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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CESAR CANDO, an individual, on behalf of
himself, and on behalf of all persons similarly
situated

Plaintiff,

vs.

ACADEMY VALET PARKING SERVICE,
INC., a Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 22STCV21833

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

Date: June 13, 2024

Time: 9:00 a.m.

Judge: Hon. Maren Nelson

Dept.: 17

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	4
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	5
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	6
	A. Class Counsel Conducted a Thorough Investigation.	7
	B. The Parties Settled At Mediation.	8
	C. Class Counsel is Experience in Similar Litigation.	8
	D. The Settlement Class Responded Positively to the Settlement.	8
	E. The Gross Settlement Amount is Fair and Reasonable.	9
	F. The Strength of Plaintiff’s Case and Risks of Continued Litigation	12
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	14
VII.	CONCLUSION	15

TABLE OF AUTHORITIES

CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1150-1151.....	5-6
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	12
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	13
9	<i>Brinker</i>	
10		12
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	12
13	<i>Browning v. Yahoo!, Inc.</i>	
14	2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007).....	13
15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	12
17	<i>Contreras v. United Food Group, LLC</i>	
18	Case No. BC389253 (L.A. County Super. Ct.).....	11
19	<i>Doty v. Costco Wholesale Corp.</i>	
20	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007).....	11
21	<i>Dunk v. Ford Motor Co.</i>	
22	(1996) 48 Cal.App.4th 1794, 1801.....	6-7
23	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
24	(9th Cir. 2000) 213 F.3d 454, 459.....	10
25	<i>Duran v. U.S. Bank National Association</i>	
26	(2014) 59 Cal.4th 1, 31.....	12, 14
27	<i>Fukuchi v. Pizza Hut</i>	
28	Case No. BC302589 (L.A. County Super. Ct.).....	11
	<i>Glass v. UBS Fin. Servs.</i>	
	2007 WL221862.....	12
	<i>Gomez v. Amadeus Salon, Inc.</i>	
	Case No. BC392297 (L.A. Super. Ct.).....	11
	<i>Hanlon v. Chrysler Corp.</i>	
	(9th Cir. 1998) 150 F.3d 1011, 1026.....	14
	<i>Hopson v. Hanesbrands Inc.</i>	
	2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009)	
	No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).....	13-15
	<i>Huens v. Tatum</i>	
	(1997) 52 Cal.App.4th 259, 265.....	5
	<i>In re Austrian & German Bank Holocaust Litigation</i>	
	(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	9
	<i>In re Newbridge Networks Sec. Litig.</i>	
	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	10
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 128-29.....	7, 9
	///	

1	<i>Laskey v. Int'l Union</i>	
	(6th Cir. 1981) 638 F.2d 954.....	9
2	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	10
3	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
	Case No. 04CC00213 (Orange County Super. Ct.).....	11
4	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	13
5	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9 th Cir. 2021) 999 F.3d 668.....	12, 14
6	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
	(1980) 103 Cal.App.3d 573, 578-579.....	6
7	<i>McKenzie v. Fed. Express Corp.</i>	
	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
8	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
	(2010) 186 Cal.App.4th 399, 408.....	7
9	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	12, 14
10	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F. 2d 615, 625.....	6
11	<i>Palencia v. 99 Cents Only Stores</i>	
	No. 34-2010-00079619.....	11
12	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1138.....	7
13	<i>Ressler v. Federated Department Stores, Inc.</i>	
	Case No. BC335018 (L.A. County Super. Ct.).....	11
14	<i>Sorenson v. PetSmart, Inc.</i>	
	Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.).....	11
15	<i>Stoetzner v. U.S. Steel Corp.</i>	
	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
16	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
	2015 U.S. Dist. LEXIS 78671.....	10
17	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
	38 Cal.3d 488, 499-500 (1985).....	9
18	<i>Tien v. Tenet Healthcare Corp.</i>	
	(2012) 209 Cal.App.4th 1077, 1088.....	12
19	<i>Viceral v. Mistras Grp., Inc.</i>	
	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	10
20	<i>Wershba v. Apple Computer</i>	
	(2001) 91 Cal.App.4th 224, 245-46, 250.....	6, 9

RULES, CODES, AND STATUTES

25	<i>Cal. Bus. & Prof. Code</i> §§ 17200.....	3
26	<i>Cal. Lab. Code</i> § 201.....	3
27	<i>Cal. Lab. Code</i> § 202.....	3
28	<i>Cal. Lab. Code</i> § 203.....	3
	<i>Cal. Lab. Code</i> § 226.....	3
	<i>Cal. Lab. Code</i> § 226.7.....	3
	<i>Cal. Lab. Code</i> § 227.3.....	3

1	<i>Cal. Lab. Code</i> §§ 510 <i>et seq.</i>	3
2	<i>Cal. Lab. Code</i> § 512.....	3
3	<i>Cal. Lab. Code</i> § 1194.....	3
4	<i>Cal. Lab. Code</i> § 1197.....	3
5	<i>Cal. Lab. Code</i> § 1197.1.....	3
6	<i>Cal. Lab. Code</i> §§ 2698 <i>et seq.</i>	3
7	<i>Code of Civ. Proc.</i> § 877.6.....	9

SECONDARY SOURCES

8	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992)	
9	§11.41, pp. 11-91.....	6

I. INTRODUCTION

Plaintiff Cesar Cando (hereinafter “Plaintiff”) seeks final approval of the First Amended Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 168 Settlement Class Members employed by Defendants Academy Valet Parking Services, Inc., and Academy Valet Parking LLC (hereinafter “Defendants”) during the Class Period.

In an order dated February 9, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 6. On March 8, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, all 168 Class Members chose to participate in the Settlement.*² There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

An objective evaluation of the proposed settlement of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over Hon. Brian C. Walsh (Ret.), a respected judge and wage and hour class action mediator. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendants during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$58,000**. This will result in an average Individual Class Payment of **\$345.24**, a high payment of **\$1,858.93**, and a low payment of **\$14.35**. Aggrieved Employees will receive an estimated average gross payment of

¹ The Agreement is attached as Ex “A” 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.

² Seventeen (17) Notices were deemed undeliverable. Apex Dec. at ¶¶ 10.

1 **\$18.94** and a high payment of **\$51.89**. JCL Dec., ¶ 9; Apex Dec. at ¶ 15.

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

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

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendants provide valet parking and shuttle services throughout California, including Los
13 Angeles, where Plaintiff worked. This action asserts claims on behalf of all of Defendants' current and
14 former non-exempt employees employed in California at any time during the Class Period. Plaintiff
15 worked for Defendants as a non-exempt employee in California from 2017 to June of 2021 as a parking
16 attendant. At all times during his employment, Plaintiff earned an hourly wage and was entitled to
17 legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours
18 worked. Throughout his employment, Plaintiff was subject to Defendants' policies and procedures.
19 JCL Dec., ¶ 12; Declaration of Cesar Cando ("Cando Dec."), ¶¶ 2-4.

20 Generally, Plaintiff claims that Defendants failed to pay for all time worked, including, time
21 spent donning and doffing and undergoing mandatory COVID-19 health questionnaires, failed to
22 provide compliant meal and rest periods, failed to pay vacation wages, failed to furnish accurate
23 itemized wage statements, and failed to pay all wages upon separation. Defendants forcefully deny
24 liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all
25 applicable employment laws and raised several other significant defenses to Plaintiff's claims,
26 including but not limited to, asserting that it paid employees for all hours worked, maintained facially
27 compliant meal and rest period policies, issued compliant wage statements, and timely paid all wages
28 due upon separation of employment. JCL Dec., ¶ 13.

1 On April 28, 2022, Plaintiff served Defendant Academy Valet Parking Service, Inc. and the
2 Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”).
3 Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendants’ alleged violations of
4 various provisions of the California Labor Code and applicable Industrial Welfare Commissions
5 (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys
6 General Act, Cal. Lab. Code Sections 2698 *et seq.* (“PAGA”). JCL Dec., ¶ 14.

7 On July 6, 2022, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case
8 Number 22STCV21833 (“Action”). The Action alleged nine causes of action against Defendant
9 Academy Valet Parking Services, Inc. for: (1) Unfair Competition in Violation of Cal. Bus. & Prof.
10 Code §§ 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194,
11 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4)
12 Failure to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the
13 Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation Of Cal. Lab
14 Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized
15 Statements in Violation Of Cal. Lab. Code § 226; (7) Failure to Pay Wages When Due in Violation Of
16 Cal. Labor Code §§ 201, 202 and 203; (8) Failure to Pay Vacation Wages When Due in Violation Of
17 California Labor Code section 227.3; and (9) Violation of the Private Attorneys General Act [Labor
18 Code §§ 2698 *et seq.*]. JCL Dec., ¶ 15.

19 The Parties agreed relatively early to mediate this action. In anticipation of mediation, the Parties
20 agreed to stay formal discovery. To prepare for mediation, the Parties agreed to informally produce
21 relevant documents and data points subject to the mediation privilege. Pursuant to that agreement,
22 Defendant produced a sample of the Class Members’ time and payroll data along with relevant policies
23 applicable to Class Members. As discussed *infra*, Plaintiff’s counsel retained Berger Consulting Group
24 to analyze Defendant’s time and payroll data. JCL Dec., ¶ 16.

25 On June 23, 2023, the Parties participated in a full day mediation with retired jurist and mediator
26 Hon. Brian C. Walsh (Ret.). After arms-length negotiations and bargaining, the Parties reached an
27 agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in
28 principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of

1 the instant motion. JCL Dec., ¶ 17.

2 On February 9, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
3 On March 8, 2024, the Administrator mailed Notice Packets to all 168 Settlement Class Members.
4 Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline
5 for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response
6 from the Settlement Class to the Settlement was outstanding – 100% of the Class Members are
7 participating in the Settlement. Apex Dec., ¶ 13.

8 **III. THE SETTLEMENT BEFORE THE COURT**

9 The Court preliminarily approved an initial Gross Settlement Amount of One Hundred Fifty
10 Thousand Dollars and Zero Cents (\$150,000.00) based on a total of an estimated 8,706 Workweeks
11 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy
12 Individual Class Payments; (2) to satisfy the Class Representative Payment; (3) to satisfy the Attorneys'
13 Fees and Litigation Costs; (4) to satisfy the PAGA Payment; and (5) to satisfy the Administration
14 Expenses Payment incurred in this action. JCL Dec., ¶ 18.

15 Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$150,000.00
16 Gross Settlement Amount in two (2) equal installments of \$75,000. The first installment shall be paid
17 on the later of June 23, 2024, or 30 days after the Court's Final Approval of the Settlement. The second
18 installment shall be paid the later of September 23, 2024, or within 120 days after the Court's Final
19 Approval of the Settlement. *See generally* Agreement at 4.3. The Administrator shall mail the
20 Individual Class Payments and Individual PAGA Payments to the Participating Class Members and/or
21 Aggrieved Employees no later than fourteen (14) days after Defendant funds the Gross Settlement
22 Amount. Agreement, ¶ 4.4. The Administrator will calculate Individual Class Payments by dividing
23 the Net Settlement Amount by the total number of Workweeks worked by all Participating Class
24 Members during the Class Period and then multiplying the result by each Participating Class Member's
25 Workweeks worked during the Class Period. Agreement, ¶ 3.2.4. The estimated average Individual Class
26 Payment is approximately **\$345.24**. JCL Dec., ¶ 9; Apex Dec., ¶ 15.

27 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
28 Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class

1 Claims for the Class Period. Agreement at ¶ 5.2. The Aggrieved Employees will release the Released
2 Parties from the Released PAGA Claims for the PAGA Period. Agreement at ¶ 5.3.

3 Apex Class Action LLC was appointed as the Administrator for the Class. Administration
4 Expenses Payment include those expenses of effectuating and administering the Settlement, i.e., the
5 costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering
6 and disbursing the Individual Class Payments, and the fees of the Administrator (“Administration
7 Expenses Payment”) approved for reimbursement by the court. The Administration Expenses Payment
8 is \$7,000.00. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount.
9 Agreement, ¶ 3.2.3.

10 Subject to Court approval, Class Counsel shall seek Attorneys’ Fees and Litigation Costs in the
11 amount of \$70,000 comprised of attorneys’ fees equal to one-third of the Gross Settlement Amount
12 estimated to be at least \$50,000 and up to \$20,000 for actually incurred litigation expenses. Plaintiff’s
13 counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC.
14 Agreement, ¶ 1.5. Plaintiff and Class Counsel have in place a contingency fee agreement wherein
15 Plaintiff agreed to the split of fees. JCL Dec., ¶ 18. The Agreement also provides for a Class
16 Representative Payment in the amount of \$10,000 for Plaintiff, in consideration of his time, risk, and
17 efforts as the Class Representative on behalf of the Settlement Class and a general release. Agreement,
18 ¶ 3.2.1.

19 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
20 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
21 the Settlement Class, the absence of any objections to the Settlement and the average Individual Class
22 Payment of \$345.24. Apex Dec., ¶¶ 11-13; JCL Dec., ¶ 19.

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

25 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
26 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
27 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
28 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the

1 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

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

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

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

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

1 parties." *Dunk, supra*, at 1801.

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

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

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

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

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

1 exposure. Class Counsel’s investigation, research, experience, and damage models informed and
2 guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff’s Counsel fully
3 understood the strengths and weaknesses of the class claims before the parties reached a settlement.
4 JCL Dec., ¶ 20-28.

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

6 On June 23, 2023, the Parties conducted a full-day mediation with Hon. Brian C. Walsh (Ret.),
7 a well-respected judge and wage and hour class action mediator. Judge Walsh helped to manage the
8 Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. The
9 Parties made substantial progress with Judge Walsh’s assistance. Namely, the Parties exchanged
10 information regarding their respective claims and defenses, including their respective evaluations of
11 the damages. After more than eight hours of arm’s length and adversarial negotiations, the mediation
12 concluded with a settlement after the Parties agreed to a Mediator’s proposal. The amount of the service
13 awards was not negotiated until after the parties agreed to the Gross Settlement Amount and many other
14 terms. No action would likely have been taken by Class Members individually, and no compensation
15 would have been recovered for them, but for Plaintiff’s service on behalf of the Class. JCL Dec., ¶ 29.

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

17 Class Counsel in this matter has extensive class action experience in multiple fields and has
18 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
19 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
20 similar wage and hour class actions throughout the State of California. As such, courts throughout
21 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
22 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
23 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 30-36; Declaration
24 of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

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

1 As of the filing of this motion, none of the 168 members of the Settlement Class opted-out of the
2 Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class
3 chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 11-13.

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 viewed
7 as indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
8 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
9 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
10 settlement should be considered when determining fairness of settlement.). Consequently, Class
11 Counsel respectfully request the Court to follow the unanimous approval of the Settlement Class and
12 grant final approval of the Settlement.

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

14 The Gross Settlement Amount of One Hundred Fifty Thousand Dollars and Zero Cents
15 (\$150,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
16 court acknowledged that "as the court does when it approves a settlement as in good faith under Code
17 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
18 the '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 One Hundred Fifty Thousand Dollars and Zero Cents
24 (\$150,000.00) represents a discount on Defendants' potential exposure if Plaintiff established liability
25 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
26 reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award
27 significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may
28 require many more years of litigation, resulting in added fees and costs without any guarantee of

1 recovery for the Class. JCL Dec., ¶ 37.

2 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
3 reasonable considering the nature and magnitude of the claims being settled and the various potential
4 impediments to recovery. Class Counsel developed varied economic damages models measuring
5 Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various
6 models were informed by Class Counsel's investigation, including the analysis of a significant sample
7 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
8 Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the
9 Settlement Class. The Gross Settlement Amount represents between approximately 11.31% to 28.74%
10 of Defendants' *class-wide* liability exposure as estimated by Class Counsel at the time of mediation.
11 JCL Dec., ¶ 38.

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

19 The calculation methodology used to compensate the Settlement Class for the alleged damages
20 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
21 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
22 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
23 Class Members is established through Defendant's data and documented compensation records. The
24

25 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
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.").

1 Administrator is responsible for calculating the Individual Class Payments by dividing the Net
2 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
3 during the Class Period and then multiplying the result by each Participating Class Member's
4 Workweeks worked during the Class Period. Agreement, ¶ 3.2.4. This process establishes an objectively
5 fair and reasonable procedure to compensate the Settlement Class.

6 The settlement also provides significant relief to the Settlement Class Members. After deductions
7 for the Attorneys' Fees and Litigation Costs, Administration Expenses Payment, the PAGA Payment,
8 and the Class Representative Payment, the Net Settlement Amount is currently estimated to be \$58,000.
9 Apex Dec., ¶14. The average Individual Class Payment is approximately \$345.24, the highest is
10 approximately \$1,858.93, and the lowest payment is approximately \$14.35. Apex Dec., ¶ 15. This
11 average net recovery is on par with many wage and hour class action settlements approved by California
12 state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento
13 County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No.
14 BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United*
15 *Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of
16 approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County
17 Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No.
18 CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65);
19 *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of
20 approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super.
21 Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No.
22 BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendants
23 must separately fund its share of any employer side payroll taxes. Agreement, ¶ 3.1.

24 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
25 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
26 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
27 JCL Dec., ¶ 39.

28 ///

1 **F. The Strength of Plaintiff’s Case and Risks of Continued Litigation**

2 Although Class Counsel believes strongly in Plaintiff’s claims, it would be misguided to ignore
3 the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or,
4 at least, drastically undercut Plaintiff’s claims. JCL Dec., ¶ 42. As the federal court in *Glass v. UBS*
5 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
6 litigation:

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

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

1 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
2 settlement. JCL Dec., ¶ 41.

3 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
4 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
5 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
6 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 42.

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

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

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

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

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

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

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

5 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
6 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
7 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
8 that if Defendant faced a large adverse judgement, Defendants undoubtedly has the resources to post a
9 bond and appeal. A post-judgment appeal by Defendants would have required many more years to
10 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
11 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
12 an uncertain result three or more years in the future. JCL Dec., ¶ 43.

13 The Class Representative and Class Counsel recognize the expense and length of a trial against
14 Defendants through possible appeals which could take another three years. In arriving at their informed
15 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
16 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
17 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
18 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
19 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
20 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
21 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
22 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
23 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 44.

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

26 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
27 indication that this amount was the result of self-interest at the expense of class members,” such
28 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 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of \$5,000 which is 3.3% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Payment (\$3,750) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$1,250) to be distributed to the Aggrieved Employees (the “Individual PAGA Payment”), which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 45.

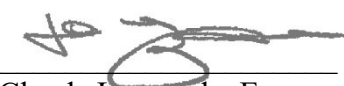
Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the LWDA. JCL Dec., ¶¶ 4-6, 46. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

VII. CONCLUSION

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

Dated: May 20, 2024

JCL LAW FIRM, APC

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