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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

MARTIN MARISCAL, DANIEL GARCIA,
RAFAEL ROJAS, JOSE HERNANDEZ, AND
LUIS VAZQUEZ individuals, on behalf of
themselves and on behalf of all persons similarly
situated,

Plaintiffs,

v.

JANCO INDUSTRIES, INC., a California
corporation; TERRY ALEXANDER, an
individual; ANDREW ALEXANDER, an
individual; and DOES 1-50, Inclusive,

Defendants.

Lead Case No: STK-CV-UOE-2022-7290

[Consolidated Case No. STK-CV-UOE-2022-9998; STK-CV-UOE-2022-8450; STK-CV-UOE-2022-8790]

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

Date: December 4, 2024

Time: 9:00 a.m.

Judge: Hon. George J. Abdallah

Dept.: 10A

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1 I. INTRODUCTION

2 Plaintiffs, MARTIN MARISCAL (“Plaintiff Mariscal”), DANIEL GARCIA (“Plaintiff Garcia”),
3 RAFAEL ROJAS (“Plaintiff Rojas”), JOSE HERNANDEZ (“Plaintiff Hernandez”), and LUIS
4 VASQUEZ (“Plaintiff Vasquez”) (collectively “Plaintiffs”) seek final approval of the Class Action and
5 PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary
6 relief for 988 Settlement Class Members employed by Defendants JANCO INDUSTRIES, INC.
7 (“Defendant Janco”), TERRY ALEXANDER (“Defendant Terry Alexander”), and ANDREW
8 ALEXANDER (“Defendant Andrew Alexander”), (collectively “Defendants”) during the period from
9 August 19, 2018, through January 12, 2024 (“Class Period”).

10 In an order dated August 6, 2024, this Court preliminarily approved the Agreement and
11 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On
12 September 11, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First
13 Class Mail. Declaration of Katherine Rovertoni (“Apex Dec.”), ¶ 7. ***The Class greeted news of the***
14 ***Settlement with 100% approval.*** There are zero objections to the Settlement and zero requests for
15 exclusion. Apex Dec., ¶¶ 11-12. The 100% participation rate by the Class evidences the clear fairness
16 and reasonableness of the Settlement. JCL Dec., ¶ 8.

17 An objective evaluation of the proposed settlement of Two Million Dollars and Zero Cents
18 (\$2,000,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the
19 Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product of informed,
20 adversarial, and non-collusive negotiations, between experienced counsel, and presided over by
21 mediator, Steve Rottman, Esq. After deducting any Court-approved PAGA Penalty Amount, Class
22 Representative Service Awards, Class Counsel Award, and the Settlement Administration Costs, the
23 Net Settlement Amount shall be distributed to Settlement Class Members based on the number of
24 Workweeks they worked while employed by Defendants during the Class Period. JCL Dec., ¶ 8.

25 This Settlement provides substantial recovery for Defendants’ alleged wage and hour violations.
26

27 ¹ The Agreement is attached as Ex “1” 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.

1 Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of
2 approximately **\$1,067,000.00**. This will result in an estimated average Individual Settlement Payment
3 of **\$1,110.32**, an estimated highest Individual Settlement Payment of **\$4,579.39**, and estimated lowest
4 Individual Settlement Payment of **\$2.32**. JCL Dec., ¶ 9; Apex Dec. at ¶ 15.

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

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

14 **II. OVERVIEW OF THE LITIGATION**

15 Defendant Janco is a concrete construction company. Defendant Terry Alexander and Defendant
16 Andrew Alexander are owners/managing members of Defendant Janco. Plaintiffs were employed by
17 Defendants as non-exempt employees in San Joaquin County, in the State of California. Throughout
18 their employment, Plaintiffs were entitled to legally compliant meal and/or rest periods, minimum and
19 regular wages. Additionally, Plaintiffs were subject to Defendants' written policies and procedures.
20 JCL Dec., ¶ 12; Declaration of Martin Mariscal ("Mariscal Dec") at ¶ 3; Declaration of Daniel Garcia
21 ("Garcia Dec") at ¶ 3, Declaration of Jose Hernandez ("Hernandez Dec") at ¶ 4; Declaration of Rafael
22 Rojas ("Rojas Dec") at ¶ 3; and Declaration of Luis Vazquez ("Vazquez Dec") at ¶ 4-5.

23 Generally, Plaintiffs claim that Defendants failed to pay minimum wages and overtime wages,
24 failed to provide compliant meal and rest periods, failed to furnish accurate itemized wages statements,
25 failed to pay all wages when due and failed to reimburse for mandatory business expenses. Defendants
26 forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully
27 complied with all applicable employment laws and raised several other significant defenses to
28

1 Plaintiffs' claims, including but not limited to, compliant meal and rest period policies, compliant wage
2 statements, reimbursement for all required business expenses, and payment of all wages upon
3 separation. JCL Dec., ¶ 13.

4 The Mariscal Class Action and PAGA Action

5 Plaintiffs Mariscal, Garcia, and Rojas exhausted the administrative requirements of the PAGA
6 on July 13, 2022, when they submitted a letter, by online submission to the Labor & Workforce
7 Development Agency ("LWDA") and by certified mail to Defendants, outlining the facts and theories
8 underlying their claims. On August 19, 2022, Plaintiffs Mariscal, Garcia, and Rojas filed their class
9 action complaint. On September 21, 2022, Mariscal, Garcia, and Rojas filed their separate PAGA
10 representative action complaint. JCL Dec., ¶ 14.

11 The Hernandez and Vazquez Actions

12 Plaintiff Hernandez exhausted the administrative requirements of PAGA on August 16, 2022,
13 when he submitted a letter via online submission to the LWDA and by certified mail to Defendants,
14 outlining the facts and theories underlying his claims. On September 30, 2022, Hernandez filed his
15 class action complaint. Plaintiff Vazquez exhausted the administrative requirements of PAGA on
16 October 28, 2022, when he submitted a letter, by online submission to the LWDA and by certified mail
17 to Defendants, outlining the facts and theories underlying his claims. On October 31, 2022, Vazquez
18 filed his class action complaint. JCL Dec., ¶ 15.

19 Consolidation of the Actions

20 On or about March 30, 2023, the San Joaquin County Superior Court consolidated the four
21 actions, with the Mariscal, et al. class action as the lead case. The complaints alleged the following:
22 (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §17200; (2) Failure to pay minimum
23 wages; (3) Failure to pay overtime; (4) Failure to provide meal periods; (5) Failure to provide rest
24 periods; (6) Failure to provide accurate itemized statements; (7) Failure to reimburse employees for
25 required expenses; and (8) Failure to provide wages when due. JCL Dec., ¶ 16.

26 Prior to mediation, the Parties engaged in further investigation and the exchange of documents
27 and information in connection with the Action. As part of this process, Defendants provided a significant
28

sample of time and payroll records, and policies, as well as other applicable policies and agreements, to Class Counsel to review and analyze. JCL Dec., ¶ 17.

On October 11, 2023, the Parties participated in a full day mediation with Steve Rottman, Esq., an experienced mediator of wage and hour class and PAGA actions. After arms-length negotiations and bargaining and a thorough investigation explained in more detail herein, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

On August 6, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 19. On September 11, 2024, the Settlement Administrator mailed Notice Packets to all 988 Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class to submit requests for exclusion or objections to the Settlement. The response from the Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of \$2,000,000.00 based on an estimated 61,357 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used to satisfy: (1) the Individual Settlement Payments; (2) the Class Representative Service Awards; (3) the Class Counsel Award; (4) the PAGA Penalty Amount; and (5) the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 20.

Defendants will fund the Settlement, in three installments, into a Qualified Settlement Fund after notice of entry of an order and judgment by the Court granting final approval of the Settlement, provided no notice of appeal or petition for review is filed by any Class Member or intervenor, according to the following schedule: The first installment of \$666,666.66 shall be made within fourteen (14) days of the date the Court enters the order and judgment granting final approval of the settlement. The second installment of \$666,666.66 shall be made within six months of the First Installment. The third and final installment of \$666,666.67 shall be made within six months of the Second Installment. Each payment

1 shall include a proportionate share of employer payroll taxes due. Agreement at § I(N). The Settlement
2 Administrator will calculate Individual Settlement Payments by dividing the respective Workweeks for
3 each Class Member by the total Workweeks for all Class Members, resulting in a Payment Ratio.
4 Agreement, ¶ III(M)(1). Each Class Member's Payment Ratio will then be multiplied by the Net
5 Settlement Amount to calculate each Class Member's Individual Settlement Payment. *Id.* The estimated
6 average Individual Settlement Payment is approximately **\$1,110.32**. Apex Dec., ¶ 15.

7 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
8 the Settlement Class Member will release the Released Parties from the Released Class Claims as
9 defined in the Agreement. Agreement, ¶ III(B).

10 Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The
11 Settlement Administration Costs include those expenses of effectuating and administering the
12 Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class,
13 the costs of administering and disbursing the Individual Settlement Payments, and the fees of the
14 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator
15 expenses are \$13,000.00. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement
16 Amount. Agreement, ¶ III(M)(12).

17 Subject to Court approval, Class Counsel shall seek a payment of Class Counsel Award in the
18 amount of \$730,000, comprised of attorneys' fees not to exceed 35% of the Gross Settlement Amount,
19 estimated to be \$700,000 and attorneys' expenses not to exceed \$30,000.00. Agreement, ¶ III(M)(10).
20 Class Counsel is to split the fees 24.6% to JCL Law Firm, APC, 24.6% to Zakay Law Group, APLC,
21 32.8% to Gaines & Gaines, APLC, and 18% to Drew Lewis, PC. Agreement, ¶ I(I). The Agreement also
22 provides for Class Representative Service Awards in the amount of \$15,000 to each Plaintiff, Martin
23 Mariscal, Daniel Garcia, Rafael Rojas, and Jose Hernandez, and an award in the amount of \$30,000 to
24 Plaintiff Luis Vazquez, in consideration of their time, risks, and efforts as the Class Representatives on
25 behalf of the Class and a general release. Agreement, ¶ III(M)(9).

26 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
27 and should be granted final approval. This is evidenced by the 100% approval of the Settlement by the
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Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of **\$1,110.32**. Apex Dec., ¶ 15; JCL Dec., ¶ 21.

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

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

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

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

support a presumption of fairness.

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

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

//

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

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

4 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
5 proposed Class Members' claims, applicable law, and potential defenses. Months before filing the
6 Action, Class Counsel began their pre-filing investigation into the Plaintiffs' complaints. Class
7 Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview
8 process, Plaintiffs produced documents related to their employment, including time and payroll records.
9 At the conclusion of the interviews, Class Counsel determined that each of Plaintiffs' complaints
10 appeared to substantiate Plaintiffs' claim that Defendants failed to, among other things, pay for all time
11 worked, failed to provide compliant meal and rest periods, failed to reimburse for all mandatory
12 business expenses, failed to issue accurate itemized wage statements, and failed to pay all wages when
13 due. JCL Dec., ¶ 22.

14 To prepare for mediation, Class Counsel requested documents and data points to further evaluate
15 Plaintiffs' claims and Defendants' liability exposure to the Class Members. In response to Class
16 Counsel's request, Defendants produced, among other things, the time and payroll records for a
17 representative sampling of the Class Members, aggregate workweek and pay period data, and copies
18 of applicable policies, and agreements. In total, Defendants produced nearly 800 pages of pertinent
19 documents for Class Members for Class Counsel to analyze. JCL Dec., ¶ 23.

20 Class Counsel then retained the statisticians and economists at Berger Consulting Group
21 ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and
22 damage modeling consulting services specializing in wage and hour class actions. BCG's team of
23 financial and data analysts are credentialed and experienced experts in their fields and have provided
24 their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze
25 Defendant's time and payroll data. JCL Dec., ¶ 24.

26 Prior to mediation, BCG analyzed the time and payroll data provided by Defendants to assist in
27 the development of various damage models. Among other things, BCG's analysis estimated the
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1 number of workweeks, pay periods, average rate of pay, and the regular rate of pay. BCG also estimated
2 the amount of unreimbursed business expenses, unpaid wages due to off-the-clock work and regular
3 rate violations, the number of missed, late, or truncated meal and rest periods, number of missed meal
4 and rest period premiums paid during the Class Period and the amount of resulting PAGA penalties for
5 identified Labor Code violations. JCL Dec., ¶ 25.

6 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
7 Plaintiffs' suitability as a putative class representatives through interviews, background investigations,
8 and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
9 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
10 of employer; (4) analyzing the Settlement Class's time and payroll data; (5) analyzing Defendants'
11 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
12 which could affect settlement approval; (7) estimating Defendants' liability for purposes of settlement;
13 (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class
14 Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments
15 to recovery, such as to make an independent assessment of the reasonableness of the terms to which
16 the Parties have agreed. JCL Dec., ¶ 26.

17 Class Counsel only agreed to enter the Settlement following this thorough investigation and
18 evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace
19 for similar settlements, and considering the risk of significant delay and uncertainty associated with
20 litigation, and the various defenses asserted by Defendants, Class Counsel believes this Agreement to
21 be in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and
22 adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 27.

23 **B. The Parties Settled at Mediation.**

24 On October 11, 2023, the Parties conducted a full day of mediation with Steve Rottman, Esq.,
25 an experienced wage and hour mediator. Mediator Rottman helped manage the Parties' expectations
26 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
27 progress with Mediator Rottman's assistance. Namely, the Parties exchanged information regarding
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1 their respective claims and defenses, including their respective evaluation of the damages. At the
2 conclusion of the mediation, the Parties reached a settlement, which was subsequently memorialized
3 in the form of a Memorandum of Understanding. The complete and final terms of the Parties'
4 settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a
5 fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 28.

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

7 Class Counsel in this matter has extensive class action experience in multiple fields and has
8 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
9 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
10 similar wage and hour class actions throughout the State of California. As such, courts throughout
11 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
12 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
13 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-36; Declaration
14 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3; Declaration of Daniel Gaines ("Gaines Dec.") ¶¶ 2-5;
15 Declaration of Drew Lewis ("Drew Lewis") ¶¶ 2-5.

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

17 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
18 dissemination of the notice to the Class, which provided each Class Member with the terms of the
19 Settlement, including the specific estimated Individual Settlement Payments. To date, there are zero
20 requests for exclusion and zero objections. Stated differently, 100% of the Class chose to participate
21 in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 11-13.

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

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

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

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

10 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
11 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
12 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
13 Cal.App.4th at 250. While the Gross Settlement Amount of \$2,000,000.00 represents a discount on
14 Defendants’ potential exposure if Plaintiffs established liability on all claims and were awarded the full
15 amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable
16 defenses raised by Defendants presented a risk that could award significantly less in damages than
17 Plaintiffs’ estimate and (2) any theoretical post-trial recovery may require many more years of litigation,
18 resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 37.

19 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
20 reasonable considering the nature and magnitude of the claims being settled and the various potential
21 impediments to recovery. Class Counsel developed varied economic damages models measuring
22 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various
23 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
24 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
25 Counsel projected a range of Defendants’ liability exposure for the claims asserted on behalf of the
26 Class. The Gross Settlement Amount represents 33% of Defendants’ *class-wide* liability exposure as
27 estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 38.

1 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
2 Court for the Northern District of California granted final approval in a wage and hour misclassification
3 action and found that the Gross Settlement Amount representing 10% of the estimated trial award was
4 within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.
5 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
6 potential recovery.” Given the amount of the settlement here as compared to potential value of the
7 claims, particularly the strength of Plaintiffs’ action, the settlement is clearly fair and reasonable.²

8 The calculation methodology used to compensate the Settlement Class Member for the alleged
9 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
10 objective, and impartial. The calculation methodology is based on the number of Workweeks each
11 Settlement Class Member worked for Defendants during the Class Period. The number of Workweeks
12 for the Settlement Class Member is established through Defendants’ data and documented compensation
13 records. The Settlement Administrator is responsible for calculating the Individual Settlement Payments
14 by dividing the respective Workweeks for each Class Member by the total Workweeks for all Class
15 Members, resulting in a Payment Ratio. Agreement, ¶ III(M)(1). Each Class Member’s Payment Ratio
16 will then be multiplied by the Net Settlement Amount to calculate each Class Member’s Individual
17 Settlement Payment. *Id.* This process establishes an objectively fair and reasonable procedure to
18 compensate the Class. JCL Dec., ¶ 39.

19 The settlement also provides significant relief to the Settlement Class Members. After deductions
20 for the Class Counsel Award, Settlement Administration Costs, the PAGA Penalty Amount, and the
21 Class Representative Service Awards, the Net Settlement Amount is currently estimated to be
22 \$1,067,000. Apex Dec., ¶ 14. The average individual settlement payment is approximately \$1,110.32,
23 and the highest is approximately \$4,579.39. Apex Dec., ¶ 14. This average net recovery is on par with

24 ² 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.”).

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 its share of any employer side payroll taxes. Agreement, ¶ I(O).

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 Plaintiffs' Case and Risks of Continued Litigation

Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or, at least, drastically undercut Plaintiffs' 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.

1 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
2 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
3 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class
4 certification because employees' declarations attesting to having taken meal and rest breaks
5 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
6 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker v. Superior Court*, 53
7 Cal. 4th 1004 (2012) and denying certification of proposed off-the-clock and rest and meal break classes
8 due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88
9 (denying certification of driver meal and rest period claims based on the predominance of individual
10 issues). JCL Dec., ¶ 42.

11 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
12 Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
13 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a
14 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088
15 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized
16 questions of fact not susceptible to class treatment."). JCL Dec., ¶ 43.

17 Finally, even if a class is certified and Defendants are found liable for the class claims alleged,
18 post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and
19 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
20 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded
21 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
22 directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber*
23 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
24 action). JCL Dec., ¶ 44.

25 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
26 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
27 factor favoring settlement. JCL Dec., ¶ 45.

1 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
2 recognize that Defendants have factual and legal defenses that, if successful, would potentially defeat
3 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
4 drastically affect the value of Plaintiffs' claims and, in fact, already has. JCL Dec., ¶ 46.

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

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

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

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

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

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 Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post a bond and appeal. A post-judgment appeal by Defendants 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., ¶ 47.

Class Representatives and Class Counsel recognize the expense and length of a trial against Defendants through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 48.

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

Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of class members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA

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

6 Here, Plaintiffs and Defendants negotiated a good faith PAGA Penalty Amount in the amount
7 of \$100,000 which is 5% of the Gross Settlement Amount. As illustrated above, this amount falls well
8 within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Penalty
9 Amount (\$75,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five
10 percent (25%) of the PAGA Penalty Amount (\$25,000.00) to be distributed to the Aggrieved
11 Employees ("Aggrieved Employee Payment"), which is within the range of PAGA penalties approved
12 by courts and should be approved. JCL Dec., ¶ 49.

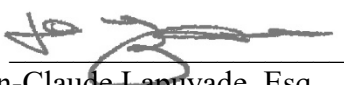
13 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
14 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
15 with the LWDA. JCL Dec., ¶¶ 5-6, 40. By not registering an objection with either Class Counsel or
16 the Court, the LWDA has accepted and approved of the proposed PAGA Penalty Amount.

17 VII. CONCLUSION

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

21
22 Dated: November 6, 2024

JCL LAW FIRM, APC

23
24 By: 
25 Jean-Claude Lapuyade, Esq.
26 Attorneys for Plaintiffs
27
28