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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN LUIS OBISPO

ELISA ALVAREZ, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiffs,

v.

SLO ARCHES, INC., a California Corporation;
IVERNIA, INCORPORATED, a California
Corporation; GOLDEN SENECA, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 21CV-0533

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

Date: February 20, 2025

Time: 9:01 a.m.

Judge: Hon. Craig van Rooyen

Dept.: 2

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I. INTRODUCTION

Plaintiff ELISA ALVAREZ (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 630 Settlement Class Members employed by Defendants SLO ARCHES, INC., a California Corporation; IVERNIA, INCORPORATED, a California Corporation; and GOLDEN SENECA, INC., a California Corporation (hereinafter, “Defendants”) during the Class Period.

In an order dated September 19, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 5. On October 4, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Cassandra Polites (“ILYM Dec.”), ¶ 16.

The Class greeted news of the Settlement with unanimous approval, as 100% of the Class Members have chosen to participate in the Settlement. There are zero objections and zero opt-outs to the Settlement. ILYM Dec., ¶¶ 21-22. The 100% approval by the Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

An objective evaluation of the proposed settlement of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by mediator Steven J. Rottman, Esq. After deducting any Court-approved attorneys’ fees and costs, class representative Class Representative Service Award, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the Net Settlement Amount shall be distributed to Settlement Class Members based on the number of Workweeks they were employed by Defendants during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery for Defendants’ alleged wage and hour violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of

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., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 approximately \$417,200.00. This will result in an average Individual Settlement Payment of **\$662.22**
2 and high payment of **\$2,489.17**. JCL Dec., ¶ 9; ILYM Dec. at ¶ 25.

3 The relief offered by the Settlement is immediate and is particularly impressive when viewed
4 against the difficulties encountered by plaintiff pursuing similar wage and hour cases (*see infra*).
5 Indeed, by settling now rather than proceeding to trial, the Class will not have to wait (possibly years)
6 for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. As
7 discussed below, the proposed Settlement satisfies all criteria for final settlement approval under
8 California law and falls well within the range of reasonableness. Accordingly, the Class Representative
9 and Class Counsel respectfully request this Court grant final approval of the Agreement and, entry of
10 the proposed Final Approval Order and Judgment. JCL Dec., ¶ 11.

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendants operate McDonald's restaurants in San Luis Obispo, where Plaintiff worked.
13 Plaintiff worked for Defendants in California from March of 2017 to March of 2019. At all times during
14 her employment, Plaintiff was denied legally compliant meal and rest periods, and minimum wages
15 and overtime compensation. Throughout her employment, Plaintiff was subject to Defendants' written
16 policies and procedures contained in, among other documents, the Employee Handbook. JCL Dec., ¶
17 12.

18 Generally, Plaintiff claims that Defendants failed to provide compliant meal and rest periods,
19 failed to pay for all time worked, and failed to pay all wages upon separation. Defendants forcefully
20 deny liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with
21 all applicable employment laws and raised several other significant defenses to Plaintiff's claims,
22 including but not limited to, asserting that they maintained facially compliant meal and rest period
23 policies, paid their employees for all hours worked, and timely paid all wages due upon separation of
24 employment. JCL Dec., ¶ 13.

25 On September 16, 2021, Plaintiff filed a class action complaint in the San Luis Obispo County
26 Superior Court, Case Number 21CV-0533 ("Action"). The Action alleged eight causes of action
27 against Defendants for: (1) Unfair Competition in Violation of California Business and Professions
28 Code §§ 17200; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et*

1 *seq.*; (3) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and
2 1197.1 (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512;
3 (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6)
4 Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7)
5 Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; and (8)
6 Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203. As part of
7 the Settlement, on December 16, 2022, Plaintiff filed a Notice of Violations (“PAGA Notice”) with the
8 Labor and Workforce Development Agency (“LWDA”) and served the same on Defendants. Plaintiff’s
9 PAGA Notice set forth the facts and theories supporting Defendants’ alleged violations of various
10 California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of
11 her intent to pursue claims under the California Labor Code Private Attorneys General Act, Cal. Lab.
12 Code sections 2698, *et seq.* (“PAGA”). Thereafter, on July 18, 2023, Plaintiff filed a First Amended
13 Complaint adding a ninth cause of action for Violation of the Private Attorneys General Act [Labor
14 Code §§ 2698 *et seq.*]. JCL Dec., ¶¶ 14-16.

15 Plaintiff and Defendants agreed to mediate the Action with Steven J. Rottman, Esq., an
16 experienced wage and hour mediator. In anticipation of mediation, the Parties agreed to stay formal
17 discovery and continue deadlines for class certification in the Action. To prepare for mediation,
18 Defendants agreed to informally produce documents and data points subject to the mediation privilege,
19 including but not limited to, a sample of the Class Members’ time and payroll records. As discussed
20 *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to
21 analyze Defendants’ time and payroll data. JCL Dec., ¶ 17.

22 On October 17, 2022, the Parties participated in a full day mediation with Mr. Rottman. After
23 arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a
24 Memorandum of Understanding. Subsequently, the Parties drafted and negotiated a long-form
25 settlement agreement, which is the subject of the instant motion. The Parties now seek approval of the
26 entire Agreement. JCL Dec., ¶ 18.

27 On June 20, 2023, Plaintiff filed the original Motion for Preliminary Approval (“original
28 Motion”). The original Motion represented to the Court that if preliminary approval was granted,

1 valuable monetary relief would be provided to 711 Class Members and 412 Aggrieved Employees. On
2 July 28, 2023, the Court entered the order granting Plaintiff's original Motion for preliminary approval.
3 On November 9, 2023, Plaintiff filed the original Motion for Final Approval. The Settlement
4 Administrator submitted a supplemental declaration in support thereof, stating in summary, between
5 August 11, 2023 and October 4, 2023, Defendants provided the Settlement Administrator with the Class
6 Data, the Settlement Administrator discovered that the escalator was triggered, informed Defendants
7 that the Gross Settlement Amount would increase by \$67,447.94 if Defendants paid a proportional
8 increase pursuant to the escalator provision, and Defendants ultimately elected to cut off the end date
9 for the Class Period as of the date on which the number of workweeks reached 32,348, which was May
10 28, 2021. Thereafter, the Class Notice was revised to reflect the shortened Class Period of September
11 16, 2017 to May 28, 2021. On October 11, 2023, the Settlement Administrator **only** mailed the Class
12 Notice to the 630 individuals who worked for Defendants during the shortened Class Period.
13 Ultimately, the Court denied Plaintiff's original Motion for Final Approval without prejudice and
14 ordered Plaintiff to file an amended Motion for Preliminary Approval based on the shortened Class
15 Period. JCL Dec., ¶ 19.

16 On September 19, 2024, this Court granted Plaintiff's amended motion for preliminary approval
17 of the Settlement. JCL Dec., ¶ 4. On October 4, 2024, the Settlement Administrator re-mailed Notice
18 Packets to all 630 Class Members. ILYM Dec., ¶ 16. The mailing of the Notice Packets triggered a
19 forty-five (45) day Response Deadline for the Class to submit requests for exclusion or objections to
20 the Settlement. The response from the Class to the Settlement is outstanding – 100% of the Class
21 Members are participating in the Settlement. ILYM Dec., ¶20.

22 **III. THE SETTLEMENT BEFORE THE COURT**

23 The Court preliminarily approved an initial Gross Settlement Amount of Seven Hundred Fifty
24 Thousand Dollars and Zero Cents (\$750,000.00) based on a total of an estimated 32,348 workweeks that
25 the Class were employed during the Class Period. Prior to the initial notice period after the Court granted
26 Plaintiff's original Motion for Preliminary Approval, Defendants discovered that they had under-
27 reported the number of workweeks, and that the actual number of workweeks was 38,783. The
28 Agreement contains a provision allowing Defendants to elect whether to pay additional funds towards

1 the settlement based on the increased number of workweeks, or to cut off the end date for the Class
2 Period on the date the number of workweeks reached 32,348. Agreement at ¶ III(A)(2). Defendants
3 elected to cut off the end date for the Class Period on the date the number of workweeks reached 32,348,
4 which was May 28, 2021. As such, the Class Period (and release period) for the Settlement is from
5 September 16, 2017 to May 28, 2021. The Gross Settlement Amount shall be used: (1) to satisfy
6 Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the
7 Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement
8 Administration Costs incurred in this action. JCL Dec., ¶ 20.

9 Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
10 Settlement Fund within ten (10) calendar days after the Effective Date (“Funding Date”). Agreement,
11 ¶ I(O). The Settlement Administrator shall disburse the Individual Settlement Payments to the
12 Settlement Class Members no later than fifteen (15) calendar days after the Funding Date. Agreement,
13 ¶ III(M)(7). The Settlement Administrator will calculate Individual Settlement Payments by adding up
14 the total number of Workweeks for all Class Members. The respective Workweeks for each Class
15 Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio
16 for each Class Member. Each Class Member’s Payment Ratio is then multiplied by the Net Settlement
17 Amount to calculate each Class Members’s estimated Individual Settlement Payments. Agreement, ¶
18 III(M)(1). The estimated average Individual Class Settlement Payment is approximately **\$662.22**.
19 ILYM Dec., ¶ 25.

20 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
21 the Settlement Class Member will release the Released Parties from the Released Class Claims that
22 accrued during the Class Period. Agreement, ¶ III(B).

23 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. The Settlement
24 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
25 costs incurred by the Settlement Administrator, the costs of giving notice to the Class, the costs of
26 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
27 Administrator approved for reimbursement by the court. The Settlement Administration Costs are
28 \$15,300. ILYM Dec., ¶¶ 23, 28. These expenses shall be paid from the Gross Settlement Amount.

1 Agreement, ¶ III(M)(12).

2 Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount of
3 \$270,000.00 comprised of attorneys' fees equal to one-third (33.33%) of the Gross Settlement Amount
4 estimated to be at least \$250,000.00 and up to \$20,000 for actually incurred litigation expenses.
5 Agreement, ¶ III(M)(10). Plaintiff's counsel is to split the fees 50% to the JCL Law Firm, APC, and
6 50% to the Zakay Law Group, APLC. Agreement, ¶ I(E). The Agreement also provides for a Class
7 Representative Service Award in the amount of \$10,000 for Plaintiff, in consideration of her time, risk,
8 and efforts as the Class Representative on behalf of the Class. Agreement, ¶ III(M)(9).

9 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
10 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
11 the Class, the absence of any objections to the Settlement and the average Individual Settlement Payment
12 of \$662.22. ILYM Dec., ¶¶ 20, 25; JCL Dec., ¶ 21.

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

15 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
16 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
17 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
18 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the
19 preferred means of dispute resolution. This is especially true in complex class action litigation").

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

1 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
2 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

14 V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

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

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

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

11 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
12 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
13 assessed the value of the class claims using data and documents provided by Defendants through formal
14 and informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
15 regarding the number of Class Members, workweeks, and average rate of pay to assess damages before
16 mediation. Class Counsel retained BCG to analyze Defendants’ time and payroll data to formulate
17 damage models estimating Defendants’ liability exposure. Class Counsel’s investigation, research,
18 experience, and damage models informed and guided the mediated negotiations that resulted in this
19 settlement. Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the class
20 claims before the parties reached a settlement. JCL Dec., ¶¶ 22-29.

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

22 On October 17, 2022, the Parties conducted a full day mediation with Steven J. Rottman, Esq.,
23 an experienced wage and hour mediator. Mediator Rottman helped to manage the Parties’ expectations
24 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
25 progress with Mediator Rottman’s assistance. Namely, the Parties exchanged information regarding
26 their respective claims and defenses, including their respective evaluations of the damages. After more
27 than eight hours of arm’s length and adversarial negotiations, the mediation concluded with a
28 settlement. The amount of the Class Representative Service Award was not negotiated until after the

1 parties agreed to the Gross Settlement Amount and many other terms. JCL Dec., ¶ 30. No action would
2 likely have been taken by Class Members individually, and no compensation would have been
3 recovered for them, but for Plaintiff's service on behalf of the Class.

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

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

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

14 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
15 dissemination of the notice to the Class, which provided each class member with the terms of the
16 Settlement, including the specific estimated Individual Settlement Payments, zero of the 630 members
17 of the Class opted out of the Settlement. Moreover, there are zero objections. Stated differently, 100%
18 of the Class chose to participate in the Settlement. JCL Dec., ¶ 8; ILYM Dec., ¶¶ 20-22.

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

28 ///

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

2 The Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars and Zero Cents
3 (\$750,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
4 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
5 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
6 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
7 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

8 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
9 provides a sizeable recovery to the Settlement Class Member and need not necessarily obtain 100 percent
10 of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at
11 250. While the Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars and Zero Cents
12 (\$750,000.00) represents a discount on Defendants’ potential exposure if Plaintiff established liability
13 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
14 reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award
15 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
16 require many more years of litigation, resulting in added fees and costs without any guarantee of
17 recovery for the Class. JCL Dec., ¶ 38.

18 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
19 reasonable considering the nature and magnitude of the claims being settled and the various potential
20 impediments to recovery. Class Counsel developed varied economic damages models measuring
21 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various
22 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
23 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
24 Counsel projected a range of Defendants’ liability exposure for the claims asserted on behalf of the
25 Class. The Gross Settlement Amount represents approximately 18.15% of Defendants’ *class-wide*
26 liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 39.

27 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
28 Court for the Northern District of California granted final approval in a wage and hour misclassification

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

6 The calculation methodology used to compensate the Settlement Class Members for the alleged
7 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
8 objective, and impartial. The calculation methodology is based on the number of Workweeks each
9 Settlement Class Member was employed for Defendants during the Class Period. The number of
10 Workweeks for the Settlement Class Member is established through Defendants’ data and documented
11 compensation records. The Settlement Administrator is responsible for calculating the Individual
12 Settlement Payments by multiplying the Workweek Value for each Settlement Class Member by the Net
13 Settlement Amount. The Settlement Administrator will calculate the payment ratio by dividing the total
14 Workweeks for all Class Members by the respective Workweeks for each Class Member. Agreement, ¶
15 III(M)(1). This process establishes an objectively fair and reasonable procedure to compensate the Class.
16 JCL Dec., ¶ 41.

17 The settlement also provides significant relief to the Settlement Class Members. After deductions
18 for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class
19 Representative Service Award, the Net Settlement Amount is currently estimated to be \$417,200.00.
20 ILYM Dec., ¶ 23. The average settlement payment is approximately \$662.22, and the highest is
21 approximately \$2,489.17. ILYM Dec., ¶ 24. Additionally, Defendants must separately fund their share
22 of any employer side payroll taxes. Agreement, ¶ III(A)(1). JCL Dec., ¶ 42.

23 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
24

25 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
26 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
27 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
28 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
In re Newbridge Networks Sec. Litig. (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 (“Courts have not identified a precise
numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly
six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk
that no recovery at all will be won, seems to be within the targeted range of reasonableness.”).

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., ¶ 43.

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 44. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack

1 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
2 certification of driver meal and rest period claims based on the predominance of individual issues).
3 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
4 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
5 settlement. JCL Dec., ¶ 44.

6 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
7 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
8 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
9 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 45.

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

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

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

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

27 **The potential complexity and possible duration of trial also weigh in**
28 **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
4 In sum, while other cases have approved class certification in wage and hour claims, class
5 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
6 Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v.*
7 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.)

8 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
9 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
10 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
11 that if Defendants faced a large adverse judgment, Defendants undoubtedly have the resources to post
12 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
13 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
14 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
15 an uncertain result three or more years in the future. JCL Dec., ¶ 46.

16 Class Representative and Class Counsel recognize the expense and length of a trial against
17 Defendants through possible appeals which could take another three years. In arriving at their informed
18 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
19 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
20 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
21 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
22 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
23 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
24 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
25 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
26 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 47.

27 ///
28

1 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
2 **ARE 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, Plaintiff and Defendants negotiated a good faith PAGA Settlement in the amount of
13 \$37,500 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 (\$28,125.00) will be paid to the LWDA with the remaining twenty-five percent (25%) of the PAGA
16 Settlement (\$9,375.00) to be distributed to the Aggrieved Employees, which is within the range of
17 PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 48.

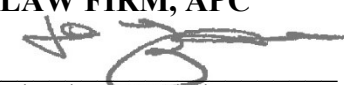
18 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
19 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
20 with the LWDA. JCL Dec., ¶¶ 5-6. By not registering an objection with either Class Counsel or the
21 Court,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

22 **VII. CONCLUSION**

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

26 Dated: January 24, 2025

JCL LAW FIRM, APC

27 By: 
28 Jean-Claude Lapuyade, Esq.
 Attorney for Plaintiff