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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

PEDRO RODRIGUEZ, an individual, on behalf
of himself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

R.M. PARKS, INC., a California corporation; and
DOES 1 through 50, Inclusive,

Defendants.

Case No. STK-CV-UOE-2021-0006050

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

Date: June 7, 2023

Time: 9:00 AM

Judge: Hon. Erin Guy Castell

Dept.: 10B

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1 I. INTRODUCTION

2 Plaintiff PEDRO RODRIGUEZ (hereinafter “Plaintiff”) seeks final approval of the Stipulation
3 of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for 64 Settlement Class Members employed by
5 Defendant R.M. PARKS, INC. (hereinafter “Defendant”) during the Class Period.

6 In an order dated February 28, 2023, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 6. On April 5,
8 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
9 Declaration of Karen Hernandez (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with*
10 *unanimous approval as, at the time of the filing of this motion, all 64 Class Members chose to*
11 *participate in the Settlement.*² As of the filing of this motion, there are zero opt-outs and zero objections
12 to the Settlement.³ ILYM Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences
13 the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

14 An objective evaluation of the proposed settlement of One Hundred Seventy-Five Thousand
15 Dollars and Zero Cents (\$175,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated
16 on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of
17 informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over
18 by Hon. Carl J. West (Ret.), a highly regarded jurist and experienced mediator of wage and hour class
19 and PAGA actions. After deducting any Court-approved attorneys’ fees and costs, class representative
20 incentive payments, administration costs, and the payments to the Labor & Workforce Development
21 Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the
22 number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec.,
23 ¶ 10.

24 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates
25

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

28 ² One (1) Notice was deemed undeliverable. ILYM Dec. at ¶ 10.

³ The Response Deadline is on May 20, 2023. Plaintiff will supplement this Declaration to advise the Court of any possible
opt-outs or objections after the filing of the Motion.

that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$80,166.67**. This will result in an average Individual Settlement Payment of **\$1,252.60**, a high payment of **\$2,180.73**, and a low payment of **\$24.78**. Aggrieved Employees will receive an estimated average gross payment of **\$54.05** and a high payment of **\$59.70**. JCL Dec., ¶ 11; 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., ¶ 12.

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., ¶ 13.

II. OVERVIEW OF THE LITIGATION

Defendant transports gasoline and diesel fuel products throughout California, including San Joaquin County where Plaintiff worked. Plaintiff worked for Defendant as a non-exempt employee in California from September of 2020 until October of 2020. Throughout his employment, Plaintiff was classified as a non-exempt employee and was entitled to minimum and straight wages. Additionally, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Policy Handbook." JCL Dec., ¶ 14; Declaration of Pedro Rodriguez ("PD Dec."), ¶¶ 2-4.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wages statements, and failed to pay all wages when due. Defendant forcefully 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, reimbursement for all required business expenses, and

1 payment of all wages upon separation. JCL Dec., ¶ 15.

2 On April 21, 2021, Plaintiff served Defendant and the Labor and Workforce Development
3 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
4 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
5 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
6 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections
7 2698 *et seq* (“PAGA”). JCL Dec., ¶ 16.

8 On July 7, 2021, Plaintiff filed a class action complaint in the San Joaquin County Superior
9 Court, Case Number STK-CV-UOE-2021-0006050 (the “Action”). The Action alleged nine causes of
10 action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200
11 *et. seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3)
12 Failure to Pay Overtime in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Meal
13 Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure
14 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
15 IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal.
16 Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab.
17 Code § 226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and
18 203; and (9) Violations of the Private Attorneys General Act under California Labor Code §§ 2698, *et*
19 *seq.* (“Class Claims”). JCL Dec., ¶ 17.

20 On October 18, 2021, Plaintiff filed a First Amended Complaint, the operative complaint, against
21 R.M. Parks, Inc. (erroneously sued as R.M. Parks Place, Inc.) removing the causes of action for
22 violations of Cal. Lab. Code §§ 226.7 and 512 for failure to provide meal and rest periods. As
23 discussed, *infra*, on June 21, 2022, the Second District Court of Appeal issued its opinion in *Garcia v.*
24 *Superior Court of Los Angeles County* (2022) 80 Cal.App.5th 63, holding that the Preemption Decision
25 issued by Federal Motor Carrier Safety Administration (“FMCSA”) applied prospectively, not
26 retroactively. JCL Dec., ¶ 12.

27 The Parties agreed relatively early to mediate the Action. To prepare for mediation, the Parties
28

1 agreed to informally produce additional documents and data points subject to the mediation privilege,
2 including but not limited to, a sample of the Class Members' time data and certain payroll data points.
3 As discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group
4 ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 18.

5 On June 27, 2022, the Parties participated in a full day mediation with Hon. Carl J. West (Ret.),
6 a highly regarded jurist and experienced mediator of wage and hour class and PAGA actions. After
7 arms-length negotiations and bargaining, the Parties reached an agreement to settle based on Judge
8 West's proposal and signed a Memorandum of Understanding. After reaching an agreement in
9 principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of
10 the instant motion. JCL Dec., ¶ 19.

11 On February 28, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶
12 6. On April 5, 2023, the Settlement Administrator mailed Notice Packets to all 64 Settlement Class
13 Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response
14 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The
15 response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members
16 are participating in the Settlement. ILYM Dec., ¶¶ 13.

17 **III. THE SETTLEMENT BEFORE THE COURT**

18 The Court preliminarily approved an initial Gross Settlement Amount of One Hundred Seventy-
19 Five Thousand Dollars and Zero Cents (\$175,000.00) based on a total of an estimated 6,500 Workweeks
20 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy
21 Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the
22 Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement
23 Administration Costs incurred in this action. JCL Dec., ¶ 21.

24 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
25 Settlement Fund within fourteen (14) calendar days after the Effective Date. Agreement, ¶ I(N). The
26 Settlement Administrator shall mail the Individual Settlement Payments and Aggrieved Employee
27 Payments to the Settlement Class Members and/or Aggrieved Employees no later than fifteen (15)
28

1 calendar days after Defendant funds the Gross Settlement Amount. Agreement, ¶ III(M)(7). The
2 Settlement Administrator will calculate Individual Settlement Payments by adding up the total number
3 of Workweeks for all Class Members. The Settlement Administrator will then divide the respective
4 Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement
5 Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment
6 Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement
7 Payment. Agreement, ¶ III(M)(1). The estimated average Individual Settlement Payment is
8 approximately **\$1,252.60**. JCL Dec., ¶ 12; ILYM Dec., ¶ 14.

9 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
10 Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class
11 Claims for the Class Period. Agreement at ¶ III(B). The Aggrieved Employees, the LWDA, and the
12 State of California will release the Released Parties from the Released PAGA Claims for the PAGA
13 Period. Agreement at ¶ III(C).

14 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
15 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
16 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
17 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
18 Administrator ("Settlement Administration Costs") approved for reimbursement by the court. The
19 Settlement Administration Costs are \$6,000.00. ILYM Dec., ¶ 15. These expenses shall be paid from
20 the Gross Settlement Amount. Agreement, ¶ III(M)(12).

21 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
22 \$73,333.33 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
23 to be at least \$58,333.33 and up to \$15,000 for actually incurred litigation expenses. Plaintiff's counsel
24 is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC.
25 Agreement, ¶ I(E). The Agreement also provides for a Class Representative Service Award in the
26 amount of \$7,500 for Plaintiff, in consideration of his time, risk, and efforts as the Class Representative
27 on behalf of the Settlement Class and a general release. Agreement, ¶¶ I(I); III(D); III(M)(9).

1 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
2 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
3 the Settlement Class, the absence of any objections to the Settlement and the average Individual
4 Settlement Payment of \$1,252.60. ILYM Dec., ¶¶ 11-14; JCL Dec., ¶ 21.

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

7 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
8 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
9 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
10 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the
11 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

23 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that
24 the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute
25 their judgment for that of the parties who negotiated the settlement. *Id.* At 246. The presumption of
26 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act
27 intelligently; (2) the settlement is reached through arm’s-length bargaining; (3) counsel is experienced
28

1 in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1801, citing
2 Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors
3 support a presumption of fairness.

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

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

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

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

22 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
23 Due regard should be given to what is otherwise a private consensual agreement between the parties.
24 *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement
25 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
26 settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the
27 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
28

1 approximations and rough justice.' [Citation omitted.]" *Id.*

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

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

5 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
6 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
7 assessed the value of the class claims using data and documents provided by Defendant through
8 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
9 the number of Class Members, aggregate workweeks and pay periods data for the Class, full and
10 complete copies of applicable handbooks containing, *inter alia*, compensation, timekeeping, and meal
11 and rest period policies. Class Counsel retained Berger Consulting Group ("BCG") to analyze
12 Defendant's time and payroll data to formulate damage models estimating Defendant's liability
13 exposure. Class Counsel's investigation, research, experience, and damage models informed and
14 guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff's Counsel fully
15 understood the strengths and weaknesses of the class claims before the parties reached a settlement.
16 JCL Dec., ¶ 22-29.

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

18 On June 30, 2021, the Parties conducted a full-day mediation with Hon. Carl J. West (Ret.), a
19 well-respected wage and hour class action mediator. Judge West helped to manage the Parties'
20 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
21 made substantial progress with Judge West's assistance. Namely, the Parties exchanged information
22 regarding their respective claims and defenses, including their respective evaluations of the damages.
23 After more than eight hours of arm's length and adversarial negotiations, the mediation concluded with
24 a settlement after the Parties agreed to a Mediator's proposal. The amount of the service awards was
25 not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No
26 action would likely have been taken by Class Members individually, and no compensation would have
27 been recovered for them, but for Plaintiff's service on behalf of the Class. JCL Dec., ¶ 30.

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 wage
4 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
5 similar wage and hour class actions throughout the State of California. As such, courts throughout
6 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
7 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
8 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 31-37; Declaration
9 of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

11 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
12 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
13 member with the terms of the Settlement, including the specific estimated Individual Settlement
14 Payments. As of the filing of this motion, none of the 64 members of the Settlement Class opted-out
15 of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement
16 Class chose to participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 12-13.

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

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

27 The Gross Settlement Amount of One Hundred Seventy-Five Thousand Dollars and Zero Cents
28

1 (\$175,000.00) 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 Code
3 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
4 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
5 *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 Settlement Class and need not necessarily obtain 100 percent of the
8 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
9 While the Gross Settlement Amount of One Hundred Seventy-Five Thousand Dollars and Zero Cents
10 (\$175,000.00) represents a discount on Defendant’s potential exposure if Plaintiff established liability
11 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
12 reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award
13 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
14 require many more years of litigation, resulting in added fees and costs without any guarantee of
15 recovery for the Class. JCL Dec., ¶ 38.

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 potential
18 impediments to recovery. Class Counsel developed varied economic damages models measuring
19 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
20 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
21 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
22 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
23 Settlement Class. The Gross Settlement Amount represents between approximately 15.6% and 29.7%
24 of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation.
25 JCL Dec., ¶ 39.

26 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
27 for the Northern District of California granted final approval in a wage and hour misclassification action
28

1 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
2 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
3 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
4 potential recovery.” Given the amount of the settlement here as compared to potential value of the
5 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable⁴.

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

17 The settlement also provides significant relief to the Settlement Class Members. After deductions
18 for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class
19 Representative Service Award, the Net Settlement Amount is currently estimated to be \$80,166.67.
20 ILYM Dec., ¶14. The average settlement payment is approximately \$1,252.60, the highest is
21 approximately \$2,180.73, and the lowest payment is approximately \$24.78. ILYM Dec., ¶ 14. This
22 average net recovery is on par with many wage and hour class action settlements approved by California
23 state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento

24 ⁴ *See also Viceria 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.”).

County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. 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, ¶ III(A)(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., ¶ 40.

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

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

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the

1 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
2 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
3 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
4 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
5 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
6 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
7 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
8 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
9 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
10 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
11 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
12 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
13 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
14 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
15 certification of driver meal and rest period claims based on the predominance of individual issues).
16 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
17 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
18 settlement. JCL Dec., ¶ 42.

19 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
20 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
21 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
22 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 43.

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

26 **Plaintiffs may have a strong case, but the risks inherent in continued**
27 **litigation are great.** Defendants strongly deny liability for Plaintiffs’
28 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 **Gross 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., ¶ 44.

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

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

14 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
15 indication that this amount was the result of self-interest at the expense of class members,” such
16 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
17 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
18 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
19 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
20 *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*,
21 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging
22 that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

23 Here, Plaintiff and Defendant negotiated a good faith PAGA Settlement in the amount of \$8,000
24 which is 4.5% of the Gross Settlement Amount. As illustrated above, this amount falls well within
25 the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement
26 (\$6,000) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%)
27 of the PAGA Settlement (\$2,000) to be distributed to the Aggrieved Employees (the “Aggrieved
28

Employee Payment”), which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 46.

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., ¶¶ 7-8, 47. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

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: May 12, 2023

JCL LAW FIRM, APC

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