

1 Todd M. Friedman (SBN 216752)
tfriedman@toddfllaw.com
2 Adrian R. Bacon (SBN 280332)
3 abacon@toddfllaw.com
Law Offices of Todd M. Friedman, P.C.
4 21031 Ventura Blvd, Suite 340
Woodland Hills, CA 91364
5 Tel: (323) 306-4234
6 Fax: (866) 633-0228
Attorneys for Plaintiff
7 [Additional Counsel on Last Page]

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF TEHAMA**

10 MELISSA FURMAN, individually and on
11 behalf of all others similarly situated,
12 Plaintiff,
13 v.
14 SET AND SERVICE RESOURCES, LLC,
15 Defendants.

Case No.: 20CI000012

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: December 6, 2022
Time: 8:30 a.m.
Dept. 5

*[Filed concurrently with Declaration of
Lisa Pavlik; [Proposed] Order; and
[Proposed] Judgment]*

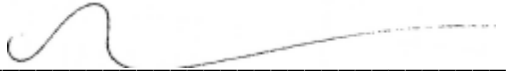
1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 6, 2022 at 8:30 a.m., in Department 5
3 of the above-captioned Court, located at 1740 Walnut St., Red Bluff CA 96080, Plaintiff
4 Melissa Furman (“Plaintiff”) will and hereby does move for an order pursuant to Code of
5 Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, granting final approval of
6 the proposed class action settlement between Plaintiff and Defendant SET AND SERVICE
7 RESOURCES, LLC (“Defendant”), and for approval of their Motion for Attorneys’ Fees and
8 Costs.

9 The motion will be based upon this notice, the attached memorandum of points and
10 authorities, the records and files in this action, and any other further evidence or argument that
11 the Court may properly receive at or before the hearing.

12
13 Dated: November 7, 2022

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

14
15 By: 

16 Todd M. Friedman
17 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Melissa Furman (“Plaintiff”) seeks final approval of a proposed \$650,000.00
4 non-reversionary, wage and hour class action settlement with Defendant SET AND SERVICE
5 RESOURCES, LLC (“Defendant”). The Settlement will provide substantial monetary
6 payments to approximately 1,909 class members. And, as set forth more fully below, the
7 proposed Settlement satisfies all the criteria for settlement approval under California law.
8 The Settlement was reached after extensive investigation, discovery, and negotiations. There
9 has been no resistance to the Settlement, with zero objections and only six opt outs.
10 Accordingly, Plaintiff requests that the Court finally approve the proposed Settlement.

11 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

12 **A. Plaintiff’s Claims**

13 Defendant is a staffing agency based in North Carolina that provides businesses
14 prescreened and prequalified temporary “associates.” Declaration of Adrian Bacon in Support
15 of Motion For Preliminary Approval (“Bacon PA Decl.”) ¶ 6.¹ Plaintiff worked for
16 Defendant in Tehama County, California, as an hourly-paid Associate/Merchandiser from
17 approximately September 2016 through April 2017, May to August 2018, and February
18 through March 2019. (*Id.* ¶ 7). The putative Class consists of all individuals who were
19 employed by Defendant as a non-exempt employee in California from January 10, 2016
20 through June 1, 2021 (“Class Period.”) (*Id.* ¶¶ 17-18).

21 On January 10, 2020, Plaintiff filed a complaint in the Tehama County superior Court
22 on behalf of herself and a class of Merchandisers employed by Defendant in California since
23 January 10, 2016. *Id.* ¶ 8. On February 14, 2020, Defendant filed an Answer and a Notice of
24 Removal in the United States District Court for the Eastern District of California. *Id.* ¶ 9. On
25 May 12, 2020, Plaintiff filed a First Amended Complaint (“FAC”) to add a cause of action

26 _____
27 ¹ The Settlement Agreement and *Kullar* analysis were included as part of the Motion for
28 Preliminary Approval. In the interests of not filing repetitive declarations, Plaintiff instead
points to those documents previously filed.

1 under the Private Attorneys General Act of 2004 (“PAGA”), Lab. Code § 2698, et seq., on
2 behalf of aggrieved employees. *Id.* ¶ 10

3 On July 16, 2020, Plaintiff filed a Second Amended Complaint (“SAC”) adding additional
4 factual asserts and ultimately alleging failure to pay overtime and double time wage violations
5 (Cal. Lab. C. §§ 218.6, 558, & 1194), to pay minimum wages (Cal. Lab. C. §§ 1194, 1194.2, &
6 1197.1), to pay all regular wages (Cal. Lab. C. §§ 1197.1 & 1199), to provide rest periods (Cal.
7 Lab. C. §§ 226.7, 558, & 1198), to provide meal periods (Cal. Lab. C. §§ 226.7, 512, 558, & 1198),
8 to reimburse business expenses (Cal. Lab. C. §§ 2800 & 2802), to provide accurate wage
9 statements (Cal. Lab. C. §§ 226 & 558), for waiting time penalties (Cal. Lab. C. §§ 201-203 &
10 558), reporting time penalties (Wage Order 7), PAGA, and the Unfair Competition Law (Cal. Bus.
11 & Prof. C. § 17200 et. seq.). *Id.* ¶ 11.

12 Thereafter, the Parties agreed to private mediation with Glenn E. Lerman, Esq., who is
13 experienced in wage and hour class actions. In advance of mediation, Defendant provided Class
14 Counsel with data regarding Class Members, including Aggrieved Employees. Such data included
15 a random sample of the Class Members’ timekeeping and payroll records, in addition to
16 Defendant’s written policies and procedures. *Id.* ¶ 12.

17 On June 1, 2021, after extensive investigation and substantial discovery by Plaintiff’s
18 counsel, the Parties participated in a full day mediation with Mr. Lerman. Plaintiff and Class
19 Counsel concluded, after taking into account the sharply disputed factual and legal issues involved
20 in this Action, the risks attendant to further litigation, the discovery conducted to date, and the
21 substantial benefits to be received, that settlement as set forth herein was in all Class Members’
22 best interests. After the lengthy negotiation with Mr. Lerman’s assistance, the Parties eventually
23 accepted a mediator’s proposal, the terms of which are embodied in this Agreement. *Id.* ¶ 13.

24 Throughout the discussions, Plaintiff performed an assessment of Defendant’s exposure and
25 potential liability, to which Defendant responded, and based on those negotiations, the Parties
26 reached an agreement in principle for the class-wide resolution of Plaintiff’s claims. The
27 Settlement has been finalized and fully executed by the parties. *Id.* ¶ 14. Plaintiff moved for
28 preliminary approval of the settlement, which was granted. Plaintiff now moves for final approval

1 of this Class Action Settlement.

2 **B. Key Terms of the Proposed Settlement**

3 The Settlement provides for a non-reversionary Settlement Fund for the benefit of all
4 Class Members and Aggrieved Employees. (Bacon PA Decl. ¶ 15, Ex. A Sec. IV). The
5 Settlement Fund is defined as the Gross Settlement Amount of Six Hundred Fifty Thousand
6 Dollars (\$650,000). (*Id.* ¶ 16). “Class Members” means “all individuals who were employed
7 by Defendant as a non-exempt employee in California during the Class Period.” (*Id.* ¶ 17.).
8 Period is January 10, 2016 through June 1, 2021. (Settlement, Sec. I(I)). The PAGA Period
9 is March 14, 2019 through June 1, 2021. (Settlement, Sec. I(T)). “Aggrieved Employees”
10 means “employed during the PAGA Period” who are “eligible to participate in a settlement
11 of the claims brought in the Action pursuant to [PAGA].” (Settlement, Sec. I(B)).
12 “Participating Class Members” includes all Class Members and Aggrieved Employees who
13 do not timely exclude themselves from the Settlement. (*Id.* ¶ 20).

14 Each Participating Class Member is entitled to an Individual Settlement Share of the
15 Net Settlement Amount, which is defined as the Gross Settlement Amount, less 1) the Service
16 Award of \$10,000 to Plaintiff for his service to the Class as Class Representative, 2)
17 Attorneys’ Fees in the amount of Two Hundred Sixteen Thousand Six Hundred Sixty Six
18 Dollars (\$216,666), or one-third (1/3) of the Settlement Fund, plus Class Counsel’s expenses
19 of up to \$10,000, 3) Claims Administration Expenses, including the postage and printing costs
20 for the Class Notices and the postage costs for mailing the payments not expected to exceed
21 \$25,000, and 4) the PAGA Allocation of Ten Thousand Dollars (\$10,000), 75% of which
22 shall go to the Labor and Workforce Administration (“LWDA”) and 25% of which shall go
23 to Aggrieved Employees. (*Id.* ¶ 21).

24 The Net Settlement Amount will be paid as individual shares to Participating Class
25 Members. (*Id.* ¶ 22). The Individual Settlement Shares will be allocated with 34% of each
26 share shall represent wages and interest and 66% shall represent penalties. (*Id.* ¶ 22).. The
27 portion of each Individual Settlement Share representing wages will be subject to normal
28 employment tax withholdings relative to the Participating Class Member’s employment (e.g.,

1 withholdings for State and Federal income tax, employee FICA tax, California SDI, etc.) with
2 the Claims Administrator remitting all such employment tax withholdings directly to the
3 pertinent state and federal taxing authorities (*Id.* ¶ 24).

4 The Settlement releases from liability Defendant and its respective past, present and
5 future parents, subsidiaries, and affiliates including, without limitation, any corporation,
6 limited liability company, partnership, trust, foundation, and non-profit entity which controls,
7 is controlled by, or is under common control with Set and Services Resources, LLC Or SASR
8 Workforce Solutions, LLC; (iii) the past, present and future shareholders, directors, officers,
9 agents, employees, attorneys, insurers, members, partners, managers, contractors, agents,
10 consultants, representatives, administrators, fiduciaries, benefit plans, transferees,
11 predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity
12 which could be jointly liable with any of the foregoing, past and present parents, subsidiaries
13 and affiliates, and their respective present and former officers, directors, stockholders, agents,
14 employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors,
15 Representative, consultants, pension and welfare benefit plans, plan fiduciaries,
16 administrators, trustees, partners, predecessors, successors and assigns (“Released Parties”).
17 (*Id.* ¶ 25). Every Class Member who does not request exclusion from, or “opt-out” of, the
18 Class, including Plaintiff, will release all claims, demands, rights, liabilities, and/or causes of
19 action of any nature and description, known or unknown, in law or in equity, that were
20 asserted or could have been asserted at any time in the Action based on the facts, theories,
21 and/or claims alleged therein, including and covering claims for violations of any state or
22 federal statutes, rules or regulations including, but not limited to, California Labor Code
23 sections 200,201,202,203,218.6, 226,226.7, 500,510, 512,558, 1194, 1194.2, 1197, 1197.1,
24 1198, 1199, 2800, 2802, 2698, et seq., California Industrial Welfare Commission Wage
25 Orders, and Business and Professions Code sections 17200, et seq., claims that were asserted
26 or could have been asserted at any time in the Action based on the facts alleged therein by
27 any Class Member and/or Aggrieved Employee that Defendant, at any time during the Class
28 Period and/or PAGA Period regarding the following causes of action alleged in the

1 Complaint: 1) failed to pay all wages, including minimum wages; 2) failed to pay overtime
2 wages; 3) failed to provide timely, full, and uninterrupted rest periods or a penalty payment
3 in lieu thereof; 4) failed to provide timely, full, and uninterrupted meal periods or a penalty
4 payment in lieu thereof; 5) failed to provide accurate itemized wage statements; 6) failed
5 timely to pay all wages earned and owed during employment or on termination of
6 employment; 7) failed to provide restitution for unpaid sums; 8) failed to maintain accurate
7 records; 9) violated the Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200, *et seq.*;
8 and 10) owed penalties pursuant to PAGA, including Labor Code section 558. (*Id.* ¶ 26).

9 On September 13, 2022, following Preliminary Approval, Defendant provided the
10 Claims Administrator with a list of all Class Members, including the name and social security
11 number, last known mailing address, and employment information during the Class Period
12 ("Class List"). Declaration of Lisa Pavlick ¶ 8 ("Pavlick Decl."). After updating the list
13 against the National Change of Address Database, the Claims Administrator mailed notice to
14 1,909 Class Members on September 16, 2022. *Id.* at ¶¶ 9-10. 297 mailed notices were returned
15 as undeliverable and the Claims Administrator successfully obtained updated contact
16 information for 274 of these notices and mailed to the updated addresses—and seven were
17 returned as undeliverable. *Id.* at ¶ 11. Ultimately, 30 notices were ultimately undeliverable.
18 *Id.* Class Members had forty-five (45) days after the date of mailing to submit disputes,
19 requests for exclusion, and/or objections. Bacon PA Decl. at ¶ 29. Thus, the deadline was
20 October 31, 2022. The Claims Administrator has received no objections and six opt outs as
21 of the filing of this motion.² Pavlick Decl. ¶¶ 15-16.

22 Within ten (10) days after the Effective Date and Final Approval, whichever is later,
23 the Claims Administrator will make all required disbursements from the Settlement Fund.
24 (Bacon PA Decl. ¶ 30). No funds will revert to Defendant, and any payments made to
25 Participating Class Members that remain uncashed ninety (90) days after mailing shall be
26 paid to Public Justice in *cy pres*. (*Id.* ¶ 31).

27 ² Plaintiff will advise the Court should any objections or exclusions come in prior to the
28 final approval hearing at the hearing.

1 **III. DISCUSSION**

2 **A. LEGAL STANDARD ON MOTION FOR FINAL APPROVAL OF**
3 **CLASS SETTLEMENT**

4 When a proposed class-wide settlement is reached, the settlement must be submitted
5 to the court for approval. 2H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992)
6 at §11.41, p.1 1- 87. The primary question presented on an application for preliminary
7 approval of a proposed class action settlement is whether the proposed settlement is “within
8 the range of possible approval.” *Manual for Complex Litigation*, Second §30.44 at 229;
9 *Gautreaux v. Pierce* (7th Cir. 1982) 690 F.2d 616, 621 n.3.³ During Final Approval, however,
10 the Court must determine whether the settlement is “fair, adequate, and reasonable.” *See*
11 *Wershba v. Apple 10 Computer* (2001) 91 Cal. App. 4th 224, 244. The approval of a
12 proposed settlement of a class action suit is a matter within the broad discretion of the trial
13 court. *Id.* at 235. In making this determination the courts look to the following factors: 1)
14 the strength of plaintiffs' case, 2) the risk, expense, complexity and likely duration of further
15 litigation, 3) the risk of maintaining class action status through trial, 4) the amount offered
16 in settlement, 5) the extent of discovery completed and the stage of the proceedings, 6) the
17 experience and views of counsel, 7) the presence of a governmental participant, and 8) the
18 reaction of the class members to the proposed settlement.” *See Id.* at 244-45. “However ‘a
19 presumption of fairness exists where: (1) the settlement is reached through arm's-length
20 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
21 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
objectors is small.’” *Id.* at 245. (internal citations omitted).

22 **B. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS**
23 **COURT TO GRANT FINAL APPROVAL**

24 This settlement agreement is fair, adequate, and reasonable by every standard set out
25 by the California courts. The initial presumption is met here as the parties had engaged in

26 ³ California courts look to federal authority on class actions. *Vasquez v. Superior Court*
27 (1971) 4 Cal.3d 800, 821. “It is well established that in the absence of relevant state precedents
28 trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil
Procedure for conducting class actions.” *Frazier v. City of Richmond* (1986) 184 Cal. App.3d
1491, 1499 (citing *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146).

1 extensive settlement talks, where this settlement agreement was reached by adverse parties
2 who were adequately represented by experienced counsel who examined the evidence
3 supporting both parties' claims and fully evaluated the strengths and weaknesses of their
4 respective cases and the risk of prolonged litigation, and zero objections were filed in this
5 case. In addition, as explained more fully below, each and every factor weighs in favor of
6 the position that this settlement is fair, adequate and reasonable.

7 **C. There is a Strong Initial Presumption of Fairness in this Case**

8 **1. The settlement was reached through arm's-length bargaining**

9 As mentioned above, the parties' entered into this settlement with conflicting
10 positions about the case and as adverse parties who came to the terms of the Settlement
11 Agreement after hours of settlement discussion and exchange of information.

12 A damages analysis was conducted in the months leading up to settlement by
13 Plaintiff's counsel, pursuant to the decision of *Kullar v. Foot Locker Retail, Inc.* (2008) 168
14 Cal.App.4th 116. This analysis was thoroughly discussed at the preliminary approval phase
15 in the declaration of counsel and is incorporated by reference for the Court's convenience
16 and so as not to unnecessarily extend the length of this unopposed Motion.

17 This settlement is the result of extensive and hard fought negotiations between
18 experienced counsel. Defendant has expressly denied and continues to deny any wrongdoing
19 or legal liability arising out of the conduct alleged in the Lawsuit. Plaintiff and Class Counsel
20 have determined that it is desirable and beneficial to the Class to put to rest the Settlement
21 Class Members' Released Claims. Moreover, the Honorable Court previously scrutinized the
22 damages analysis conducted by Plaintiff's counsel pursuant to *Kullar v. Foot Locker Retail,*
23 *Inc.* (2008) 168 Cal.App.4th 116, and found that the settlement reached is fair and
24 reasonable.

25 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate
26 and trying this Lawsuit against Defendant through possible appeals which could take several
27 years. Class Counsel has also taken into account the uncertain outcome and risk of litigation,
28 especially in complex actions such as this Lawsuit. Class Counsel is also mindful of and
recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted

1 in the Lawsuit. Based upon their evaluation, Plaintiff and Class Counsel have determined
2 that the settlement set forth in the Settlement Agreement is in the best interest of the Class
3 Members. Here, there can be no dispute that the litigation has been hard-fought with
4 aggressive and capable advocacy on both sides. The Parties were represented by experienced
5 and capable counsel who zealously advocated their respective positions. Accordingly,
6 “[t]here is likewise every reason to conclude that settlement negotiations were vigorously
7 conducted at arms’ length and without any suggestion of undue influence.” *In re Wash. Public*
8 *Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1392.

9 **2. Investigation and discovery are sufficient to allow counsel and the**
10 **court to act intelligently**

11 With regard to class action settlements, the opinions of counsel should be given
12 considerable weight both because of counsel’s familiarity with this litigation and previous
13 experience with cases such as these. *Officers for Justice v. Civil Service Com’n of City and*
14 *County of S.F.* (9th Cir. 1982) 688 F.2d 615, 625; *In re Wash. Public Power Supply System*
15 *Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1392; *Kirkorian v. Borelli* (N.D. Cal. 1988) 695
16 F. Supp. 446, 451; *Weinberger v. Kendrick* (2d Cir. 1982) 698 F.2d 61, 74. For example, in
17 *Lyons v. Marrud, Inc.* (S.D.N.Y. 1972) [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH)
18 Paragraph 93,525, the court noted that “[experienced and competent counsel have assessed
19 these problems and the probability of success on the merits.... The parties’ decision regarding
20 the respective merits of their position has an important bearing.” *Id.* at 92,520. “The
21 recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.”
22 *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 622. As a result, courts hold that the
23 recommendation of counsel is entitled to significant weight. *Nat’l Rural Telecomms. Coop. v.*
24 *DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528.

25 The Plaintiff and Class Counsel believe that the Settlement provides a favorable
26 recovery for the Class, based on the claims asserted, the evidence developed, and the
27 damages that might be proven against Defendant in the Action. The Plaintiff and Class
28 Counsel further recognize and acknowledge the expense and length of continued proceedings
necessary to prosecute the Action against Defendant through trial and appeals. They also

1 have considered the uncertain outcome and the risk of any litigation, especially in complex
2 litigation such as the Action, as well as the difficulties and delays inherent in any such
3 litigation. In light of the risk of further litigation and the defenses that Defendant has
4 asserted and could assert, the proposed Settlement set forth in the Settlement Agreement is
5 fair, reasonable, adequate, and in the best interests of the Class.

6 Prior to settlement, the Parties engaged in investigation and the exchange of
7 documents and information in connection with the Lawsuit. As part of this process,
8 Defendant has provided documents and detailed information to Class Counsel to review and
9 analyze, and the Plaintiff and Class Counsel have also conducted their own independent
10 investigations and evaluations.

11 Class Counsel has conducted a thorough investigation into the facts of the class
12 action. Class Counsel has diligently evaluated the Class Members' claims against Defendant.
13 Prior to the Parties executing the Settlement Agreement, counsel for Defendant provided
14 Class Counsel with access to data and information for the Class, including information
15 concerning the Defendant's practices, and documentation necessary to evaluate the wage and
16 hour damages to the class such as number of class members and number of workweeks. In
17 addition, Class Counsel has previously negotiated settlements involving nearly identical
18 issues and analogous defenses. Based on the foregoing data and their own independent
19 investigation, evaluation and experience, Class Counsel believes that the settlement with
20 Defendant on the terms set forth in the Settlement Agreement is fair, reasonable, and
21 adequate and is in the best interest of the Class in light of all known facts and circumstances,
22 including the risk of significant delay, defenses asserted by Defendant, and numerous
23 potential appellate issues. Defendant and Defendant's counsel also agree that the Settlement
is fair and in the best interest of the Class.

24 Determination of wrongdoing is still up to a trier of fact, which poses a significant
25 risk to both Plaintiff and Defendant that Defendant failed to comply with these various
26 provisions of the Labor Code. Furthermore, the record supports and allows the Court to
27 evaluate that both sides are at substantial risk with regards to the issue of Class Certification.
28 As the Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding

1 of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Service Com’n*
2 *of City and County of S.F.* (9th Cir. 1982) 688 F.2d 615, 624.

3 **3. Counsel is experienced in similar litigation**

4 Both Plaintiff’s and Defendant’s counsel are extremely well experienced in this type
5 of litigation. Defendant’s counsel specializes in Employment Litigation, while Plaintiff’s
6 counsel collectively have years of Class Action, Wage and Hour and Consumer Protection
7 experience. The Law Offices of Todd M. Friedman and Blanchard Law Firm have been
8 appointed as plaintiff’s counsel in nearly a hundred class action cases involving various class
9 actions claims consumer rights and wage and hour claims, where a settlement was reached
10 on a class-wide basis and have achieved over \$300,000,000 in class-wide relief for
11 consumers. *See* Bacon PA Decl. at ¶¶ 43-50; Declaration of Lonnie Blanchard in Support of
12 Preliminary Approval (“Blanchard PA Decl.”) at ¶¶ 4-8). The Law Offices of Todd M.
13 Friedman is currently appointed as class counsel in seven matters which were certified by
14 contested motion. *Id.*

15 **4. The percentage of objectors is small**

16 In settling this class action, the parties agreed to a notice mailing program that
17 consisted of a Notice mailing to all Class Members, along with an information sheet and opt
18 out form. The Settlement Class Member master mailing list was prepared from records
19 obtained from Defendant that consisted of a spreadsheet containing 1,909 records. Rust
20 mailed Notices to the records on the mailing list. Prior to sending the Notices, Rust
21 processed the names and addresses on this list through the National Change of Address
22 database to update any address information on file with the United States Postal Service.
23 Since mailing the Notices, Rust received 297 Notice Packets returned by the USPS, 274 of
24 which they were able to locate updated mailing addresses. Pavlick Decl. ¶ 11. Ultimately,
25 98.5% of the Class Members were reached with the direct Class Notice. *Id.* As of the date
26 of this declaration, Rust has received **zero opt out requests and zero objections**. *Id.* at ¶
27 15-16. Consequently, this Settlement Agreement is presumed to be fair, since the settlement
28 is reached through arm's-length bargaining; investigation and discovery are sufficient to

1 allow counsel and the court to act intelligently; counsel is experienced in similar litigation;
2 and the percentage of objectors is zero.

3 **D. The Settlement Agreement is Fair, Reasonable, and Adequate**

4 As mentioned above, in making this determination the courts look to the following
5 factors: 1) the strength of plaintiffs' case, 2) the risk, expense, complexity and likely duration
6 of further litigation, 3) the risk of maintaining class action status through trial, 4) the amount
7 offered in settlement, 5) the extent of discovery completed and the stage of the proceedings,
8 6) the experience and views of counsel, 7) the presence of a governmental participant, and
9 8) the reaction of the class members to the proposed settlement.” *See Wershba v. Apple 10*
10 *Computer*, 91 Cal. App. 4th 224, 244 (2001). As explained below, all of these factors weigh
11 in favor of the Court approving the Settlement Agreement.

12 **1. The strength of Plaintiffs’ case**

13 Plaintiff alleges generally that Defendant had a practice of not paying merchandisers
14 for all “active time,” “reporting time,” and for meal and rest breaks and resulting failure to
15 provide such employees with minimum and overtime wages, meal and rest periods or
16 premium wages in lieu thereof, all wages earned and owed at termination, and accurate
17 written wage statements. Class Members are all individuals who were employed by
18 Defendant as a non-exempt employee in California from January 10, 2016 through June 1,
19 2021. Plaintiff alleges these practices are unlawful, and that Defendant’s acts violated
20 various provisions of the Labor Code.

21 Defendant denies the allegations in the Action, denies that it has engaged in any
22 wrongdoing; were paid for all time worked. Defendant further denies that a litigation class
23 could properly be certified in the Action, and states that it is entering into this Settlement
24 Agreement solely to eliminate the uncertainties, burden, expense, and delay of further
25 protracted litigation. A bona fide dispute exists as to whether any amount of money is due
26 from Defendant to any putative Settlement Class Member.
27
28

1 **2. The risk, expense, complexity and likely duration of further**
2 **litigation**

3 Where both sides face significant uncertainty, the attendant risks favor settlement.
4 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. Class actions such as these pose
5 serious risk, expense, complexity and likely last for years of protracted litigation, and this case is
6 no different. There is a significant risk on liability, damages, and issues of Class Certification.

7 Here, a number of defenses asserted by Defendant presented serious threats to the
8 claims of the Plaintiff and the other Settlement Class Members. As described in the motion
9 for Preliminary Approval, there are risks with respect to certification issues, as well as merits
10 issues. Such risks include the existence of arbitration clauses for the Class Members, a
11 defense to the merits of the alleged wage and hour claims, and certification defenses,
12 primarily with respect to an argument that there are individualized issues as to the alleged
13 violations and manageability arguments at trial for presenting damages.

14 After arm's length negotiations between experienced and informed counsel, the
15 Parties recognized the potential risks and agreed on the settlement of \$650,000. As the
16 federal court recently held in *Glass*, where the parties faced uncertainties similar to those
17 here:

18 In light of the above-referenced uncertainty in the law, the risk, expense,
19 complexity, and likely duration of further litigation likewise favors the
20 settlement. Regardless of how this Court might have ruled on the merits of the
21 legal issues, the losing party likely would have appealed, and the parties would
22 have faced the expense and uncertainty of litigating an appeal. "The expense
23 and possible duration of the litigation should be considered in evaluating the
24 reasonableness of [a] settlement." See *In re Mego Financial Corp. Securities*
25 *Litigation*. (9th Cir. 2000) 213 F.3d 454, 458.

26 Here, the risk of further litigation is substantial. These risks of liability are multiplied for
27 each Class Members if certification cannot be established, which may make it impossible for
28 the Class Members to find an attorney that would be willing to litigate the issue on an
individual basis, leaving the Class Members with little to no recourse. However, even if
Class Certification were established in this case, additional risks ensue for both parties as
Plaintiff is forced to prove a widespread, systematic and common violations as to all

Members of the Class, while Defendant is forced to carry a huge seven figure judgement over its head, likely for years.

3. The risk of maintaining class action status through trial

At trial, many of the risks and expenses that were outlined above with respect to litigation are also applicable to trial. Plaintiff and Defendant will have to call multiple witnesses and experts with little assurance of succeeding at trial. The case would only proceed to trial if there were genuine factual issues that must be determined by a fact-finder, and thus no party would be able to accurately predict the outcome. In the meantime, there would be a long, difficult struggle that would likely last for days with substantial risk hanging over both parties.

4. The amount offered in settlement

The calculations to compensate for the amount due to the Class Members at the time this Settlement was negotiated were calculated based on a pro rata share of the settlement funds, calculated based on the number of work weeks the class member worked for Defendant. The damages analysis conducted by counsel suggests that the settlement achieved as compared with the realistic recovery represents a fair recovery of those damages by Class Members. Bacon PA Decl. ¶ 49-76. Given the risks discussed at preliminary approval and here, this is a very fair settlement for Class Members that avoids the risk of protracted litigation, where they could potentially receive zero. The settlement reached is fair and reasonable. Based on the nature of the claims, the evidence of the case, prevailing similar lawsuits, the experience of Class Counsel, Class Counsel believes that a settlement of this value represents an excellent result for the Class, and it is most certainly fair and reasonable. Clearly, the goal of this litigation has been met.⁴ This settlement is entitled to final approval.

5. The extent of discovery completed and the stage of the proceedings

The stage of the proceedings at which this settlement was reached also militates in favor of final approval of the settlement. As mentioned above, Class Counsel has conducted

⁴See *Dunleavy v. Nadler (InreMegoFin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459 approving settlement which represented “roughly one-sixth of the potential recovery”); *Stovall-Gusman v. W. W. Granger, Inc.* (N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 78671, at *12 (granting final approval where “the proposed Total Settlement Amount represents approximately 10% of what class might have been awarded had they succeeded at trial.”)

1 a thorough investigation into the facts of the class action. Class Counsel began investigating
2 the Class Members' claims before this action was filed. Class Counsel engaged in a thorough
3 review and analysis of the relevant documents and data. Class Counsel was also experienced
4 with the claims at issue here, as Class Counsel previously litigated and settled similar claims
5 in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
6 possessed sufficient information to make an informed judgment regarding the likelihood of
7 success on the merits and the results that could be obtained through further litigation.

8 Based on the foregoing data and their own independent investigation and evaluation,
9 Class Counsel is of the opinion that the settlement with Defendant for the consideration and
10 on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in
11 the best interest of the class in light of all known facts and circumstances, including the risk
12 of significant delay, defenses asserted by Defendant, and numerous potential appellate
13 issues. Defendant and Defendant's counsel also agree that the Settlement Agreement is fair
14 and in the best interest of the Class Members. There can be no doubt that Counsel for both
15 parties possessed sufficient information to make an informed judgment regarding the
16 likelihood of success on the merits and the results that could be obtained through further
17 litigation. In *Glass*, the Northern District of California granted final approval of a class
18 action although in *Glass* no formal discovery had been conducted prior to the settlement:

19 Here, no formal discovery took place prior to settlement. As the Ninth Circuit
20 has observed, however," [i]n the context of class action settlements, 'formal
21 discovery is not a necessary ticket to the bargaining table' where the parties
22 have sufficient information to make an informed decision about settlement."
23 See *In re Mego Financial Corp. Securities Litigation*, 213 F.3d at 459.

24 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14.

25 Class Counsel was in a strong position to evaluate the fairness of this settlement as
26 they had the same sufficient information, as well as independent investigations and due
27 diligence to confirm the accuracy of the information supplied by Defendant.

28 **6. The experience and views of counsel**

As mentioned above, counsel for both Plaintiff and Defendant have a plethora of
experience in cases similar to this one. Class Counsel has conducted a thorough investigation
into the facts of the class action. Based on the foregoing data and their own independent

1 investigation, evaluation and experience, Class Counsel believes that the settlement with
2 Defendant on the terms set forth in the Settlement Agreement is fair, reasonable, and
3 adequate and is in the best interest of the Class in light of all known facts and circumstances,
4 including the risk of significant delay, defenses asserted by Defendant, and numerous
5 potential appellate issues. Defendant and Defendant's counsel also agree that the Settlement
6 is fair and in the best interest of the Class.

7 **7. The presence of a governmental participant**

8 In this case, the LWDA is receiving a portion of the settlement for PAGA penalties.
9 The LWDA was provided notice of the settlement and has not objected.

10 **8. The reaction of the class members to the proposed settlement**

11 As mentioned above, the reaction of the class members was exceptionally positive.
12 After, notice was successfully mailed to 98.5% of the Class Members' addresses, fully laying
13 out the terms of the settlement agreement, the rights of the Class Members to object and the
14 rights of the Class Members to opt out of the class. Pavlick Decl. ¶ 11. After the Class
15 Members were so informed, *zero objections* were lodged. *Id.* ¶¶ 15-16.

16 **IV. CONCLUSION**

17 Plaintiff respectfully requests that the Court approve the proposed settlement and
18 sign the proposed Final Approval Order, which is submitted herewith.

19 Dated: November 7, 2022

Respectfully submitted,
LAW OFFICES OF TODD M. FRIEDMAN, P.C.

20
21 By: 

Todd M. Friedman

22
23 LONNIE C. BLANCHARD III
24 **THE BLANCHARD LAW GROUP, APC**
25 3579 EAST FOOTHILL BOULEVARD NO. 338
PASADENA, CA 91107
Tel: (213) 599-8255

26 Attorneys for Plaintiff
27
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I, the undersigned, certify and declare that I am over the age of 18 years, employed in the
4 County of Los Angeles, State of California, and not a party to the above-entitled cause. My
5 business address is the Law Offices of Todd M. Friedman, P.C., 21031 Ventura Blvd., Ste. 340,
6 Woodland Hills, CA 91364.

7 On **November 7, 2022**, I served the document(s) described as: **MOTION FOR FINAL
8 APPROVAL; DECLARATION OF LISA PAVLIK; PROPOSED FINAL APPROVAL
9 ORDER** on the interested parties in this action by sending a true copy thereof to interested parties
10 as follows:

11 [x] **BY E-MAIL:** I hereby certify that this document was served from Orange,
12 California, by e-mail delivery on the parties listed herein at their most recent known
13 email address.

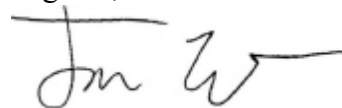
14 Austin, Nathan W. Austin
15 Jackson Lewis
16 Nathan.Austin@jacksonlewis.com

17 [] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope,
18 by hand to the offices of the addressee(s) named herein.

19 [] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of
20 collection and processing correspondence for overnight delivery. Under that practice,
21 overnight packages are enclosed in a sealed envelope with a packing slip attached
22 thereto fully prepaid. The packages are picked up by the carrier at our offices or
23 delivered by our office to a designated collection site.

24 I declare under the penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on November 7, 2022, in Los Angeles, California.

27 

28 Thomas E. Wheeler