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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

PEDRO RODRIGUEZ and JOSE GARCIA,
individuals, on behalf of themselves and on behalf
of all persons similarly situated,

Plaintiffs,

v.

FERMA GREENBOX, INC., a California
Corporation; FERMA CORPORATION, a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. RG21101104

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

Date: July 28, 2023

Time: 9:00 a.m.

Judge: Hon. Evelio Grillo

Dept.: 21

Reservation ID: 131351394793

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1 I. INTRODUCTION

2 Plaintiffs PEDRO RODRIGUEZ and JOSE GARCIA (hereinafter “Plaintiffs”) seek final
3 approval 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 52 Settlement Class
5 Members employed by Defendants FERMA GREENBOX, INC. and FERMA CORPORATION
6 (hereinafter “Defendants”) during the Class Period.

7 In an order dated March 15, 2023, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 6. On April 14,
9 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
10 Declaration of Karen Hernandez (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with*
11 *unanimous approval as, at the time of the filing of this motion, all 52 Class Members chose to*
12 *participate in the Settlement.*² As of the filing of this motion, there are zero opt-outs and zero objections
13 to the Settlement. ILYM Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the
14 clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

15 An objective evaluation of the proposed settlement of Two Hundred Thousand Dollars and Zero
16 Cents (\$200,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the
17 Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial,
18 and non-collusive negotiations, between experienced counsel, and presided over by Steven J. Rottman,
19 a highly regarded and experienced mediator of wage and hour class and PAGA actions. After deducting
20 any Court-approved attorneys’ fees and costs, class representative incentive payments, administration
21 costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement
22 fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while
23 employed by Defendants during the Class Period. JCL Dec., ¶ 10.

24 This Settlement provides substantial recovery to Settlement Class Members. Plaintiffs estimate
25 that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$75,334.00**.

26
27 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the
28 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 One (1) Notice was deemed undeliverable. ILYM Dec. at ¶ 10.

1 This will result in an average Individual Settlement Payment of **\$1,448.73**, a high payment of
2 **\$3,467.07**, and a low payment of **\$8.85**. Aggrieved Employees will receive an estimated average gross
3 payment of **\$48.08** and a high payment of **\$159.16**. JCL Dec., ¶ 11; ILYM Dec. at ¶ 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 uncertain
8 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 Agreement
12 and entry of the proposed Final Approval Order and Judgment. JCL Dec., ¶ 13.

13 **II. OVERVIEW OF THE LITIGATION**

14 Defendants provide debris box hauling services to general contractors, residential, industrial,
15 commercial, state and government facilities, including in Alameda County, where Plaintiffs worked.
16 Plaintiffs worked for Defendants as drivers since 2016. As drivers, at all times during their employment,
17 Plaintiffs earned an hourly wage, including minimum wages for all hours worked. Throughout their
18 employment, Plaintiffs were subject to Defendants' written policies and procedures. JCL Dec., ¶ 14;
19 Declarations of Pedro Rodriguez ("PD Dec."), and Jose Garcia ("JG Dec."), ¶¶ 2-4.

20 Generally, Plaintiffs claim that Defendants failed to pay them and the Class Members wages for
21 all time worked, including time spent undergoing Covid-19 screening, failed to provide accurate
22 itemized wage statements, and failed to provide wages when due. Defendants assert that they fully
23 complied with all applicable employment laws and raised several other significant defenses to
24 Plaintiffs' claims. JCL Dec., ¶ 15.

25 On March 3, 2021, Plaintiffs served Defendants and the Labor and Workforce Development
26 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
27 the facts and theories supporting Defendants' alleged violations of various provisions of the California
28

1 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
2 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
3 2698 et seq (“PAGA”). JCL Dec., ¶ 16.

4 On May 21, 2021, Plaintiffs filed a class action complaint in the Alameda Superior Court. On
5 October 18, 2021 Plaintiffs filed a First Amended Complaint, which is the operative complaint, alleging
6 claims for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay
7 minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to
8 provide accurate itemized wage statements in violation of California Labor Code sections 226 and
9 226.2; (4) failure to provide wages when due in violation of California Labor Code sections 201, 202
10 and 203; and (5) violations of PAGA. JCL Dec., ¶ 17.

11 After engaging in extensive formal written discovery, the Parties agreed to attend mediation. To
12 prepare for mediation, the Parties agreed to informally produce certain documents and data points
13 subject to the mediation privilege, including but not limited to, a sample of the Class Members’ time
14 and payroll data. As discussed *infra*, Plaintiffs’ counsel retained the Berger Consulting Group, to
15 analyze Defendants’ time and payroll data. JCL Dec., ¶ 12.

16 The Parties agreed relatively early to mediate the Action. To prepare for mediation, the Parties
17 agreed to informally produce additional documents and data points subject to the mediation privilege,
18 including but not limited to, a sample of the Class Members’ time data and certain payroll data points.
19 As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group
20 (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 18.

21 On August 1, 2022, the Parties participated in a full day mediation with Steven J. Rottman, Esq.
22 After arms-length negotiations and bargaining, the mediation concluded without a settlement.
23 However, Mediator Rottman made a mediator’s proposal, which was accepted by all Parties, and was
24 memorialized in the form of a Memorandum of Understanding. After reaching an agreement in
25 principle, the parties drafted and negotiated a long-form settlement agreement, which is the subject of
26 the instant motion. JCL Dec., ¶ 19.

27 On March 15, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 6.
28

On April 14, 2023, the Settlement Administrator mailed Notice Packets to all 52 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 – 100% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) based on a total of an estimated 6,052 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., ¶ 21.

Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within sixty-five (65) days after the Effective Date. The Settlement Administrator shall mail the Individual Settlement Payments and Aggrieved Employee Payments to the Settlement Class Members and/or Aggrieved Employees no later than fifteen (15) calendar days after Defendants fund the Gross Settlement Amount. 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. The estimated average Individual Settlement Payment is approximately **\$1,448.73**. JCL Dec., ¶ 12; ILYM Dec., ¶ 14.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, Plaintiffs and the Settlement Class Members will release the Released Parties from the Released Class Claims for the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims for the PAGA Period.

1 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
2 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
3 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
4 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
5 Administrator (“Settlement Administration Costs”) approved for reimbursement by the court. The
6 Settlement Administration Costs are \$8,000.00. ILYM Dec., ¶ 14. These expenses shall be paid from
7 the Gross Settlement Amount. Agreement, ¶ III(M)(12).

8 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
9 \$91,666.00 comprised of attorneys’ fees equal to one-third of the Gross Settlement Amount estimated
10 to be at least \$66,666.00 and up to \$25,000 for actually incurred litigation expenses. Plaintiff’s counsel
11 is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC. The
12 Agreement also provides for a Class Representative Service Award in the amount of \$7,500 for each
13 Plaintiff, in consideration of their time, risk, and efforts as the Class Representatives on behalf of the
14 Settlement Class and a general release.

15 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
16 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
17 the Settlement Class, the absence of any objections to the Settlement and the average Individual
18 Settlement Payment of \$1,448.73. ILYM Dec., ¶¶ 11-14; JCL Dec., ¶ 21.

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

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

26 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
27 action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
28

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

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

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

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

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

27 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
28

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

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

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

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

19 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
20 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
21 assessed the value of the class claims using data and documents provided by Defendants through
22 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
23 the number of Class Members, aggregate workweeks and pay periods data for the Class, full and
24 complete copies of applicable handbooks containing, *inter alia*, compensation, timekeeping, and meal
25 and rest period policies. Class Counsel retained Berger Consulting Group (“BCG”) to analyze
26 Defendant’s time and payroll data to formulate damage models estimating Defendant’s liability
27 exposure. Class Counsel’s investigation, research, experience, and damage models informed and
28

guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 22-29.

B. The Parties Settled At Mediation.

On August 1, 2022, the Parties conducted a full-day mediation with Steven J. Rottman, Esq. a well-respected wage and hour class action mediator. Mr. Rottman 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 Mr. Rottman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluations of the damages. After hours of arm's length and adversarial negotiations, the mediation concluded with a settlement after the Parties agreed to a Mediator's proposal. The amount of the service awards was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs' service on behalf of the Class. JCL Dec., ¶ 30.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 31-37; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Settlement

1 Payments. As of the filing of this motion, none of the 52 members of the Settlement Class opted-out
2 of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement
3 Class chose to participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 12-13.

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

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

14 The Gross Settlement Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00)
15 in this case is fair and well within the range of recognized reasonableness. The *Kullar* court
16 acknowledged that "as the court does when it approves a settlement as in good faith under Code of
17 Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the
18 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
19 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

20 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
21 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
22 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
23 While the Gross Settlement Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00)
24 represents a discount on Defendant's potential exposure if Plaintiffs established liability on all claims
25 and was awarded the full amount of the estimated damages at trial, this compromise is reasonable
26 because (1) the formidable defenses raised by Defendants presented a risk that could award significantly
27 less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many
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1 more years of litigation, resulting in added fees and costs without any guarantee of recovery for the
2 Class. JCL Dec., ¶ 38.

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 potential
5 impediments to recovery. Class Counsel developed varied economic damages models measuring
6 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various
7 models were informed by Class Counsel's investigation, including the analysis of a significant sample
8 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
9 Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the
10 Settlement Class. The Gross Settlement Amount represents approximately 36.7% of Defendant's *class-*
11 *wide* liability exposure as estimated by Class Counsel at the time of mediation for damages and statutory
12 penalties. JCL Dec., ¶ 39.

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

20 The calculation methodology used to compensate the Settlement Class for the alleged damages
21 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
22 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
23 Member worked for Defendants during the Class Period. The number of Workweeks for the Settlement

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.").

Class Members is established through Defendant's data and documented compensation records. The Settlement Administrator is responsible for calculating the Individual Settlement Payments by multiplying the Payment Ratio for each Settlement Class Member by the Net Settlement Amount. The Settlement Administrator will calculate the payment ratio by dividing the total number of Workweeks for each Settlement Class Member by the total number of Workweeks for all Settlement Class Members. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class Representative Service Award, the Net Settlement Amount is currently estimated to be \$75,334.00. ILYM Dec., ¶13. The average settlement payment is approximately \$1,448.73, the highest is approximately \$3,467.07, and the lowest payment is approximately \$8.85. ILYM Dec., ¶ 13. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (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, Defendants must separately fund their share of any employer side payroll taxes.

Clearly the goal of this litigation 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

1 settlement is fair and reasonable, and is therefore entitled to final approval. JCL Dec., ¶ 40.

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

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

8 *In light of the above-referenced uncertainty in the law, the risk, expense,*
9 *complexity, and likely duration of further litigation likewise favors the*
10 *settlement.* Regardless of how this Court might have ruled on the merits of
11 the legal issues, the losing party likely would have appealed, and the parties
12 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.

13 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
14 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
15 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
16 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
17 trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*
18 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
19 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
20 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
21 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
22 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
23 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
24 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
25 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
26 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
27 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
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certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 42.

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

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 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.

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

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

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

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

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

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

12 Here, Plaintiffs and Defendants negotiated a good faith PAGA Settlement in the amount of
13 \$10,000 which is 5% of the Gross Settlement Amount. As illustrated above, this amount falls well
14 within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement
15 (\$6,000) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%)
16 of the PAGA Settlement (\$2,000) to be distributed to the Aggrieved Employees (the “Aggrieved
17 Employee Payment”), which is within the range of PAGA penalties approved by courts and should be
18 approved. JCL Dec., ¶ 46.

19 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
20 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
21 with the LWDA. JCL Dec., ¶¶ 7-8, 47. By not registering an objection with either Class Counsel or
22 the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

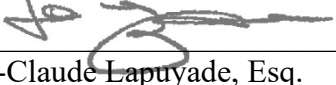
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1 **VII. CONCLUSION**

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

5 Dated: June 23, 2023

JCL LAW FIRM, APC

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7 By: 
8 Jean-Claude Lapuyade, Esq.
9 Attorneys for Plaintiff
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