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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

RICARDO COLIN COVARRUBIAS, an
individual, on behalf of himself and on behalf
of all persons similarly situated,

Plaintiff,

v.

PENINSULA CUSTOM HOMES, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 22-CIV-02733

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

Date: April 18, 2023
Time: 2:00 p.m.

Judge: Hon. Marie S. Weiner
Dept.: 2

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1 I. INTRODUCTION

2 Plaintiff RICARDO COLIN COVARRUBIAS (hereinafter “Plaintiff”) seeks final approval
3 of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for 60 Settlement Class
5 Members employed by Defendant PENINSULA CUSTOM HOMES, INC. (hereinafter
6 “Defendant”).

7 In an order dated December 6, 2022, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On
9 December 29, 2023, the Settlement Administrator delivered notice of the proposed settlement to the
10 Class. Declaration of Nathalie Hernandez (“ILYM Dec.”), ¶ 7.

11 *The Class greeted news of the Settlement with 96.67% approval.*² There are two opt-outs
12 and zero objections to the Settlement. ILYM Dec., ¶¶ 10-12. The high approval by the Settlement
13 Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

14 An objective evaluation of the proposed settlement of Two Hundred Twenty-Five Thousand
15 Dollars and Zero Cents (\$225,000.00) (“Gross Settlement Amount”) confirms that the relief
16 negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a
17 product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and
18 presided over by Hon. Carl J. West (Ret.), a respected jurist and experienced mediator of wage and
19 hour class and representative actions. After deducting any Court-approved attorneys’ fees and costs,
20 class representative service awards, settlement administration costs, and the payments to the Labor
21 & Workforce Development Agency (“LWDA”), the net settlement amount shall be distributed to
22 the Settlement Class based on the number of Workweeks they worked while employed by
23 Defendant during the Class Period. JCL Dec., ¶ 10.

24 This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the
25 Settlement, if approved, would result in a Net Settlement Amount of approximately **\$108,000**. This
26 will result in an average Individual Settlement Payment of **\$1,800.00**, with the estimated highest

27 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations
28 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.

² As of the filing date of this Motion, 1 Notice was deemed undeliverable.

1 gross payment being \$3,639.00. Aggrieved Employees will receive an estimated average gross
2 payment of \$41.67, with the estimated highest gross payment being \$85.15. JCL Dec., ¶ 11; ILYM
3 Dec., ¶ 13.

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

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

13 **II. OVERVIEW OF THE LITIGATION**

14 Defendant owns and operates a residential construction business, including in San Mateo
15 County, California, where Plaintiff worked. This action asserts claims on behalf of Defendant's
16 current and former non-exempt employees employed in California. Plaintiff worked for Defendant
17 as a carpenter during the Class Period. At all times during his employment, Plaintiff earned hourly
18 wage, was entitled to legally compliant meal and/or rest periods, and minimum, regular and
19 overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to
20 Defendant's written policies and procedures. JCL Dec., ¶ 14.

21 Generally, Plaintiff claims that Defendant failed to pay for all time worked, including time
22 spend waiting for and undergoing mandatory COVID-19 screenings, failed to provide compliant
23 meal and rest periods, failed to furnish accurate itemized wage statements, failed to pay all wages
24 when due and failed to reimburse employees for mandatory business expenses. Defendant forcefully
25 denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with
26 all applicable employment laws and raised several other significant defenses to Plaintiff's claims,
27 including but not limited to, facially compliant meal and rest period polices, compliant wage
28 statements, and timely payment of all wages due upon separation of employment. JCL Dec., ¶ 15.

1 On November 9, 2021, Plaintiff served Defendant and the Labor and Workforce
2 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA
3 Notice set forth the facts and theories supporting Defendant’s alleged violations of various
4 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”)
5 Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys
6 General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 16.

7 On July 5, 2022, Plaintiff filed a class action complaint in the San Mateo County Superior
8 Court (the “Action”). The Action alleged nine causes of action against Defendant for: (1) Unfair
9 Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay
10 Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay
11 Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to Provide Required
12 Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest
13 Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized
14 Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in
15 Violation of Cal. Lab. Code Sections § 201, 202, and 203; (9) Failure to Reimburse Employees for
16 Required Business Expenses in Violation of Cal. Lab. Code § 2802; and (9) Violations of the
17 Private Attorney General Act at Lab. Code §§ 2698 *et. seq.* (“Class Claims”). JCL Dec., ¶ 17.

18 The Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to
19 informally exchange relevant documents and data points subject to the mediation privilege.
20 Pursuant to that agreement, Defendant produced a sample of the Class Members’ time and payroll
21 data along with itemized wage statements and relevant policies applicable to Class Members. As
22 discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group
23 (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 18.

24 On August 3, 2022, the Parties participated in a full day mediation with highly regarded jurist
25 and wage and hour mediator, Judge West. After arms-length negotiations and bargaining, the
26 Parties reached an agreement to settle based on a Mediator’s proposal, and signed a Memorandum
27 of Understanding. After reaching an agreement in principle, the Parties negotiated a long-form
28 settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 19.

On December 6, 2022, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 6. On December 29, 2022, the Settlement Administrator mailed Notice Packets to all 60 Class Members. ILYM 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 – 96.67% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 10-12.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) based on a total of an estimated 7,700 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 20.

Defendant will fund the Settlement by transferring the Gross Settlement Amount to the Settlement Administrator on the Funding Date, defined as sixty-five (65) calendar days after the Effective Date. Agreement, ¶ III(A)(3), I(O). Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than fifteen (15) calendar days after the Funding Date. Agreement, ¶ III(K)(7). The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The Settlement Administrator will then divide the respective Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶ III(K)(1). The estimated average Individual Settlement Payment is approximately **\$1,800.00**. JCL Dec., ¶ 21.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Settlement Class Members will release the Released Parties from the Released Class

1 Claims that accrued during the Class Period. The PAGA Members, the LWDA, and the State of
2 California will release the Released Parties from the Released PAGA Claims for the PAGA Period.
3 Agreement at ¶¶ III(B), III(C).

4 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
5 Administration Costs include those expenses of effectuating and administering the Settlement, i.e.,
6 the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs
7 of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
8 Administrator approved for reimbursement by the court. The Settlement Administrator expenses
9 are \$7,000. ILYM Dec., ¶ 14. These expenses shall be paid from the Gross Settlement Amount.
10 Agreement, ¶ III(K)(12).

11 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
12 \$90,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount
13 estimated to be at least \$75,000.00 and up to \$15,000 for actually incurred litigation expenses.
14 Plaintiff's counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law
15 Group, APLC. Agreement, ¶ I(E). The Agreement also provides for a Class Representative Service
16 Award in the amount of \$10,000 paid to Plaintiff in consideration of his time, risk, and efforts as
17 the Class Representative on behalf of the Settlement Class. Agreement, ¶¶ I(I); III(K)(9).

18 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the
19 class and should be granted final approval. This is evidenced by the high approval of the Settlement
20 by the Settlement Class and absence of any objections to the Settlement and the average Individual
21 Settlement Payment of \$1,800.00. ILYM Dec., ¶ 13; JCL Dec., ¶ 21.

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

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

1 complex class action litigation”).

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

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

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

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

27 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
28 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *see also Officers for Justice v. Civil Service*

1 *Com'n* (9th Cir. 1982) 688 F. 2d 615, 625. The purpose of the requirement is “the protection of
2 those class members, including the named plaintiffs, whose rights may not have been given due
3 regard by the negotiating parties.” *Dunk, supra*, at 1801.

4 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v.*
5 *Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial
6 court should consider in evaluating the reasonableness of a class action settlement agreement
7 include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
8 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
9 the extent of discovery completed and the stage of the proceedings, the experience and views of
10 counsel, the presence of a governmental participant, and the reaction of the class members to the
11 proposed settlement.’ [Citations.]” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
12 128; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
13 408.

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

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

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

24 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
25 the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class
26 Counsel assessed the value of the claims using data and documents provided by Defendant through
27 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
28 regarding the number of Class Members, workweeks, and average rate of pay to assess damages

1 before mediation. Class Counsel retained BCG to analyze Defendant's time and payroll data to
2 formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation,
3 research, experience, and damage models informed and guided the mediated negotiations that
4 resulted in this settlement. Accordingly, Class Counsel fully understood the strengths and
5 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 22-27.

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

7 On August 3, 2022, the Parties conducted a full-day mediation with Hon. Carl J. West (Ret.),
8 a respected jurist and experienced mediator of wage and hour class and representative actions. Judge
9 West helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues
10 and risks to both sides. The Parties made substantial progress with Judge West's assistance. Namely,
11 the Parties exchanged information regarding their respective claims and defenses, including their
12 respective evaluations of the damages. After more than eight hours of arm's length and adversarial
13 negotiations, the mediation concluded with a settlement. The amount of the service award was not
14 negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No
15 action would likely have been taken by Class Members individually, and no compensation would
16 have been recovered for them, but for Plaintiff's services on behalf of the Class. JCL Dec., ¶ 28.

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

18 Class Counsel in this matter has extensive class action experience in multiple fields and has
19 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar
20 wage and hour class actions involving similar claims. Class Counsel has been approved as class
21 counsel in similar wage and hour class actions throughout the State of California. As such, courts
22 throughout the California have deemed Class Counsel experienced and knowledgeable in this area
23 of law. Class Counsel has participated in every aspect of the settlement discussions and has
24 concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL
25 Dec., ¶¶ 29-35; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

27 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
28 Significantly, after dissemination of the notice to the Settlement Class, which provided each class

1 member with the terms of the Settlement, including the specific estimated Individual Settlement
2 Payments. To date, only two of the 60 members of the Settlement Class has opted-out of the
3 Settlement. Moreover, there are zero objections. Stated differently, 96.67% of the Settlement Class
4 chose to participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 10-12.

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

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

15 The Gross Settlement Amount of Two Hundred Twenty-Five Thousand Dollars and Zero
16 Cents (\$225,000.00) in this case is fair and well within the range of recognized reasonableness. The
17 *Kullar* court acknowledged that “as the court does when it approves a settlement as in good faith
18 under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class
19 settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v.*
20 *Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

21 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
22 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
23 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
24 Cal.App.4th at 250. While the Gross Settlement Amount of Two Hundred Twenty-Five Thousand
25 Dollars and Zero Cents (\$225,000.00) represents a discount on Defendant’s potential exposure if
26 Plaintiff established liability on all claims and were awarded the full amount of the estimated
27 damages at trial, this compromise is reasonable because (1) the formidable defenses raised by
28 Defendant presented a risk that could award significantly less in damages than Plaintiff’s estimate

1 and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in
2 added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 36.

3 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
4 reasonable considering the nature and magnitude of the claims being settled and the various
5 potential impediments to recovery. Class Counsel developed varied economic damages models
6 measuring Defendant's liability exposure while accounting for the uncertainties of continued
7 litigation. The various models were informed by Class Counsel's investigation, including the
8 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
9 preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for
10 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents
11 approximately 25.2% of the value of the maximum potential *damages* at issue. Even when
12 including the penalties for Plaintiff's claim for wage statement violations and waiting time penalties
13 under *Labor Code* Sections 203 and 226, the settlement represents up to 10.4% of the maximum
14 potential liability, assuming all of these amounts could be proved at trial. JCL Dec., ¶ 37.

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

23 The calculation methodology used to compensate the Settlement Class Members for the
24

25 ³ 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 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology
2 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks
3 each Settlement Class Member worked for Defendant during the Class Period. The number of
4 Workweeks for the Settlement Class Members is established through Defendant's data and
5 documented compensation records. The Settlement Administrator is responsible for calculating the
6 Individual Settlement Payments by multiplying the Payment Ratio for each Settlement Class
7 Member by the Net Settlement Amount. The Settlement Administrator will calculate the Payment
8 Ratio by dividing the total number of Workweeks for each Settlement Class Member by the total
9 number of Workweeks for all Settlement Class Members. This process establishes an objectively
10 fair and reasonable procedure to compensate the Settlement Class. Agreement, ¶ III(K)(1).

11 The Settlement also provides significant relief to the Settlement Class Members. After
12 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement,
13 and the Class Representative Service Award, the Net Settlement Amount is currently estimated to
14 be **\$108,000**. The average settlement payment is approximately **\$1,800.00**. ILYM Dec., ¶ 13. This
15 average net recovery is on par with many wage and hour class action settlements approved by
16 California state and federal courts. JCL Dec., ¶ 38. Additionally, Defendant must separately fund
17 its share of any employer side payroll taxes. Agreement, ¶ III(A)(4).

18 Clearly the goal of this litigation – to obtain redress for the class – has been met by this
19 Settlement. Given the amount of the Settlement, the risks of litigation, and the arm's length
20 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore
21 entitled to final approval. JCL Dec., ¶ 39.

22 **F. The Strength of Plaintiff's Case and Risks of Continued Litigation**

23 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to
24 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the
25 action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 40. As the federal court in
26 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to
27 those in this litigation:

28 *In light of the above-referenced uncertainty in the law, the risk,
expense, complexity, and likely duration of further litigation*

1 *likewise favors the settlement.* Regardless of how this Court might
2 have ruled on the merits of the legal issues, the losing party likely
3 would have appealed, and the parties would have faced the expense
4 and uncertainty of litigating an appeal. The expense and possible
5 duration of the litigation should be considered in evaluating the
6 reasonableness of [a] settlement.

7 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
8 the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
9 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and
10 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
11 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
12 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
13 hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th
14 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*
15 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might
16 not take their breaks were predominantly individualized questions of fact not susceptible to class
17 treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
18 certification because employees’ declarations attesting to having taken meal and rest breaks
19 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*
20 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
21 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
22 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
23 certification of driver meal and rest period claims based on the predominance of individual issues).
24 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
25 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
26 risk factor favoring settlement. JCL Dec., ¶ 41.

27 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
28 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat
29 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation
30 can drastically affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 42.

31 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,

2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class action settlement and explained:

Plaintiffs may have a strong case, but the risks inherent in continued litigation are great. Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service Associates were misclassified as exempt. In addition to the uncertainties raised by Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case, 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 Plaintiffs.....[T]he **Total Settlement amount and the Class Members' expected net recovery, after fees and other costs are deducted, appear to be a reasonable compromise, in light of the risks of litigation.**

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

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

The potential complexity and possible duration of trial also weigh in favor of granting final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the uncertainty of outcome, and believe defendant would appeal in the event of adverse judgment. A post-judgment appeal would require many years to 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 Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a bond and appeal. A post-judgment appeal by Defendant 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., ¶ 43.

Class Representative and Class Counsel recognize the expense and length of a trial against Defendant 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., ¶ 44.

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

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

1 the total settlement).

2 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$10,000 which
3 is 4.4% of the Gross Settlement Amount. As illustrated above, this amount falls well within the
4 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement
5 (\$7,500) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent
6 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties
7 approved by courts and should be approved. JCL Dec., ¶ 45.

8 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
9 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
10 with the LWDA. JCL Dec., ¶¶ 5-6, 46. By not registering an objection with either Class Counsel
11 or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

12 VII. CONCLUSION

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

16
17 DATED: March 23, 2023

JCL LAW FIRM APC

18
19 By: 

20 Jean-Claude Lapuyade
21 Attorney for Plaintiff
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