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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

JAMES E. AGUILAR, an individual; PAMELA
CAZARES, an individual, on behalf of
themselves and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

T & K, L.P., a California Limited Partnership;
and DOES 1-50, Inclusive.

Defendants.

Case No. 21CV384674

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

Date: October 26, 2023

Time: 1:30 p.m.

Dept.: 1

Action Filed: July 23, 2021

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I. INTRODUCTION

Plaintiffs JAMES E. AGUILAR and PAMELA CAZARES hereinafter “Plaintiff”) seeks final approval of the Joint Stipulation and Agreement for Class and Representative Action Settlement and Release (“Agreement”)¹, which if approved, would provide valuable monetary relief for 1,904 Settlement Class Members employed by Defendant T&K, L.P. (hereinafter “Defendant”) during the Class Period.

In an order dated May 30, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On July 14, 2023, the Court-approved Notice Packet was mailed to each Class Member via U.S. First Class Mail. Declaration of Makenna Snow (“ILYM Dec.”), ¶ 6. *As of the filing of this motion, the Class greeted news of the Settlement with 99.58% approval.*² There are only eight opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 11-13. The high approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

An objective evaluation of the proposed settlement of Two Million Dollars and Zero Cents (\$2,000,000.00) (“Maximum 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 Hon. Carl J. West (Ret.), a highly regarded jurist and mediator. After deducting any Court-approved attorneys’ fees and expenses, service awards, administration expenses, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement amount shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$1,163,333.34**. This will result in an average Individual Class Payment of **\$613.57**, and a high payment

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, 229 Notices were deemed undeliverable. ILYM Dec. at ¶ 10.

of **\$3,881.73**. ILYM Dec. at ¶ 15. Aggrieved Employees will receive an estimated average gross payment of **\$21.19** and a high payment of **\$73.97**. JCL Dec., ¶ 9; ILYM Dec. at ¶ 16.

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 owns and operates restaurants throughout Northern California, including in Santa Clara County. Plaintiff Aguilar worked for Defendant as a non-exempt employee in California from August 2020 to April 2021. Plaintiff Cazares worked for Defendant as a non-exempt employee in California from November 2020 to April 2021. At all times during their employment, Plaintiffs earned an hourly wage and were entitled to legally compliant meal and/or rest periods, minimum, regular, and overtime wages. Throughout their employment, Plaintiffs were subject to Defendant’s written policies and procedures contained in, among other documents, the T&K, LP Employee Handbook. JCL Dec., ¶ 12; Declaration of James Aguilar (“JA Dec.”), ¶¶ 2-4; Declaration of Pamela Cazares (“PC Dec.”), ¶¶ 2-4.

Defendant forcefully denies liability for each of Plaintiffs’ claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs’ claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, reimbursement for all required business expenses, and payment of all wages when due. JCL Dec., ¶ 13.

On May 19, 2021, Plaintiffs served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiffs’ PAGA Notice set forth

1 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
2 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of their intent to
3 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections 2698
4 *et seq* (“PAGA”). JCL Dec., ¶ 14.

5 On July 23, 2021, Plaintiff Aguilar filed a class action complaint in the Santa Clara Superior
6 Court, Case Number 21CV384674 (the “Action”). The Action alleged nine causes of action against
7 Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§
8 17200 *et seq*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and
9 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq*.; (4) Failure to
10 Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide
11 Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate
12 Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When
13 Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; (8) Failure to Reimburse Employees for
14 Required Expenses in Violation of Cal. Lab. Code § 2802; and (9) Violations of the Private Attorney
15 General Act at Lab. Code §§ 2698 *et. seq.* (“Class Claims”). On March 4, 2022, the First Amended
16 Class Action Complaint was filed to add Plaintiff Cazares as an additional plaintiff and class
17 representative. JCL Dec., ¶ 15.

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

23 On August 29, 2022, the Parties participated in a full day mediation with Hon. Carl J. West (Ret.),
24 a highly regarded jurist and mediator. After arms-length negotiations and bargaining, the Parties reached
25 an agreement to settle based on Judge West’s Mediator’s proposal and signed a Memorandum of
26 Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form
27 settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 17.

28 On May 30, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On

July 14, 2023, the Settlement Administrator mailed Notice Packets to all 1,904 Settlement 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 – as of the filing of this motion, 99.58% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 11-13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Maximum Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00) based on a total of an estimated 94,000 Workweeks worked by the Class during the Class Period. The Maximum Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Service Awards; (3) to satisfy the Class Counsel Attorneys' Fees and Expenses; (4) to satisfy the PAGA Payment; and (5) to satisfy the Administration Expenses incurred in this action. JCL Dec., ¶ 18.

Defendant will fund the Settlement by transferring the Maximum Settlement Amount into a Qualified Settlement Fund within ten (10) calendar days after the Effective Date. Agreement, § 6.4. The Settlement Administrator shall mail the Individual Settlement Payments to the Settlement Class Members and/or Aggrieved Employees no later than five (5) business days after Defendant funds the Maximum Settlement Amount. Agreement, § 6.4. The Settlement Administrator will calculate Individual Settlement Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Class Members during the Class Period and multiplying the result by each Settlement Class Member's Workweeks. Agreement, § 6.2. The estimated average Individual Class Payment is approximately **\$613.57**. JCL Dec., ¶ 19; ILYM Dec., ¶ 15.

In exchange for the valuable consideration, as of the funding of the Maximum Settlement Amount, the Settlement Class Members will release the Defendant from the Released Class Claims that accrued during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release the Defendant from the Released PAGA Claims for the PAGA Period. Agreement at § 1.33, 1.34, 9.1, 9.3.

ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Administration Expenses include those expenses of effectuating and administering the Settlement, i.e., the costs incurred

1 to the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and
2 disbursing the Individual Settlement Payments, and the fees of the Settlement Administrator approved
3 for reimbursement by the court. The Settlement Administrator expenses are \$25,000.00. ILYM Dec., ¶
4 17. These expenses shall be paid from the Maximum Settlement Amount. Agreement, §§ 1.2, 4.5.

5 Subject to Court approval, Class Counsel shall seek a Class Counsel's Attorneys' Fees and
6 Expenses in the amount of \$691,666.66, comprised of attorneys' fees equal to one-third of the Maximum
7 Settlement Amount estimated to be at least \$666,666.66 and up to \$25,000.00 for actually incurred
8 litigation expenses. Plaintiff's counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to
9 the Zakay Law Group, APLC. The Agreement also provides for Service Awards in the amount of
10 \$10,000.00 for each Plaintiff, in consideration of their time, risk, and efforts as the Class Representatives
11 on behalf of the Settlement Class and a general release. Agreement, §§ 1.38; 4.1; 9.2.

12 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
13 and should be granted final approval. This is evidenced by the high approval of the Settlement by the
14 Settlement Class, the absence of any objections to the Settlement and the average Individual Class
15 Payment of \$613.57. ILYM Dec., ¶¶ 11-15; JCL Dec., ¶ 19.

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

18 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
19 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
20 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
21 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the
22 preferred means of dispute resolution. This is especially true in complex class action litigation").

23 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
24 action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
25 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
26 must decide whether the proposed settlement falls within the range of reasonable settlements,
27 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
28 judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple*

1 *Computer* (2001) 91 Cal.App.4th 224, 246 (The proposed settlement is not to be judged against a
2 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).
3 In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the
4 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
5 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

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

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

23 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
24 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial court should
25 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of
26 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
27 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
28 completed and the stage of the proceedings, the experience and views of counsel, the presence of a

governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]" *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.

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

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

A. Class Counsel Conducted a Thorough Investigation.

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

B. The Parties Settled At Mediation.

On August 29, 2022, the Parties conducted a full-day mediation with Hon. Carl J. West (Ret.), a highly regarded jurist and mediator. Judge West helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge West's assistance. Namely, the Parties exchanged information regarding their

1 respective claims and defenses, including their respective evaluations of the damages. After more than
2 eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement
3 based on a Mediator's proposal. The amount of the service awards was not negotiated until after the
4 parties agreed to the Maximum Settlement Amount and many other terms. No action would likely have
5 been taken by Class Members individually, and no compensation would have been recovered for them,
6 but for Plaintiffs' service on behalf of the Class. JCL Dec., ¶ 26.

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

8 Class Counsel in this matter has extensive class action experience in multiple fields and has
9 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
10 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
11 similar wage and hour class actions throughout the State of California. As such, courts throughout the
12 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
13 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
14 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 27-33; Declaration
15 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

17 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
18 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
19 member with the terms of the Settlement, including the specific estimated Individual Settlement
20 Payments. As of the filing of this motion, eight of the 1,904 members of the Settlement Class opted-out
21 of the Settlement. Moreover, there are zero objections. Stated differently, 99.58% of the Settlement
22 Class chose to participate in the Settlement. JCL Dec., ¶ 8; ILYM Dec., ¶¶ 11-13.

23 The high approval by the Settlement Class strongly supports a finding that the Settlement is fair,
24 reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000) 80
25 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed as
26 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
27 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
28 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed

1 settlement should be considered when determining fairness of settlement.). Consequently, Class Counsel
2 respectfully request the Court to follow the high approval of the Settlement Class and grant final
3 approval of the Settlement.

4 **E. The Maximum Settlement Amount is Fair and Reasonable.**

5 The Maximum Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00) in
6 this case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged
7 that “as the court does when it approves a settlement as in good faith under Code of Civil Procedure
8 section 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of
9 reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d
10 488, 499-500 (1985).)

11 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
12 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
13 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
14 While the Maximum Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00)
15 represents a discount on Defendant’s potential exposure if Plaintiffs established liability on all claims
16 and were awarded the full amount of the estimated damages at trial, this compromise is reasonable
17 because (1) the formidable defenses raised by Defendant presented a risk that could award significantly
18 less in damages than Plaintiffs’ estimate and (2) any theoretical post-trial recovery may require many
19 more years of litigation, resulting in added fees and costs without any guarantee of recovery for the
20 Class. JCL Dec., ¶ 34.

21 As detailed at the time of preliminary approval, the Maximum Settlement Amount is fair and
22 reasonable considering the nature and magnitude of the claims being settled and the various potential
23 impediments to recovery. Class Counsel developed varied economic damages models measuring
24 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
25 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
26 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
27 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
28 Settlement Class. The Gross Settlement Amount represents between approximately 10.5% and 18.6%

1 of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation.
2 JCL Dec., ¶ 35.

3 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
4 for the Northern District of California granted final approval in a wage and hour misclassification action
5 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
6 the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
7 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the
8 potential recovery." Given the amount of the settlement here as compared to potential value of the
9 claims, particularly the strength of Plaintiffs' action, the settlement is clearly fair and reasonable³.

10 The calculation methodology used to compensate the Settlement Class for the alleged damages
11 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
12 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
13 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
14 Class Members is established through Defendant's data and documented compensation records. The
15 Settlement Administrator is responsible for calculating the Individual Settlement Payments by dividing
16 the Net Settlement Amount by the total number of Workweeks worked by all Class Members during the
17 Class Period and multiplying the result by each Settlement Class Member's Workweeks. This process
18 establishes an objectively fair and reasonable procedure to compensate the Settlement Class.
19 Agreement, § 6.2.

20 The settlement also provides significant relief to the Settlement Class Members. After deductions
21 for the Class Counsel's Attorneys' Fees and Expenses, Administration Expenses, the PAGA Payment,
22 and the Service Awards, the Net Settlement Amount is currently estimated to be **\$1,163,333.34**. ILYM
23 Dec., ¶ 14. The average settlement payment is approximately **\$613.57**, and the highest is approximately

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.").

1 \$3,881.73. ILYM Dec., ¶ 15. This average net recovery is on par with many wage and hour class action
2 settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*,
3 No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80);
4 *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of
5 approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super.
6 Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case
7 No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco*
8 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of
9 approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.)
10 (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213
11 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon,*
12 *Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally,
13 Defendant must separately fund its share of any employer side payroll taxes. Agreement, §§ 1.17.

14 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
15 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
16 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
17 JCL Dec., ¶ 36.

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

19 Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to ignore
20 the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at
21 least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 37. As the federal court in *Glass v. UBS Fin.*
22 *Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

23 *In light of the above-referenced uncertainty in the law, the risk, expense,*
24 *complexity, and likely duration of further litigation likewise favors the*
25 *settlement.* Regardless of how this Court might have ruled on the merits of
26 the legal issues, the losing party likely would have appealed, and the parties
27 would have faced the expense and uncertainty of litigating an appeal. The
28 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, Inc.*
2 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
3 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
4 to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir.
5 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
6 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
7 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
8 reason, if any, that employees might not take their breaks were predominantly individualized questions
9 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
10 (affirming denial of certification because employees’ declarations attesting to having taken meal and
11 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
12 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
13 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);
14 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
15 meal and rest period claims based on the predominance of individual issues). Collectively, the examples
16 cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining
17 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 38.

18 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
19 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or
20 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
21 drastically affect the value of Plaintiffs’ claims and, in fact, already has. JCL Dec., ¶ 39.

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

25 **Plaintiffs may have a strong case, but the risks inherent in continued**
26 **litigation are great.** Defendants strongly deny liability for Plaintiffs’
27 principal claim that full-time Service Associates were misclassified as
28 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

1 meal periods is an open one, signaling even less certainty for
2 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
3 **expected net recovery, after fees and other costs are deducted, appear**
4 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

9 **The potential complexity and possible duration of trial also weigh in**
10 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
11 of proving damages, recognize the uncertainty of outcome, and believe
12 defendant would appeal in the event of adverse judgment. A post-judgment
13 appeal would require many years to resolve and delay payment to class
14 members. Plaintiffs believe the benefits of a guaranteed recovery today
15 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the
16 Court agrees, the actual recovery confers substantial benefits on the class
17 that outweigh the potential recovery through full adjudication.

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

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

24 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
25 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
26 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
27 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
28 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., ¶ 40.

The Class Representatives and Class Counsel recognize the expense and length of a trial against

1 Defendant through possible appeals which could take another three years. In arriving at their informed
2 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
3 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
4 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
5 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
6 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
7 Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and
8 non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class
9 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
10 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 41.

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

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

22 Here, Plaintiffs and Defendant negotiated a good faith PAGA Payment in the amount of
23 \$100,000.00 which is 5% of the Gross Settlement Amount. As illustrated above, this amount falls well
24 within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment
25 (\$3,750.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
26 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payment
27 approved by courts and should be approved. JCL Dec., ¶ 42.

28 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy

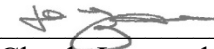
1 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
2 LWDA. JCL Dec., ¶¶ 5-6, 43. By not registering an objection with either Class Counsel or the Court,
3 the LWDA has accepted and approved of the proposed PAGA Payment.

4 **VII. CONCLUSION**

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

8
9 Dated: October 3, 2023

JCL LAW FIRM, APC

10 By: 
11 Jean-Claude Lapuyade, Esq.
12 Attorney for Plaintiffs
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