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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 DAVID ETTEDGUI, an individual,
15 on behalf of himself and on behalf of
16 all persons similarly situated,

17 Plaintiff,

18 vs.

19 WB STUDIO ENTERPRISES INC.,
20 a corporation; and DOES 1 through
21 50, inclusive,

22 Defendants.

CASE No. **2:20-cv-08053-MCS-(JDEx)**

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

Hearing Date: May 23, 2022

Hearing Time: 9:00 a.m.

District Judge: Hon. Mark C. Scarsi
First Street Courthouse
Courtroom 7C

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I. INTRODUCTION

Plaintiff David Ettedgui (“Plaintiff”) and Defendant WB Studio Enterprises Inc. (“Defendant”) reached a full and final settlement of the above-captioned class action and PAGA action (the “Action”). Under the terms of the Class Action Settlement Agreement (“Agreement”), Defendant agrees to pay the maximum gross sum of Seven Hundred Twenty Thousand Dollars (\$720,000) (the “Gross Settlement Amount”) with no reversion in consideration for the settlement and the release of claims as described in the Agreement. This Court preliminarily approved the settlement by Order dated January 26, 2022. (Doc. No. 72.) In accordance with the Preliminary Approval Order, the required Class Notice of the proposed settlement was disseminated to the Class of 632 members. The results are that there are no objections and four opt-outs.

In the Preliminary Approval Order, the Court raised a couple issues with respect to the resolution of the PAGA claim, which as addressed herein. First, the LWDA was served with the Agreement and the motion for preliminary approval, as verified in the Decl. Blumenthal at ¶9, and is also being served with this motion as verified in the accompanying proof of service. Second, as fully detailed below, the PAGA allocation is a fair and reasonable resolution. Plaintiff calculated the maximum value of the alleged PAGA claim as to the Aggrieved Employees for civil penalties to be between \$237,700 and \$475,400 for a single violation in every one of the 4,754 pay periods at issue in the PAGA Period (Decl. Blumenthal at ¶9(c)), however, at trial, any PAGA penalties awarded could be significantly less than Plaintiff’s calculation even where Plaintiff prevailed on the PAGA claim. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), affirmed a judgment which only provided for a PAGA penalty of \$5 per violation. Using the valuation from *Carrington* for all 4,754 pay periods results in a more realistic recovery of \$23,770 under PAGA, which means that the \$20,000 PAGA allocation is a reasonable percentage of this realistic PAGA recovery. (Decl. Blumenthal at ¶9(c).) In addition, as noted by the LWDA in *O'Connor v. Uber*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), the Class recovery to the Aggrieved Employees also satisfies the

1 purposes of PAGA. Finally, as detailed below, the reasonableness of PAGA allocation
2 in this case is further supported by the comparison with other settlements approved in
3 various courts. (Decl. Blumenthal at ¶9.)

4 The purpose of this Final Approval Hearing is to determine whether the proposed
5 settlement of the Action should be finally approved and for approval of the award of
6 attorneys' fees and costs to be paid to Class Counsel and the Plaintiff's service award.¹
7 Plaintiff respectfully submits this Memorandum in support of his motion for final
8 approval and the proposed entry of the Order granting final approval and judgment in
9 this Action.

10 **II. SUMMARY OF THE LITIGATION**

11 The procedural history is set forth at length in the accompanying Declaration of
12 Blumenthal ("Decl. Blumenthal") at paragraphs 6(a) through 6(i), and is summarized
13 below. Plaintiff initially filed the Class Action against Defendant in the Superior Court
14 of California, Los Angeles County, and then also filed a separate PAGA Action against
15 Defendant in the same Court based on the same factual allegations ("State Court PAGA
16 Action"). Decl. Blumenthal, ¶¶ 6(a)-6(c). The Class Action was removed to federal
17 court. Decl. Blumenthal, ¶6(b). On December 28, 2020, the United States District Court,
18 Central District of California granted in part and denied in part Defendant's Motion to
19 Dismiss Plaintiff's First Amended Complaint without leave to amend. [Doc. No. 35].
20 (Decl. Blumenthal, ¶ 6(b).)

21 As part of this Settlement, Plaintiff filed a Second Amended Complaint to add the
22 PAGA claim from the State Court PAGA Action to this Action. [Doc. No. 67]. (Decl.
23 Blumenthal, ¶ 6(g).)

24 Class Counsel has extensive experience in litigating wage and hour class actions
25 and PAGA actions in California and conducted significant discovery, research and
26 investigation in furtherance of the prosecution of this Action. The Parties have
27 _____

28 ¹ The Declaration of the Plaintiff is being filed in support of this motion.

1 vigorously litigated the Action since its inception. During the course of litigation, the
2 Parties each performed analysis of the merits and value of the claims. This discovery,
3 investigation, research and prosecution included, among other things, (a) formal
4 discovery and multiple conferences between counsel; (b) inspection and analysis of
5 hundreds of pages of documents and other information produced by Plaintiff and
6 Defendant formally during the litigation of the Action and informally in preparation for
7 mediation (including class data); (c) analysis of the numerous legal positions taken by
8 Defendant; (d) investigation into the viability of class treatment of the claims; (e)
9 analysis of potential class-wide damages, including reviewing class data, and analyzing
10 information sufficient to understand Defendant's potential defenses; (f) research of the
11 applicable law with respect to the claims asserted as well as potential defenses; and (g)
12 assembling and analyzing extensive data and information for calculating damages.
13 Plaintiff and Class Counsel believe that the settlement with Defendant for the
14 consideration and on the terms set forth in the Agreement is fair, reasonable, and
15 adequate and is in the best interests of the Class in light of all known facts and
16 circumstances, including the risk of significant delay, the likelihood that Defendant
17 would prevail on their defenses, and numerous potential appellate issues. (Decl.,
18 Blumenthal, ¶6(e).)

19 Defendant denies all allegations of wrongdoing and allege numerous affirmative
20 defenses relating not only to Plaintiff's claims, but also to class certification. Defendant
21 asserts facts that could negate essential elements of Plaintiff's claims. Defendant
22 contends, for example, that its employees were able to take meal and rest breaks. In
23 addition, Defendant contends that federal law preempts the claims because of the
24 collective bargaining agreement that was applicable during the Class Members' and
25 Aggrieved Employees' employment with Defendant. Further, there could be significant
26 problems of proof regarding the extent to which Class Members and Aggrieved
27 Employees allegedly missed meal and rest breaks during the Class Period. (Decl.
28 Blumenthal, ¶ 6(f).)

1 Following the extensive investigation by both Parties, the Parties agreed to engage
2 in private mediation. The Parties attended an all-day mediation on April 28, 2021 before
3 Jeffrey Krivis, a respected and experienced mediator. At all times, the Parties’
4 settlement negotiations have been non-collusive, adversarial, and at arm's length. The
5 Parties agreed on the basic terms of a class and PAGA settlement pursuant to a
6 Memorandum of Understanding executed following the mediation, ongoing post-
7 mediation discussions and a mediator’s proposal. By September 15, 2021, the long-form
8 Agreement was finalized and executed. Class Counsel filed the motion requesting
9 preliminary approval of the settlement on September 30, 2021. [Doc. No. 69.] (Decl.
10 Blumenthal ¶ 6(g).)

11 By the Order of January 26, 2022, the Court granted preliminary approval of the
12 settlement and approved the mailing of the Class Notice to the Class. [Doc. No. 72.] On
13 February 18, 2022, the Settlement Administrator mailed to the Class Members the Class
14 Notice, which provided notice of the settlement and an explanation of monetary relief
15 and the right to opt out of the Class, or object to the Settlement. (Decl. Blumenthal ¶
16 6(h).)

17 Currently, out of the 632 individuals in the Class, not one Class Member objected,
18 and only four (4) Class Members opted out of the Class, which means that currently
19 99.36% of the Class has elected to participate in the Settlement. The final results are
20 detailed in the Declaration of the Settlement Administrator, Evelin Reyes (“Decl.
21 Reyes”) filed and served herewith. (Decl. Blumenthal ¶ 6(i).)

23 **III. THE SETTLEMENT BEFORE THE COURT**

24 To implement the terms of this Settlement, Defendant agrees to pay the Gross
25 Settlement Amount of Seven Hundred Twenty Thousand Dollars (\$720,000) in full and
26 complete satisfaction of the Class Members’ Released Class Claims. (Agreement at ¶
27 III(B).) The Gross Settlement Amount consists of all payments to Class Members from
28 the Net Settlement Amount, and includes (a) the costs of administration of the

1 settlement, (b) all attorneys' fees and costs, (c) a service award to the Plaintiff, and (d)
2 the PAGA Payment to the LWDA and the Aggrieved Employees. (Agreement at ¶
3 III(C)-(D).) (Decl. Blumenthal ¶ 3(a).)

4 The amount remaining in the Gross Settlement Amount after the deduction of
5 Court-approved amounts for Class Counsel Fees Payment, Class Counsel Litigation
6 Expenses Payment, the Class Representative Service Payment, the PAGA Payment, and
7 the Settlement Administration Expenses (called the "Net Settlement Amount") shall be
8 allocated to Class Members as their Settlement Shares. (Agreement at ¶¶ I(V) and
9 III(D).) (Decl. Blumenthal ¶ 3(b).)

10 From the Net Settlement Amount, the Settlement Share for each Participating
11 Class Member will be calculated by (a) dividing the Net Settlement Amount by the total
12 number of workweeks worked by the Participating Class Members while Defendant's
13 Studio Tour was running and operational during the Class Period to determine a dollar
14 amount per week ("Weekly Rate"), and (b) multiplying the total number of workweeks
15 worked by each Participating Class Member while Defendant's Studio Tour was running
16 and operational during the Class Period by the Weekly Rate. (Agreement at ¶ III(D)(2).)
17 (Decl. Blumenthal ¶ 3(c).)

18 Subject to Court approval, the Parties have agreed that \$20,000 of the Gross
19 Settlement Amount will be allocated to the resolution of the PAGA Claim, of which 75%
20 (\$15,000) shall be allocated to the Labor and Workforce Development Agency
21 ("LWDA") as the LWDA's share of the settlement of civil penalties and 25% (\$5,000)
22 will be distributed to the Aggrieved Employees based on the number of pay periods
23 worked while Defendant's Studio Tour was running and operation during the PAGA
24 Period. (Agreement at ¶ III(C)(3).) The LWDA was served with the Agreement both
25 at the time of preliminary approval and again with this motion, and the LWDA has not
26 indicated any objection to this Settlement. (Decl. Blumenthal ¶ 3(d).) The reasonableness
27 of the PAGA allocation is addressed fully addressed in the Decl. Blumenthal at ¶9.

28 Simpluris was appointed as Settlement Administrator (Agreement at ¶ III(E).) All

1 administrative fees, costs and expenses incurred by the Settlement Administrator in
2 connection with administering the Settlement will be deducted from the Gross Settlement
3 Amount. The actual expenses of the Settlement Administrator are \$20,000 as outlined
4 in the Declaration of the Evelin Reyes at ¶16. (Decl. Blumenthal ¶ 3(e).)

5 Class Counsel has applied to the Court for an award of reasonable attorneys' fees
6 in an amount not to exceed one-third (1/3) of the Gross Settlement Amount, and for
7 reimbursement of reasonable expenses in the amount of \$17,774.86, both subject to
8 Court approval. (Agreement at ¶ III(C)(2)). The Plaintiff has also applied for Court
9 approval of service awards in an amount not to exceed \$10,000 each in consideration for
10 his service as the class representative. (Agreement at ¶ III(C)(1).) The motion is
11 scheduled for the Final Approval Hearing and was filed and posted on March 22, 2022,
12 which was well before the deadline for written objections to the Settlement. (Decl.
13 Blumenthal ¶ 3(f).)

14 The scope of the release by all Class Members who do not opt out tracks the scope
15 of the allegations in the Action. Upon the Effective Date and full funding, all
16 Participating Class Members shall irrevocably release the following claims against
17 Defendant and the Released Parties:

18 any and all claims, liabilities, rights, demands, suits, matters, obligations,
19 liens, damages, losses, costs, expenses, debts, actions, and causes of action,
20 of every kind and/or nature whatsoever, which any Participating Class
21 Member now has or at any time ever had against any of the Released
22 Parties that is alleged in the operative Complaint or that could have been
23 alleged based on the facts alleged in the operative Complaint, including: (a)
24 meal period penalties allegedly owed to the Participating Class Members
25 by Defendant during the Class Period; (b) rest period penalties allegedly
26 owed to the Participating Class Members by Defendant during the Class
27 Period; (c) violation or alleged violation of California Labor Code Sections
28 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial
Commission Wage Order or other statute or regulation regarding meal and
rest periods; (d) attorneys' fees due or allegedly due under California Labor
Code or any other statute, regulation, or contractual provision providing for
such fees in connection with the operative Complaint; and (e) penalties or
other payments which are based on any of the foregoing, including
penalties, premiums, or payments under California Labor Code Sections
201, 202, 203, 226, 226.7, 512, and 2802 and/or any violation of the
California Industrial Commission Wage Order alleged in the operative
Complaint ("Released Class Claims"). Without in any way limiting the
foregoing, the Released Class Claims shall include all claims, liabilities,

1 rights, demands, suits, matters, obligations, liens, damages, losses, costs,
2 expenses, debts, actions, and causes of action under statutes and regulations
3 set forth in this Section G.1., whether enforced directly or pursuant to
4 California Labor Code Section 2699, California Business and Professions
5 Code Section 17200, et seq., or any other mechanism. The Released Class
6 Claims do not include claims for vested benefits, wrongful termination,
7 unemployment insurance, disability, social security, workers'
8 compensation, and claims outside of the Class Period.

9 (Agreement at ¶ III(G)(1).) (Decl. Blumenthal ¶ 3(g).)

10 The scope of the release by all Aggrieved Employees tracks the scope of the
11 allegations in the Action. Upon the Effective Date and full funding, all Aggrieved
12 Employees shall irrevocably release the following claims against Defendant and the
13 Released Parties:

14 any and all PAGA claims for civil penalties pled in the operative Complaint
15 or in the Class Representative's letter to the LWDA, dated February 17,
16 2020, which arose during the PAGA Period or could have been alleged
17 based on the factual allegations contained in the operative Complaint or the
18 letters sent by Plaintiff that occurred during the PAGA Period as to the
19 Aggrieved Employees, including: (a) PAGA claims predicated on meal
20 period penalties allegedly owed to the Aggrieved Employees by Defendant
21 during the PAGA Period; (b) PAGA claims predicated on rest period
22 penalties allegedly owed to the Aggrieved Employees by Defendant during
23 the PAGA Period; (c) PAGA claims predicated on violation or alleged
24 violation of California Labor Code Sections 201, 202, 203, 226, 226.7, 512,
25 and 2802 and/or any California Industrial Commission Wage Order or other
26 statute or regulation regarding meal and rest periods; (d) attorneys' fees due
27 or allegedly due under PAGA in connection with the operative Complaint;
28 and (e) PAGA penalties which are based on any of the foregoing, including
PAGA penalties predicated on penalties, premiums, or payments allegedly
due under California Labor Code Sections 201, 202, 203, 226, 226.7, 512,
and 2802 and/or any California Industrial Commission Wage Order.
("Released PAGA Claims"). The Released PAGA Claims exclude any
PAGA claims outside the PAGA Period. The release of the Released PAGA
Claims shall be effective as to all Aggrieved Employees, regardless of
whether an Aggrieved Employee submitted a request for an exclusion from
the Class.

(Agreement at ¶ III(G)(2).) (Decl. Blumenthal, ¶ 3(g).)

Class Members were permitted the opportunity to object to or comment on the
Settlement; or elect not to participate in the Settlement. Class Members who wished to
exclude themselves from the Settlement must either have mailed a signed Election Not
to Participate in Settlement to the Settlement Administrator or submitted a signed
Election Not to Participate in Settlement online through the Settlement Website no later

1 than forty-five (45) days after the Settlement Administrator mailed the Class Notice.
2 (Agreement at ¶ III(F)(4).) (Decl. Reyes, Exh. A.) Class Members who wished to object
3 to the Settlement must have submitted their written objections to the Settlement
4 Administrator not later than forty-five (45) days after the mailing of the Class Notice or
5 alternatively may appear at the Final Approval Hearing to make an oral objection.
6 (Agreement at ¶ III(F)(4).) To date, there have been no objections and only four opt outs.
7 (Decl. Blumenthal ¶ 3(h); Decl. Reyes at ¶¶ 13-14.)

8 The Class Notice further advises Aggrieved Employees that they may not exclude
9 themselves from the PAGA (non-class) portion of the settlement, as that claim is filed
10 on behalf of the LWDA.

11 The Settlement is fair, adequate and reasonable to the Class and Aggrieved
12 Employees and should be finally approved. In sum, this settlement valued at \$720,000
13 provides the Class Members and Aggrieved Employees with the opportunity to receive
14 a substantial monetary recovery. This result is particularly remarkable in light of the fact
15 that there was also a risk that, if the matter was not settled, Plaintiff would be unable to
16 certify the class action, demonstrate the manageability of the PAGA action, or prevail
17 at trial on behalf of the entire Class and Aggrieved Employees, and thereby not recover
18 on behalf of any individual. As such, liability in this case was far from certain in light
19 of the defenses asserted by Defendant. Finally, the pandemic circumstances impacting
20 many employees only further underscores the importance of distributing these settlement
21 payments to the Class Members and Aggrieved Employees. (Decl. Blumenthal ¶ 3(i).)
22

23 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 24 **COURT TO GRANT FINAL APPROVAL**

25 When a proposed class-wide settlement is reached, it must be submitted to the
26 court for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992)
27 at §11.41, p.11-87. Court approval of a class settlement is considered at a final settlement
28 approval hearing, at which evidence and argument concerning the fairness, adequacy,

1 and reasonableness of the settlement may be presented and class members may be heard
2 regarding the settlement. *See Manual for Complex Litigation, Second* §30.44 (1993).
3 During final approval, the court must determine whether the settlement is fair, reasonable
4 and adequate. *See Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d. 615, 625
5 (9th Cir. 1982) and Fed. Rules Civ. Proc., rule 23(e).

6 Governing the settlement of class actions, the Federal Rules of Civil Procedure,
7 §23 (e) specifically provides for the Court to consider the following factors:

- 8 (A) the class representatives and class counsel have adequately represented
9 the class;
10 (B) the proposal was negotiated at arm's length;
11 (C) the relief provided for the class is adequate, taking into account:
12 (i) the costs, risks, and delay of trial and appeal;
13 (ii) the effectiveness of any proposed method of distributing relief to
14 the class, including the method of processing class-member claims;
15 (iii) the terms of any proposed award of attorneys' fees, including
16 timing of payment; and
17 (iv) any agreement required to be identified under Rule 23(e)(3); and
18 (D) the proposal treats class members equitably relative to each other.

19 Fed. R. Civ. P. 23(e)(2).

20 As set forth herein, this Settlement was reached through arm's-length negotiations.
21 The Settlement was negotiated by experienced counsel for the Class and represented by
22 an adequate Class Representative, who protected the interests of the Class Members.
23 There were complex legal and factual issues that placed the ultimate outcome of this
24 litigation in doubt. Accordingly, the immediate value of the Settlement to the Class
25 Members and Aggrieved Employees far outweighs the possibility of relief if this
26 protracted and expensive litigation had continued through trial and appeal. Finally, the
27 considered judgment of all Parties to the Settlement is that the Settlement is fair and
28 reasonable in light of the immediate benefit provided by the Settlement to the Class
Members and Aggrieved Employees, which is a conclusion that is reinforced by the
response of the Class Members participating in the Settlement.

Settlements of disputed claims are favored by the courts. *Waits v. Weller*, 653 F.2d
1288, 1291 (9th Cir 1981) ("settlement encouraged in appropriate class action
settlements"). In evaluating settlements, the courts have long recognized that

1 compromise is particularly appropriate since such litigation is difficult and notoriously
2 uncertain. Settlement is especially favored in class actions because it minimizes the
3 litigation expenses of all parties and reduces the strain on judicial resources. *Officers for*
4 *Justice*, 688 F.2d at 625 ("voluntary conciliation and settlement are the preferred means
5 of dispute resolution. This is especially true in complex class action litigation"); *Class*
6 *Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) ("This is especially true in light
7 of the strong judicial policy that favors settlements, particularly where complex class
8 action litigation is concerned."); *Garcia v. L.A. County Sheriff's Dep't*, 2015 U.S. Dist.
9 LEXIS 192443, *40 (C.D. Cal. 2015) (citing policy favoring settlement in complex class
10 litigation).

11 "[T]he court's intrusion upon what is otherwise a private consensual agreement
12 negotiated between the parties to a lawsuit must be limited to the extent necessary to
13 reach a reasoned judgment that the agreement is not the product of fraud or overreaching
14 by, or collusion between, the negotiating parties, and that the settlement, taken as a
15 whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d
16 at 625. Under this standard, the court must decide whether the proposed settlement falls
17 within the range of reasonable settlements, taking into account that settlements are
18 compromises between the parties reflecting subjective, unquantifiable judgments
19 concerning the risks and possible outcomes of litigation. *Id.*

20 In cases such as this one, courts have repeatedly emphasized that there is a strong
21 initial presumption that the compromise is fair and reasonable. *In re Heritage Bond*
22 *Litig.*, 2005 U.S. Dist. Lexis 13555, at *11 (C.D. Cal. 2005). Courts are advised not to
23 adjudicate the merits of the action, nor substitute their judgment for that of the parties
24 who negotiated the settlement, nor should they reopen and enter into negotiations with
25 the litigants in the hopes of improving the terms of the settlement. *Id.*, at *11; *Officers*
26 *for Justice*, 688 F.2d at 625.

27 The essential evaluation is whether, given the risks of litigation and the range of
28 probable results, the settlement, taken as a whole, is fair, reasonable and adequate to all

1 concerned. *Officers for Justice*, 688 F.2d at 625; *Hanlon v. Chrysler Corp.*, 150 F.3d
2 1011, 1026 (9th Cir. 1998). Here, the facts and circumstances compel the conclusion that
3 the proposed settlement satisfies that standard.

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

5 **A. The Test for Fairness**

6 To determine whether a settlement is fair, reasonable, and adequate, courts
7 consider factors such as: "(1) the strength of the plaintiffs' case; (2) the risk, expense,
8 complexity, and likely duration of further litigation; (3) the risk of maintaining class
9 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of
10 discovery completed and the stage of the proceedings; (6) the experience and views of
11 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
12 members to the proposed settlement." *Churchill v. Gen. Elec.*, 361 F.3d 566, 575 (9th
13 Cir. 2004); *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

14 The list of factors is not exhaustive and should be tailored to each case. *Officers*
15 *for Justice*, at 625. Due regard should be given to what is otherwise a private consensual
16 agreement between the parties. *Id.* The inquiry "must be limited to the extent necessary
17 to reach a reasoned judgment that the agreement is not the product of fraud or
18 overreaching by, or collusion between, the negotiating parties, and that the settlement,
19 taken as a whole, is fair, reasonable and adequate to all concerned." *Id.*, at 625.
20 "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of
21 delicate balancing, gross approximations and rough justice." *Id.*

22 The question whether a proposed settlement is fair, reasonable and adequate
23 necessarily requires a judgment and evaluation by the attorneys for the parties based
24 upon a comparison of "the terms of the compromise with the likely rewards of
25 litigation." *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464
26 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
27 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts recognize
28 that the opinion of experienced counsel supporting the settlement is entitled to

1 considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Reed*
2 *v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d at
3 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher*
4 *Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985). For
5 example, in *Lyons v. Marrud, Inc.*, 1972 U.S. Dist. LEXIS 13401, *5 (S.D.N.Y. 1972),
6 the court noted that "[e]xperienced and competent counsel have assessed these problems
7 and the probability of success on the merits. They have concluded that compromise is
8 well-advised and necessary. The parties' decision regarding the respective merits of their
9 position has an important bearing on this case." *Id.* at *5.

10 **B. The Settlement Satisfies the Test for Fairness**

11 1. The Investigation and Discovery Are Sufficient to Allow Class
12 Counsel and the Court to Act Intelligently

13 As detailed during Preliminary Approval, Class Counsel has conducted a thorough
14 investigation into the facts of the class and PAGA action, including a review of relevant
15 documents and data and a diligent investigation of the Class Members' and Aggrieved
16 Employees' claims against Defendant. Class Counsel also retained an expert to prepare
17 a damage valuation for use in the mediation and negotiations. Class Counsel also has
18 experience in settlements involving similar claims brought by employees. The Parties
19 and their counsel recognize that, in the absence of an approved settlement, they would
20 face a protracted litigation course, including but not limited to a contested motion for
21 certification, motions for summary judgment, and trial and appellate proceedings that
22 would consume time and resources and present each of them with ongoing litigation
23 risks and uncertainties. (Decl. Blumenthal at ¶ 7(a).)

24 Plaintiff and Class Counsel recognize the expense and length of continuing to
25 litigate and trying this Action against Defendant through possible appeals which could
26 take several years, especially in complex actions such as this litigation. Class Counsel
27 is also mindful of and recognize the inherent problems of proof under, and alleged
28 defenses to, the claims asserted in the Action. Based on the foregoing documents and

1 data, and their own independent investigation and evaluation, Class Counsel is of the
2 opinion that the settlement with Defendant for the consideration and on the terms set
3 forth in the Settlement is fair, reasonable, and adequate in light of all known facts and
4 circumstances, including the risk of significant delay, defenses asserted by Defendant,
5 and numerous potential appellate issues. Based upon their evaluation, Plaintiff and Class
6 Counsel have determined that the settlement set forth in the Agreement is in the best
7 interest of the Class Members and Aggrieved Employees. (Decl. Blumenthal at ¶ 8(d).)

8 Class Counsel has litigated similar wage and hour cases against other employers.
9 (Decl. Blumenthal at ¶ 2.) Although Plaintiff and Class Counsel believed that the case
10 had merit, they recognized the potential risks both sides would face if litigation of this
11 Action continued. As the federal court held in *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist.
12 LEXIS 8476 (N.D.Cal. 2007), where the parties faced uncertainties similar to those in
13 this litigation:

14 In light of the above-referenced uncertainty in the law, the risk, expense,
15 complexity, and likely duration of further litigation likewise favors the
16 settlement. Regardless of how this Court might have ruled on the merits of
17 the legal issues, the losing party likely would have appealed, and the parties
18 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." See *In re Mego Financial*
Corp. Securities Litigation, 213 F.3d 454, 458 (9th Cir. 2000). Here, the
risk of further litigation is substantial.

19 *Id.* at *12.

20 Negotiations were hard-fought and aggressive with capable advocacy on both
21 sides. Defendant vigorously disputed liability and the amount of damages that were
22 claimed to be owed. Liability in this action was hotly disputed and would be subject to
23 a motion for summary judgment. Even if summary judgment was denied, liability would
24 still be subject to a contested trial on the merits. (Decl. Blumenthal at ¶ 7(b).)

25 Based on the complexity of the case, the novelty of the legal issues, the substantial
26 risks and uncertainty of the outcome on both liability and certification issues, as well as
27 the need to establish damages, Plaintiff believes that the Settlement is fair, reasonable
28 and in the best interests of the Class Members. There can be no doubt that counsel for

1 both the Parties possessed sufficient information to make an informed judgment
2 regarding the likelihood of success on the merits and the results that could be obtained
3 through further litigation, given the relative strengths and weaknesses of their position.
4 (Decl. Blumenthal at ¶ 7(e).)

5 2. The Settlement Was Reached Through Arm's Length Bargaining and
6 Presents Adequate Relief for the Class

7 Settlement negotiations took place between experienced counsel and were
8 contentious and arm's length. Plaintiff and Class Counsel recognize the expense and
9 length of continuing to litigate and trying this Action against Defendant through possible
10 appeals which could take several years. Class Counsel has also taken into account the
11 uncertain outcome and risk of litigation, especially in complex actions such as this
12 litigation. Class Counsel is also mindful of and recognize the inherent problems of proof
13 under, and alleged defenses to, the claims asserted in the Action. Based upon their
14 evaluation, Plaintiff and Class Counsel believe that the settlement with Defendant for the
15 consideration and on the terms set forth in the Agreement is fair, reasonable, and
16 adequate and is in the best interest of the Class Members and Aggrieved Employees in
17 light of all known facts and circumstances, including the risk of significant delay, the
18 likelihood that Defendant would prevail on one or more of its defenses, and numerous
19 potential appellate issues. By reason of the settlement, Defendant agrees to pay the Gross
20 Settlement Fund of Seven Hundred Twenty Thousand Dollars (\$720,000) as provided
21 by the Agreement. (Decl. Blumenthal at ¶7(b).)

22 In advance of negotiations, Class Counsel received class data concerning
23 employment and payroll information, which permitted Class Counsel to make an
24 intelligent evaluation. The calculations to compensate for the amount due for the Class
25 at the time of the mediation were calculated by Berger Consulting, Plaintiff's damage
26 expert. As to the Class whose claims are at issue in this Action, Plaintiff used an expert
27 (Berger Consulting) to analyze the data and determine the potential unpaid wages for the
28 employees. According to Plaintiff's expert, the maximum potential damages were

1 calculated to be \$462,778 for meal periods at a 28% violation rate after accounting for
2 meal period premiums paid to the Class and \$1,686,796 for rest period premiums at a
3 100% violation rate based upon Plaintiff's on-duty rest period theory. As a result,
4 Plaintiff believes that Defendant was subject to a purported maximum amount of
5 \$2,149,574 in damages. As to potential penalties, Plaintiff calculated that potential wage
6 statement penalties were a maximum of \$875,150 and potential waiting time penalties
7 were \$1,656,474; however, these wage statement and waiting time penalties claims
8 potentially have a much smaller value, even if damages were awarded, to the extent that
9 they are only derivative of the meal and rest break claims.² Plaintiff's exposure theories
10 and calculations regarding the maximum damages and/or penalties purportedly owed to
11 the Class are vigorously disputed by Defendant. (Decl. Blumenthal ¶ 7(d).)

12 Consequently, the Gross Settlement Amount of \$720,000 represents more than
13 33% of Plaintiff's calculated value of the damages at issue in this case at the time this
14 Settlement was negotiated, assuming these amounts could be proven at trial. Given the
15 amount of the settlement as compared to the potential value of claims in this case and the
16 defenses asserted by Defendant, this settlement is fair and reasonable.³ (Decl.

18 ² While Plaintiff alleged claims for statutory penalties pursuant to Labor Code
19 Sections 203 and 226, Plaintiffs recognized that these claims were subject to various
20 defenses asserted by Defendant, including, but not limited to, a good faith dispute
21 defense as to whether any premium wages for meal or rest periods or other wages were
22 owed given Defendant's position that Plaintiff were properly compensated. See
23 *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful
24 failure to pay wages if the employer and employee have a good faith dispute as to
25 whether and when the wages were due."). Additionally, Courts have held that violations
26 of the meal and rest period regulations, which require payment of a "premium wage" for
27 each improper meal period, do **not** give rise to claims under sections 203 and 226. See
28 *Ling v. P.F. Chang's China Bisto, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and
Maldonado v. Epsilon Plastics, Inc., 22 Cal. App. 5th 1308, 1336 (2018). As a result,
the viability of Plaintiff's claims on these theories is uncertain.

³ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007)
(approving a settlement where the settlement amount constituted approximately 25% of

1 Blumenthal ¶ 7(d).)

2 The Parties attended an all-day mediation on April 28, 2021 before Jeffrey Krivis,
3 a respected and experienced mediator. At all times, the Parties' settlement negotiations
4 have been non-collusive, adversarial, and at arm's length. The Parties agreed on the
5 basic terms of a class and PAGA settlement pursuant to a Memorandum of
6 Understanding, executed following the mediation, ongoing post-mediation discussions
7 and a mediator's proposal. (Decl. Blumenthal ¶ 6(g).)

8 After the settlement negotiations, the specific terms of the Agreement required
9 additional negotiation before the final written agreement could be signed. Even after the
10 Parties reached an agreement as to the material terms, Class Counsel had to ensure that
11 the terms of the final settlement agreement were fair to every member of the Class and
12 Aggrieved Employees and that the Class received the requisite opportunities for notice,
13 exclusion, and objection in accordance with class action law. (Decl. Blumenthal at
14 ¶7(c).)

15 Plaintiff filed the motion for preliminary approval of the settlement, and by the
16 Order dated January 26, 2022, the Court granted preliminary approval of the settlement
17 and approved the mailing of the Class Notice to the Class. (Doc. No. 72.) On February
18 18, 2022, the Settlement Administrator mailed the Class Notice to the 632 Class
19 Members, which gave them notice of the Parties settlement and an opportunity to claim
20 monetary relief, object, or opt out. (Decl. Blumenthal at ¶6(i).)

21 3. Counsel Is Experienced in Similar Litigation and Believes the
22 Settlement Is Fair and Reasonable to the Class

23 Class Counsel in this matter has extensive class action experience in many fields

24 _____
25 the estimated overtime damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*,
26 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where
27 "the proposed Total Settlement Amount represents approximately 10% of what class
28 might have been awarded had they succeeded at trial."); *Dunleavy v. Nadler (In re Mego*
Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of a class
settlement which represented "roughly one-sixth of the potential recovery".)

1 and has represented thousands of employees in actions including labor and employment
2 litigation, wage and hour class actions, representative PAGA actions and complex
3 litigation. Class Counsel has been previously approved as experienced Class Counsel by
4 state and federal courts throughout California, and courts have found that Class Counsel
5 has substantial experience handling large employment related class actions and has been
6 found to be qualified class counsel in prior actions. A list of previous and current class
7 action cases managed and settled by the Class Counsel in this action is provided to the
8 Court by way of the Declaration of Norman Blumenthal. Class Counsel have participated
9 in every aspect of the settlement discussions and have concluded the settlement is fair,
10 adequate and reasonable and in the best interests of the Class. (Decl. Blumenthal at ¶ 2.)

11 4. The Reaction of the Class Is Positive

12 After dissemination of the Class Notice to the 632 members of the Class, which
13 provided each Class Member with the terms of the settlement, to date, not a single Class
14 Member has filed an objection to the settlement, and only four have requested exclusion.
15 As a result, 99.36% of the Class will be participating in the Settlement and will be sent
16 a payment. (Decl. Blumenthal ¶ 4.) The absence of any objector strongly supports the
17 fairness, reasonableness and adequacy of the Settlement. *See In re Austrian & German*
18 *Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) ("If only a small
19 number of objections are received, that fact can be viewed as indicative of the adequacy
20 of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990)
21 (29 objections out of 281 member class 'strongly favors settlement'); *Laskey v. Int'l*
22 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected
23 to the proposed settlement should be considered when determining fairness of
24 settlement.)

25 Importantly, every Class Member was given the opportunity to participate in the
26 Settlement under the same terms. To date, almost the entire Class has elected to
27 participate in the Settlement and will be mailed a check for their settlement share.
28 Similarly, every Aggrieved Employee will be mailed a check of their share of the PAGA

1 Payment. The details of the notice process are set forth in the Declaration of Evelin
2 Reyes, the Settlement Administrator. Here, given the fact that not one Class Member
3 objected, the Court should conclude that the settlement is fair, reasonable and adequate.
4 (Decl. Blumenthal ¶ 4.)

5 5. The Strength of Plaintiff's Case and the Risks of Further Litigation

6 In advance of settlement negotiations and mediation, Class Counsel conducted a
7 thorough investigation into the facts of the Action, including a review of relevant
8 documents and data and a diligent investigation of the Class Members' and Aggrieved
9 Employees' claims against Defendant. Class Counsel also retained an expert to prepare
10 a damage valuation in advance of mediation. Class Counsel also has experience in
11 settlements involving similar claims against other employers. Based on the foregoing
12 documents and data, and their own independent investigation and evaluation, Class
13 Counsel is of the opinion that the settlement with Defendant for the consideration and
14 on the terms set forth in the Settlement is fair, reasonable, and adequate in light of all
15 known facts and circumstances, including the risk of significant delay, defenses asserted
16 by Defendant, and numerous potential appellate issues. The Parties and their counsel
17 recognize that, in the absence of an approved settlement, they would face a protracted
18 litigation course, including a contested motion for certification, motions for summary
19 judgment, and trial and appellate proceedings that would consume time and resources
20 and present each of them with ongoing litigation risks and uncertainties. (Decl.
21 Blumenthal at ¶ 8(c).)

22 The risks, complexities and duration of further litigation cannot be overstated.
23 Defendant asserted a number of defenses that presented serious threats to the claims of
24 the Plaintiff and the other Class Members. Defendant contends that its employment
25 practices complied with all applicable Labor laws. Here, a number of defenses asserted
26 by Defendant presented serious threats to the claims of Plaintiff and the other Class
27 Members and Aggrieved Employees. Defendant contends that Defendant's employment
28 practices complied with all applicable Labor laws, including Wage Order 12-2001.

1 Defendant further contends that federal law preempts the meal period claims of Plaintiff,
2 the Class Members and the Aggrieved Employees because their right to meal penalties
3 arises exclusively from and requires interpretation and analysis of a collective bargaining
4 agreement that was applicable to their employment with Defendant. Defendant
5 successfully convinced this Court that claims for minimum wages and overtime were
6 barred. Defendant also argued that the California Supreme Court decision in *Brinker v.*
7 *Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value,
8 class certifiability, and manageability. Finally, several Courts have held that meal and
9 rest period violations do not give rise to wage statement or waiting time penalties. See
10 *e.g. Ling v. P.F. Chang's China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). If
11 successful, Defendant's defenses could eliminate or substantially reduce any recovery to
12 the Class or the Aggrieved Employees. While Plaintiff believes that these defenses could
13 be overcome, Defendant maintains these defenses have merit and therefore present a
14 serious risk to recovery for Plaintiff, the Class Members, and the Aggrieved Employees.
15 (Decl. Blumenthal ¶ 8(a).)

16 Moreover, there was also a significant risk that, if the Action was not settled,
17 Plaintiff would be unable to obtain class certification and maintain a certified class
18 through trial or demonstrate that his PAGA claim is manageable, and thereby not recover
19 on behalf of any employees other than himself. At the time of the mediation, Defendant
20 forcefully opposed the propriety of class certification and the manageability of Plaintiff's
21 PAGA claim, arguing that individual issues precluded such findings. Further, as
22 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
23 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide
24 recovery even where the class has been certified. While other cases have approved class
25 certification in wage and hour claims, class certification in this action would have been
26 hotly disputed and was by no means a foregone conclusion. (Decl. Blumenthal at ¶
27 8(b).)

28 Plaintiff and Class Counsel recognize the expense and length of continuing to

1 litigate and trying this Action against Defendant through possible appeals which could
2 take several years. Class Counsel has also taken into account the uncertain outcome and
3 risk of litigation, especially in complex actions such as this litigation. Class Counsel is
4 also mindful of and recognize the inherent problems of proof under, and alleged defenses
5 to, the claims asserted in the Action. Based upon their evaluation, Plaintiff and Class
6 Counsel have determined that the settlement set forth in the Agreement is in the best
7 interest of the Class Members and Aggrieved Employees. (Decl. Blumenthal at ¶8(d).)

8 It is impossible to predict with certainty whether, under the facts of this case,
9 Plaintiff would prevail against the Defendant's factual and legal defenses. While Plaintiff
10 and Class Counsel believe in the merits of the claims, Defendant has asserted real and
11 substantial defenses to them. Settlement in this case clearly benefits the settlement class
12 when measuring the strengths of the case and the risk of establishing liability and
13 damages. (Decl. Blumenthal at ¶8(e).)

14 15 **VI. THE RESOLUTION OF THE PAGA CLAIM IS FAIR AND** 16 **REASONABLE**

17 **A. The LWDA Was Served**

18 The LWDA was served with the Agreement and the entire motion for preliminary
19 approval on September 30, 2021 at the same time as the motion was filed with this Court.
20 (Decl. Blumenthal at ¶9(a).) In addition, the LWDA is being served with this motion for
21 final approval as set forth in the accompanying proof of service. When a settlement is
22 submitted to the LWDA, the online form requires the input of information, including the
23 gross amount of the settlement, the number of Aggrieved Employees and the proposed
24 PAGA penalty amount. The LWDA has not indicated any objection to the settlement.
25 The decision of the LWDA to accept the settlement and to not object in any manner
26 should be given considerable weight.

27 **B. Approval of PAGA Settlements**

28 As to the approval of PAGA settlement, the decision in *O'Connor v. Uber*, 201

1 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), and the LWDA's Response therein is
2 illustrative. The LWDA first states that "when viewing the monetary relief allocated to
3 PAGA claims under a settlement, the LWDA recognizes that the PAGA sum need not
4 necessarily be viewed through the same lens as the relief obtained by absent class
5 members on other claims (i.e., the percentage of recovery-to-exposure on the PAGA
6 claims need not necessarily equal the percentage of recovery on the other claims)."
7 (LWDA Response at p.3). The LWDA also indicated that the payment of money to the
8 aggrieved employees furthers the purposes of PAGA and that the Court considers that
9 primary consideration. "The LWDA recognizes that this Court does not review the
10 PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine
11 whether it is fundamentally fair, reasonable and adequate, with primary consideration for
12 the interests of absent class members." (LWDA Response at p.4).

13 **C. Valuation of the PAGA Claim**

14 In this Action, Plaintiff calculated the value of the alleged PAGA claim as to the
15 Aggrieved Employees for civil penalties to be between \$237,700 and \$475,400 for a
16 single violation in every one of the 4,754 pay periods at issue in the PAGA Period,
17 depending on whether the violation was \$50 per pay period as in the case of Labor Code
18 § 558(a)(1) or the standard amount of \$100 per pay period for violation of Labor Code
19 §1198. (Decl. Blumenthal at ¶9(c).) This valuation assumed that PAGA civil penalties
20 would be awarded at the maximum rate per pay period but without stacking. The PAGA
21 allocation in the Settlement is the amount of \$20,000. This allocation is justified by
22 several important considerations. First, the PAGA claim was subject to the same risks
23 as the underlying class claims. Second, Defendant asserted additional defenses to the
24 PAGA claim, not only as to liability but also as to the amount of the penalties.
25 Defendant could also argue that no penalties prior to the PAGA notification should be
26 awarded, and I am aware of one Court which has so ruled. These additional defenses
27 present a risk to the PAGA claim and the potential that some or all of the PAGA
28 penalties sought may not be awarded. Third, civil penalties may not be awarded at the

1 maximum rate. In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the court
2 affirmed a judgment which only provided for a PAGA penalty of \$5 per violation.
3 Therefore, at trial, any PAGA penalties awarded could be significantly less than
4 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. Even if we
5 assume that violations for all 4,754 pay periods were established, using the valuation
6 from *Carrington* results in a more realistic recovery of \$23,770 under PAGA. This
7 means that the \$20,000 PAGA allocation is a reasonable percentage of this potential
8 PAGA recovery. Fourth, the interests of PAGA are also served by the Class recovery
9 under the reasoning of the LWDA in *O'Connor v. Uber*.

10 **D. Similar PAGA Settlements Have Been Approved**

11 In reaching the settlement of the PAGA claim, Class Counsel was also aware of
12 what allocations other Courts have approved for similar PAGA settlements as compared
13 to the total settlement amount. Here, the settlement allocates approximately 2.7% of the
14 total settlement value to resolve the PAGA claims applicable to the Class, and this
15 allocation is supported by what has been approved in other wage-and-hour class
16 settlements. Indeed, Courts typically approve PAGA settlement amounts in the range of
17 between .27 to 1.7 percent of the total settlement. See *Davis v. Brown Shoe Co.*, 2015
18 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$1.5 million
19 class settlement); *Zamora v. Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS
20 184096 (S.D. Cal. 2014) (\$7,500 payment to LWDA for PAGA on a \$1.5 million class
21 settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015)
22 (PAGA Payment of \$5,000 in a \$500,000 class settlement); *Cruz v. Sky Chefs, Inc.*, 2014
23 U.S. Dist Lexis 17693 (N.D. Cal. 2014) (approving payment of \$10,000 to the LWDA
24 for PAGA out of \$1,750,000 class settlement); *Chu v. Wells Fargo Investments, LLC*,
25 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to the
26 LWDA out of \$6.9 million common-fund settlement); *Franco v. Ruiz Food Products,*
27 *Inc.*, 2012 WL 5941801, *13 (E.D. Cal. 2012) (approving PAGA payment of \$7,500 to
28 the LWDA out of \$2.5 million common-fund settlement); *Hopson v. Hanesbrands Inc.*,

1 2009 WL 928133, *9 (N.D. Cal. 2009) (approving PAGA allocation that was .49% of
2 \$408,420.32 gross settlement); *Garcia v. Gordon Trucking, Inc.*,
3 10-cv-00324-AWI-SKO, Dkt. 149-3, 165 (E.D. Cal.) (approving a class settlement of
4 \$3,700,000, with \$10,000 allocated to the PAGA claim); *McKenzie v. Federal Express*
5 *Corp.*, CV 10-02420 GAF (PLAx), Dkt. 139 & 141 (C.D. Cal.) (court approved a
6 settlement in an amount of \$8.25 million, with \$82,500 allotted to the PAGA claim);
7 *DeStefan v Frito-Lay*, 8:10-cv-00112-DOC (C.D. Cal.) (court approved a class
8 settlement of \$2 million, with \$10,000 allocated to PAGA); *Martino v. Ecolab Inc.*, No.
9 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted as PAGA penalties or 0.48% of
10 \$21,000,000 settlement amount); *East v. Comprehensive Educational Services Inc.*,
11 Fresno Superior Court Case No. 11-CECG-04226 (2015) (\$10,000 allotted as PAGA
12 penalties or 0.13% of \$7,595,846 settlement amount); *Bararsani v. Coldwell Banker*
13 *Residential Brokerage Company*, Los Angeles Superior Court Case No. BC495767
14 (2016) (\$10,000 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount);
15 *Moppin v. Los Robles Medical Center*, No. 5:15CV01551 (C.D. Cal. 2017) (\$15,000
16 allotted as PAGA penalties or 0.40% of \$3,775,000 settlement amount); *Scott-George*
17 *v. PVH Corporation*. No., 2:13CV00441 (E.D. Cal. 2017) (\$15,000 allotted as PAGA
18 penalties or 0.46% of \$3,250,000 settlement amount); *Nehrlich v. RPM Mortgage Inc.*,
19 Orange County Superior Court Case No. 30-2013-00666783-CU-OE-CXC (2017)
20 (\$10,000 allotted as PAGA penalties or 0.40% of \$2,500,000 settlement amount); *Rubio*
21 *v. KTI Incorporated*, San Bernardino Superior Court Case No. CIVDS-14-06132 (2015)
22 (\$1,000 allotted as PAGA penalties or 0.18% of \$550,000 settlement amount); *Gray v.*
23 *Mountain View Child Care Inc.*, San Bernardino Superior Court Case No.
24 CIVDS-14-02285 (2016) (\$2,500 allotted as PAGA penalties or 0.37% of \$675,000
25 settlement amount); *Perez v. West Coast Liquidators Inc. d/b/a Big Lots*, San Bernardino
26 Superior Court Case No. CIVDS-14-17863 (2016) (\$3,000 allotted as PAGA penalties
27 or 0.33% of \$900,000 settlement amount); *Penaloza vs. PPG Industries Inc.*, Los
28 Angeles Superior Court No. BC471369 (2013) (\$5,000 allotted as PAGA penalties or

0.38% of \$1,300,000 settlement amount); *Mejia v. DHL Express (USA) Inc.*, No. 2:15CV00890 (C.D. Cal. 2017) (\$5,000 allotted as PAGA penalties or 0.34% of \$1,450,000 settlement amount). As a result, the resolution of the PAGA claim in this settlement is fair and reasonable as evidenced by these comparable settlements

VII. CONCLUSION

For the reasons stated herein and in the accompanying declarations, Plaintiff respectfully submits that the proposed settlement is fair, reasonable and adequate to the Class and to each Class Member and Aggrieved Employee, and should therefore be finally approved.

Dated: April 22, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug
Attorneys for Plaintiffs