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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

ALAN CARRILLO RODRIGUEZ, an
individual, on behalf of themselves, and on behalf
of all persons similarly situated,

Plaintiff,

v.

TITAN WORKFORCE, A California
Corporation; and DOES 1-50, Inclusive;

Defendants.

Case No.: STK-CV-UOE-2022-0003036

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

Date: March 28, 2024

Time: 9:00 a.m.

Judge: Hon. Barbara A. Kronlund

Dept.: 10D

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6 Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91
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1 I. INTRODUCTION

2 Plaintiff ALAN CARRILLO RODRIGUEZ (hereinafter “Plaintiff”) seeks final approval of the
3 Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide
4 valuable monetary relief for 952 Settlement Class Members employed by Defendant TITAN
5 WORKFORCE, a California Corporation, (hereinafter “Defendant”) during the period from April 26,
6 2018, through May 10, 2023 (“Class Period”).

7 In an order dated November 30, 2023, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On January
9 3, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
10 Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with 100%*
11 *approval.*² There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The
12 unanimous participation rate by the Class evidences the clear fairness and reasonableness of the
13 Settlement. JCL Dec., ¶ 8.

14 An objective evaluation of the proposed settlement of Six Hundred Fifty Thousand Dollars and
15 Zero Cents (\$650,000.00) (“Total Settlement Amount”) confirms that the relief negotiated on behalf of
16 the Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product of
17 informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over
18 by Tripper Ortman, Esq. After deducting any Court-approved PAGA Penalty Amount, Class
19 Representative Service Award, Class Counsel Award, and the Settlement Administration Costs, the Net
20 Settlement Amount shall be distributed to Settlement Class Members based on the number of
21 Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 8.

22 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
23 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
24 approximately \$356,333.34. This will result in an average Individual Settlement Payment of **\$374.30**,
25 a high payment of **\$2,672.86**, and low payment of **\$10.16**. JCL Dec., ¶ 9; Apex Dec. at ¶ 15.

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.

² Fifty-two (52) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

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

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

10 II. OVERVIEW OF THE LITIGATION

11 Defendant provides construction staffing solutions for residential and commercial construction
12 projects throughout California, including Manteca, California, where Plaintiff worked. Plaintiff
13 worked for Defendant as a non-exempt employee in California from August of 2021 to November of
14 2021. Throughout his employment, Plaintiff was classified as a non-exempt employee and was entitled
15 to legally compliant meal and/or rest periods, minimum and regular wages. Additionally, Plaintiff was
16 subject to Defendant's written policies and procedures contained in, among other documents, the
17 "Employee Handbook." JCL Dec., ¶ 12; Declaration of Alan Carrillo Rodriguez ("AR Dec.") at ¶ 4.

18 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
19 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
20 accurate itemized wages statements, and failed to pay all wages when due. Defendant forcefully denies
21 liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
22 applicable employment laws and raised several other significant defenses to Plaintiff's claims,
23 including but not limited to, facially compliant meal and rest period policies, compliant wage
24 statements, reimbursement for all required business expenses, and payment of all wages upon
25 separation. JCL Dec., ¶ 13.

26 On February 10, 2022, Plaintiff served Defendant and the Labor and Workforce Development
27 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
28 the facts and theories supporting Defendant's alleged violations of various provisions of the California

1 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
2 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections
3 2698 *et seq* (“PAGA”). JCL Dec., ¶ 14.

4 On April 26, 2022, Plaintiff filed a class action complaint in the San Joaquin County Superior
5 Court, Case Number STK-CV-UOE-2022-3036 (the “Action”). The Action alleged nine causes of
6 action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200
7 *et. seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3)
8 Failure to Pay Overtime in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Meal
9 Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure
10 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
11 IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab.
12 Code § 226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and
13 203; (8) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802;
14 and (9) Violations of the Private Attorneys General Act under California Labor Code §§ 2698, *et seq.*
15 JCL Dec., ¶ 15.

16 On July 25, 2023, Plaintiff initiated formal discovery. Prior to answering Plaintiff’s discovery,
17 the Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to informally
18 produce additional documents and data points subject to the mediation privilege, including but not
19 limited to, a sample of the Class Members’ time data and certain payroll data points. As discussed *infra*,
20 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
21 Defendant’s time and payroll data. JCL Dec., ¶ 16.

22 On March 10, 2023, the Parties participated in a full day mediation with Tripper Ortman, an
23 experienced mediator of wage and hour class and PAGA actions. After arms-length negotiations and
24 bargaining, the Parties reached an agreement to settle based on Mediator Ortman’s proposal and signed
25 a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
26 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶
27 17.

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

4. On January 3, 2024, the Settlement Administrator mailed Notice Packets to all 952 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 Total Settlement Amount of Six Hundred, Fifty Thousand Dollars and Zero Cents (\$650,000.00) based on a total of an estimated 34,217 Workweeks worked by the Class during the Class Period. The Total Settlement Amount shall be used to satisfy: (1) the Individual Settlement Payments; (2) the Class Representative Service Award; (3) the Class Counsel Award; (4) the PAGA Penalty Amount; and (5) the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 18.

Defendant will fund the Settlement by transferring the Total Settlement Amount into a Qualified Settlement Fund within ten (10) calendar days after the Effective Date. Agreement, ¶ I(O). The Settlement Administrator shall mail checks for all of the Individual Settlement Payments to the Settlement Class Member no later than fifteen (15) calendar days after Defendant fund the Total Settlement Amount. Agreement, ¶ III(M)(7). The Settlement Administrator will calculate Individual Settlement Payments by dividing the respective Workweeks for each Class Member by the total Workweeks for all Class Members, resulting in a Payment Ratio. Agreement, ¶ III(M)(1). Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's Individual Settlement Payment. *Id.* The estimated average Individual Settlement Payment is approximately **\$374.30**. Apex Dec., ¶ 16.

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

Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The Settlement Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class,

1 the costs of administering and disbursing the Individual Settlement Payments, and the fees of the
2 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator
3 expenses are \$12,000. Apex Dec., ¶ 14. These expenses shall be paid from the Total Settlement Amount.
4 Agreement, ¶ III(M)(12).

5 Subject to Court approval, Class Counsel shall seek a payment of Class Counsel Award in the
6 amount of \$241,666.66, comprised of attorneys' fees equal to one-third of the Total Settlement Amount
7 estimated to be at least \$216,666.66 and up to \$25,000 for actually incurred litigation expenses.
8 Agreement, ¶ III(M)(10). Class Counsel is to split the fees 50% to JCL Law Firm, APC, and 50% to
9 Zakay Law Group, APLC. Agreement, ¶ I(E). The Agreement also provides for three Class
10 Representative Service Awards in the amount of \$10,000 allocated to Plaintiff, in consideration of his
11 time, risk, and efforts as the Class Representative on behalf of the Class and a general release.
12 Agreement, ¶ III(M)(9).

13 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
14 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
15 the Class, the absence of any objections to the Settlement and the average Individual Settlement Payment
16 of **\$374.30**. Apex Dec., ¶ 15; JCL Dec., ¶ 19.

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

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

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

1 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
2 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a
3 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).
4 In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the
5 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
6 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

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

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

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

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

A. Class Counsel Conducted a Thorough Investigation.

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

B. The Parties Settled Following Mediation.

On March 10, 2023, the Parties conducted a full day mediation with Tripper Ortman, Esq., an experienced wage and hour mediator. Mediator Ortman helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial

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

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

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

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

18 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
19 dissemination of the notice to the Class, which provided each Class Member with the terms of the
20 Settlement, including the specific estimated Individual Settlement Payments. To date, none of the 952
21 Class Members opted out of the Settlement. Moreover, there are zero objections. Stated differently,
22 100% of the Class chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 11-13.

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

1 settlement should be considered when determining fairness of settlement.). Consequently, Class
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 Total Settlement Amount is Fair and Reasonable.**

5 The Total Settlement Amount of Six Hundred Fifty Thousand Dollars and Zero Cents
6 (\$650,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
7 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
8 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
9 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
10 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

11 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
12 provides a sizeable recovery to the Settlement Class Member and need not necessarily obtain 100 percent
13 of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at
14 250. While the Total Settlement Amount of Six Hundred Fifty Thousand Dollars and Zero Cents
15 (\$650,000.00) represents a discount on Defendant’s potential exposure if Plaintiff established liability
16 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
17 reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award
18 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
19 require many more years of litigation, resulting in added fees and costs without any guarantee of
20 recovery for the Class. JCL Dec., ¶ 34.

21 As detailed at the time of preliminary approval, the Total Settlement Amount is fair and
22 reasonable considering the nature and magnitude of the claims being settled and the various potential
23 impediments to recovery. Class Counsel developed varied economic damages models measuring
24 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
25 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
26 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
27 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
28 Class. The Total Settlement Amount represents between 5.45% and 14.13% of Defendant’s *class-wide*

liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 35.

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

The calculation methodology used to compensate the Settlement Class Member for the alleged damages was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks each Settlement Class Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement Class Member is established through Defendant’s data and documented compensation records. The Settlement Administrator is responsible for calculating the Individual Settlement Payments by dividing the respective Workweeks for each Class Member by the total Workweeks for all Class Members, resulting in a Payment Ratio. Agreement, ¶ III(M)(1). Each Class Member’s Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member’s Individual Settlement Payment. *Id.* This process establishes an objectively fair and reasonable procedure to compensate the Class. JCL Dec., ¶ 36.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Penalty Amount, and the Class Representative Service Award, the Net Settlement Amount is currently estimated to be \$356,333.34. Apex Dec., ¶ 14. The average settlement payment is approximately \$374.30, and the

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 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *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.”).

highest is approximately \$2,672.86. Apex Dec., ¶ 15. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ 3.1.

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., ¶ 37.

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, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 38. 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 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 39.

Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 40.

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

Plaintiffs may have a strong case, but the risks inherent in continued

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

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

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

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

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

25 In sum, while other cases have approved class certification in wage and hour claims, class
26 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
27 Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v.*
28 *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 Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
bond and appeal. A post-judgment appeal by Defendant would have required many more years to
resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case

1 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
2 an uncertain result three or more years in the future. JCL Dec., ¶ 41.

3 Class Representative and Class Counsel recognize the expense and length of a trial against
4 Defendant through possible appeals which could take another three years. In arriving at their informed
5 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
6 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognizes
7 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
8 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
9 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
10 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
11 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
12 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
13 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 42.

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

16 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
17 indication that this amount was the result of self-interest at the expense of class members,” such
18 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
19 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
20 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
21 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
22 *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*,
23 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging
24 that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

25 Here, Plaintiff and Defendant negotiated a good faith PAGA Penalty Amount in the amount of
26 \$30,000 which is 4.6% of the Total Settlement Amount. As illustrated above, this amount falls well
27 within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Penalty
28 Amount (\$22,500.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five

1 percent (25%) of the PAGA Penalty Amount (\$7,500.00) to be distributed to the Aggrieved Employees
2 (“Aggrieved Employee Payment”), which is within the range of PAGA penalties approved by courts
3 and should be approved. JCL Dec., ¶ 43.

4 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
5 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
6 with the LWDA. JCL Dec., ¶¶ 4-5, 44. By not registering an objection with either Class Counsel or
7 the Court, the LWDA has accepted and approved of the proposed PAGA Penalty Amount.

8 **VII. CONCLUSION**

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

12
13 Dated: March 5, 2024

JCL LAW FIRM, APC

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15 By: 
16 Jean-Claude Lapuyade, Esq.
17 Attorneys for Plaintiff
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