement Class
3 Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response
4 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The
5 response from the Settlement Class to the Settlement was outstanding – as of the filing of this motion,
6 100% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 13.

7 **III. THE SETTLEMENT BEFORE THE COURT**

8 The Court preliminarily approved an initial Gross Settlement Amount of One Hundred Sixty
9 Thousand Dollars and Zero Cents (\$160,000.00) based on a total of an estimated 6,150 Workweeks
10 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy
11 Individual Class Payments; (2) to satisfy the Class Representative Service Payment; (3) to satisfy the
12 Class Counsel Fees and Litigation Expenses Payment; (4) to satisfy the PAGA Penalties; and (5) to
13 satisfy the Administration Expenses Payment incurred in this action. JCL Dec., ¶ 18.

14 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
15 Settlement Fund within sixty-five (65) days after the Effective Date. Agreement, § 4.3. The Settlement
16 Administrator shall disburse the Individual Class Payments and Individual PAGA Payment to the
17 Settlement Class Members and/or Aggrieved Employees no later than fourteen (14) days after Defendant
18 funds the Gross Settlement Amount. Agreement, § 4.4. The Settlement Administrator will calculate
19 Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks
20 worked by all Participating Class Members during the Class Period and multiplying the result by each
21 Participating Class Member's Workweeks. Agreement, § 3.2.4. The estimated average Individual Class
22 Payment is approximately **\$196.39**. JCL Dec., ¶ 19; ILYM Dec., ¶ 14.

23 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
24 the Settlement Class Members will release the Defendant from the Released Class Claims that accrued
25 during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release
26 the Defendant from the Released PAGA Claims for the PAGA Period. Agreement at § 1.40, 1.41.

27 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Administration
28

Expenses Payment include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Class Payments, and the fees of the Settlement Administrator approved for reimbursement by the court. The Settlement Administrator expenses are \$10,000.00. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross Settlement Amount. Agreement, § 3.2.3.

Subject to Court approval, Class Counsel shall seek a Class Counsel Fees and Litigation Expenses Payment in the amount of \$73,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$53,333.33 and up to \$20,000 for actually incurred litigation expenses. Plaintiff's counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC. Agreement, § 1.7. The Agreement also provides for a Class Representative Service Payment in the amount of \$10,000 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative on behalf of the Settlement Class and a general release. Agreement, §§ 1.14; 3.2.1; 6.1.1.

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, the absence of any objections to the Settlement and the average Individual Class Payment of \$196.39. ILYM Dec., ¶¶ 11-14; JCL Dec., ¶ 19.

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*

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

10 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that
11 the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute
12 their judgment for that of the parties who negotiated the settlement. *Id.* At 246. The presumption of
13 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act
14 intelligently; (2) the settlement is reached through arm’s-length bargaining; (3) counsel is experienced
15 in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1801, citing
16 Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors
17 support a presumption of fairness.

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

21 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

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

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

9 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
10 Due regard should be given to what is otherwise a private consensual agreement between the parties.
11 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement
12 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
13 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
14 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
15 approximations and rough justice.' [Citation omitted.]” *Id.*

16 These factors are analyzed seriatim below and all support final approval of the class action
17 settlement before this Court.

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

19 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
20 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
21 assessed the value of the class claims using data and documents provided by Defendant through informal
22 discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number
23 of Class Members, workweeks, and average rate of pay to assess damages before mediation. Class
24 Counsel retained Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data to
25 formulate damage models estimating Defendant’s liability exposure. Class Counsel’s investigation,
26 research, experience, and damage models informed and guided the mediated negotiations that resulted
27 in this settlement. Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the
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1 class claims before the parties reached a settlement. JCL Dec., ¶ 20-26.

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

3 On June 7, 2022, the Parties conducted a full-day mediation with Kelly Knight, Esq., a mediator
4 of wage and hour class actions. Mediator Knight helped to manage the Parties' expectations and
5 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
6 progress with Mediator Knight's assistance. Namely, the Parties exchanged information regarding their
7 respective claims and defenses, including their respective evaluations of the damages. After more than
8 eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement
9 based on a Mediator's proposal. The amount of the service awards was not negotiated until after the
10 parties agreed to the Gross Settlement Amount and many other terms. No action would likely have been
11 taken by Class Members individually, and no compensation would have been recovered for them, but
12 for Plaintiff's service on behalf of the Class. JCL Dec., ¶ 27.

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

14 Class Counsel in this matter has extensive class action experience in multiple fields and has
15 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
16 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
17 similar wage and hour class actions throughout the State of California. As such, courts throughout the
18 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
19 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
20 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 28-34; Declaration
21 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

23 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
24 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
25 member with the terms of the Settlement, including the specific estimated Individual Class Payments.
26 As of the filing of this motion, none of the 314 members of the Settlement Class opted-out of the
27 Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose
28

1 to participate in the Settlement. JCL Dec., ¶ 8; ILYM Dec., ¶¶ 12-13.

2 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
3 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.
4 2000)80 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed
5 as indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
6 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
7 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
8 settlement should be considered when determining fairness of settlement.). Consequently, Class Counsel
9 respectfully request the Court to follow the unanimous approval of the Settlement Class and grant final
10 approval of the Settlement.

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

12 The Gross Settlement Amount of One Hundred Sixty Thousand Dollars and Zero Cents
13 (\$160,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
14 court acknowledged that "as the court does when it approves a settlement as in good faith under Code
15 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
16 the 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
17 *Associates*, 38 Cal.3d 488, 499-500 (1985.).

18 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
19 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
20 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
21 While the Gross Settlement Amount of One Hundred Sixty Thousand Dollars and Zero Cents
22 (\$160,000.00) represents a discount on Defendant's potential exposure if Plaintiff established liability
23 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
24 reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award
25 significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may
26 require many more years of litigation, resulting in added fees and costs without any guarantee of
27 recovery for the Class. JCL Dec., ¶ 35.

1 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
2 reasonable considering the nature and magnitude of the claims being settled and the various potential
3 impediments to recovery. Class Counsel developed varied economic damages models measuring
4 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various
5 models were informed by Class Counsel's investigation, including the analysis of a significant sample
6 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
7 Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the
8 Settlement Class. The Gross Settlement Amount represents between approximately 8.43% and 16.60%
9 of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation.
10 JCL Dec., ¶ 36.

11 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
12 for the Northern District of California granted final approval in a wage and hour misclassification action
13 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
14 the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
15 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the
16 potential recovery." Given the amount of the settlement here as compared to potential value of the
17 claims, particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable³.

18 The calculation methodology used to compensate the Settlement Class for the alleged damages
19 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
20 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
21 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
22 Class Members is established through Defendant's data and documented compensation records. The
23 Settlement Administrator is responsible for calculating the Individual Class Payments by dividing the

24 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
25 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
26 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
27 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
28 *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.").

Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class. Agreement, § 3.2.4.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Fees and Litigation Expenses Payment, Administration Expenses Payment, the PAGA Penalties, and the Class Representative Service Payment, the Net Settlement Amount is currently estimated to be **\$61,666.67**. ILYM Dec., ¶14. The average settlement payment is approximately **\$196.39**, and the highest is approximately \$866.19. ILYM Dec., ¶ 14. This average net recovery in on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, § 3.1.

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. JCL Dec., ¶ 37.

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1 **F. The Strength of Plaintiff’s Case and Risks of Continued Litigation**

2 Although Class Counsel believes strongly in Plaintiff’s claims, it would be misguided to ignore
3 the asserted defenses. If successful on any one its defenses, Defendant could defend the action or, at
4 least, drastically undercut Plaintiff’s claims. JCL Dec., ¶ 38. As the federal court in *Glass v. UBS Fin.*
5 *Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

6 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
7 ***complexity, and likely duration of further litigation likewise favors the***
8 ***settlement.*** Regardless of how this Court might have ruled on the merits of
9 the legal issues, the losing party likely would have appealed, and the parties
10 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.

11 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
12 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
13 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
14 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
15 to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir.
16 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
17 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
18 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
19 reason, if any, that employees might not take their breaks were predominantly individualized questions
20 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
21 (affirming denial of certification because employees’ declarations attesting to having taken meal and
22 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
23 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
24 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);
25 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
26 meal and rest period claims based on the predominance of individual issues). Collectively, the examples
27 cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining
28

1 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 39.

2 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
3 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
4 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
5 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 40.

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

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

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

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

22 **The potential complexity and possible duration of trial also weigh in**
23 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
24 of proving damages, recognize the uncertainty of outcome, and believe
25 defendant would appeal in the event of adverse judgment. A post-judgment
26 appeal would require many years to resolve and delay payment to class
27 members. Plaintiffs believe the benefits of a guaranteed recovery today
28 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.

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

31 In sum, while other cases have approved class certification in wage and hour claims, class

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

4 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
5 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
6 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
7 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
8 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
9 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
10 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
11 an uncertain result three or more years in the future. JCL Dec., ¶ 41.

12 The Class Representative and Class Counsel recognize the expense and length of a trial against
13 Defendant through possible appeals which could take another three years. In arriving at their informed
14 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
15 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
16 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
17 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
18 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
19 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
20 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
21 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
22 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 42.

23 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE**
24 **REASONABLE**

25 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no indication
26 that this amount was the result of self-interest at the expense of class members,” such amounts are
27 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
28

928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, Plaintiff and Defendant negotiated a good faith PAGA Penalties in the amount of \$5,000 which is 3.1% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Penalties (\$3,750.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 43.

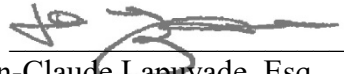
Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the LWDA. JCL Dec., ¶¶ 5-6, 44. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

VII. CONCLUSION

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

Dated: February 23, 2023

JCL LAW FIRM, APC

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