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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY**

GUSTAVO DOMINGUEZ and MATTHEW
SCOTT, individuals, on behalf of themselves
and on behalf of others similarly situated,

Plaintiff,

v.

LIFESAFER OF NORTHERN CALIFORNIA,
a Corporation, and DOES 1-50, inclusive,

Defendants.

Case No: 20CV002586

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

Hearing Date: May 20, 2022
Hearing Time: 9:00am

Honorable Judge Marla O. Anderson
Department 14

Trial Date: Not Set
Action Filed: September 25, 2020

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1 **I. INTRODUCTION**

2 Plaintiffs GUSTAVO DOMINGUEZ and MATTHEW SCOTT (“Plaintiffs”) and
3 Defendant LIFESAfer OF NORTHERN CALIFORNIA (“Defendant”), have reached a full and
4 final settlement of the above-captioned action, which is set forth in the Class Action Settlement
5 Agreement (hereinafter the “Agreement”) filed herewith.¹ The Court preliminarily approved the
6 Agreement via its Preliminary Approval Order dated November 5, 2021 (“Preliminary Approval
7 Order”); and pursuant to the Preliminary Approval Order the approved Class Notice has been
8 disseminated to the Class.²

9 After disseminating notice to the members of the Class, to date there have been no objections
10 and no opt outs, which means that 100% of the Class is currently participating in the Settlement.
11 (Decl. Zakay ¶9.) This is a positive response from the class evidencing their approval of the
12 Settlement.

13 This \$175,000 settlement is an excellent result for the Class Members in light of the serious
14 doubts as to the result of the adjudication of their claims, along with further uncertainty as to
15 whether class certification can be maintained through trial. Considered as a whole, the \$175,000 in
16 Settlement represents approximately **14%** of Defendant’s liability exposure for *damages*, **11.76%**
17 of Defendant’s liability exposure for *damages and statutory penalties*, and **4.3%** of Defendant’s
18 liability exposure for *damages, penalties and PAGA penalties*, as estimated by Class Counsel at the
19 time of mediation, which Class Counsel calculated to be \$1,242,929 for damages and interest,
20 \$1,488,055 for damages and statutory penalties for violations of Labor Code Sections 226 and 203,³
21 and \$4,096,306 for damages, statutory penalties and PAGA penalties. Under *Kullar v. Foot Locker*
22 *Retail, Inc.*, 168 Cal.App.4th 116 (2008), this Settlement is a fair and reasonable recovery on these
23 claims (which were subject to considerable uncertainty, both as to the merits and certification). The
24

25 _____
26 ¹ A copy of the Agreement is attached as Exhibit 2 to the Declaration of Shani O. Zakay (“Decl.
27 Zakay”), served and filed herewith. Capitalized terms in this Memorandum have the same meaning
28 as contained in the Agreement.

² The “Class” means all non-exempt employees who are or previously were employed by Defendant
in California during the period of September 25, 2016 to May 16, 2021.

³ The damage analysis is detailed in the declaration of Shani O. Zakay. (Decl. Zakay, ¶ 14)

1 response of the Class has been positive. Accordingly, Plaintiffs respectfully submit that the Class
2 Settlement should be finally approved as fair, reasonable, and adequate.

3 **II. THE SETTLEMENT BEFORE THE COURT**

4 Plaintiffs and Defendant reached a full and final Settlement of the above-captioned action,
5 which is embodied in the Agreement filed concurrently with the Court. As consideration for this
6 Settlement, Defendant has agreed to pay the all-in, non-reversionary amount of One Hundred
7 Seventy-Five Thousand Dollars and Zero Cents (\$175,000) (“Gross Settlement Amount”). The
8 Gross Settlement Amount includes all Settlement Shares to Participating Class Members, the Class
9 Representative Service Payment to Plaintiffs, Settlement Administration Expenses, the PAGA
10 Payment, and Court-approved attorneys’ fees and costs. Defendant will separately pay the
11 employer’s share of payroll taxes to the qualified settlement fund, per the Agreement. (Decl. Zakay
12 ¶3(a).)

13 The Net Settlement Amount shall equal the net amount available for Settlement shares to
14 Participating Class Members from the Gross Settlement Amount after deducting the Court-
15 approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment,
16 the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the fees and expenses of
17 the Settlement Administrator. The Settlement Administrator will pay a Settlement Share from the
18 Net Settlement Amount to each Participating Class Member. The submission of a claim form is not
19 required to be paid. The Settlement Share for each Participating Class Member will be calculated
20 based on the workweeks worked by each Participating Class Member during the Class Period. The
21 entire Net Settlement Fund shall be distributed. (Decl. Zakay ¶3(b).)

22 Class Members were sent the Court approved Class Notice, using the procedure approved
23 by the Court, by mailing the notice packets after updating class members’ addresses using the
24 National Change of Address database and, for any notice packets returned as undeliverable, re-
25 mailing such notices to any forwarding address provided or updated address located through skip
26 tracing. Class Members were provided with the opportunity to exclude themselves (“opt out”) if
27 they did not want to participate in the Settlement. Class Members who did not “opt out” are deemed
28 Participating Class Members who are bound by the Settlement and will be mailed a settlement

1 payment. The Class Notice also advised Class Members of their right to object to the Settlement.
2 This notice process is documented in the accompanying Declaration of Makenna Snow (the
3 Settlement Administrator), which is filed concurrently herewith. (Decl. Zakay ¶3(c).)

4 If a Participating Class Member's Settlement Share check is not cashed within 180 days
5 after its last mailing to the Participating Class Member, the funds from such uncashed checks will
6 be paid to the Children Advocacy Institute in accordance with California Code of Civil Procedure
7 section 384 in the name of the Participating Class Member and the Participating Class Member will
8 remain bound by the Settlement. (Decl. Zakay ¶4).

9 The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the
10 Gross Settlement Amount as their Class Counsel Fees Payment. Class Counsel will also be allowed
11 to apply separately for an award of litigation expenses incurred in the prosecution and settlement of
12 the Action in an amount not exceeding \$15,000. **In support of this request, Class Counsel is**
13 **providing evidentiary support, including lodestar, in the declarations submitted concurrently**
14 **herewith.** The Agreement provides for payment of Class Representative Service Payment of no
15 more than \$7,500 for each Plaintiff, or such lesser amount as may be approved by the Court in
16 compensation for his services. Defendant does not oppose a motion for approval of attorneys'
17 fees, costs and a service awards consistent with the Agreement. (Decl. Zakay ¶5).

18 The Parties allocated \$10,000 from the Gross Settlement Amount for settlement of civil
19 penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the requirements of Labor
20 Code §2699(i) the PAGA Payment shall be allocated \$7,500 to the LWDA (the "LWDA Payment"
21 or the "PAGA Payment") as the LWDA's share of the settlement of civil penalties and \$2,500 to
22 the Net Settlement Amount for distribution to the Participating Class Members. (Decl. Zakay ¶6).

23 The Settlement was reached through arm's length negotiations. On May 17, 2021, the
24 Parties participated in mediation presided over by Hon. Carl J. West (Ret.), a respected jurist and
25 experienced mediator of wage and hour class and PAGA actions. Prior to the mediation, the Parties
26 prepared by exchanging data, calculating damages, and submitting mediation briefs to the Mediator.
27 Defendant provided Class Counsel with necessary records and information for the members of the
28 Class. Defendant produced a sample consisting of pay records and time records for some of the

1 Class Members for the entire Class Period. Defendant also produced Defendant's relevant
2 employment policies, banquet policy information, including compensation policies and
3 timekeeping policies. Plaintiff analyzed the data with the help of an expert and prepared and
4 submitted a mediation brief to Judge West. At the conclusion of the mediation, the Parties reached
5 a settlement, which was supported by Judge West. The Parties documented the agreement in the
6 form of a Memorandum of Understanding. The Parties then prepared the full Agreement that was
7 signed by the Parties and received preliminary approval from the Court by Order dated November
8 5, 2021. (Decl. Zakay ¶7).

9 The Settlement is fair, adequate and reasonable to the Class and should be finally approved
10 for the same reasons the Court granted preliminary approval to the Settlement, finding that it is fair,
11 adequate, and reasonable as to all potential Class Members. In sum, this Settlement valued at
12 \$175,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
13 that liability in this case was far from certain in light of the defenses asserted by Defendant. There
14 have been no objections and no opt outs. Given the complexities of this case, the defenses asserted,
15 the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the
16 proposed Settlement is fair, reasonable and adequate, and should be finally approved. (Decl. Zakay
17 ¶8).

18 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND** 19 **APPROVAL OF CLASS ACTION SETTLEMENTS**

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

26 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
27 class action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)
28 (citing *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579

(1980).) The court must decide whether the proposed settlement falls within the range of reasonable settlements, taking into account that settlements are compromises between the parties reflecting subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. See *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”) In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the Court rejected this argument and held that “the merits of the underlying class claims are not a basis for upsetting the settlement of a class action.” *Id.*; see also *7-Eleven, supra*, at 1150.

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

IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

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

The trial court has broad discretion to determine whether the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in

1 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
2 views of counsel, the presence of a governmental participant, and the reaction of the class members
3 to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
4 (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App.
5 4th 399, 408 (2010).

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

13 These factors are analyzed seriatim below, and all support final approval of the class action
14 Settlement before this Court, consistent with this Court’s Preliminary Approval Order.

15 **1. The Investigation and Discovery are Sufficient to Allow Counsel and the Court to Act**
16 **Intelligently**

17 On September 25, 2020, Plaintiffs filed a class action Complaint against Defendant in the
18 Superior Court of the State of California, County of Monterey, asserting claims that Defendant: (1)
19 Violated California Business and Professions Code § 17200; (2) Failed to pay minimum wages in
20 violation of California Labor Code §§ 1194, 1197, 1197.1; (3) Failed to pay overtime wages in
21 violation of California Labor Code § 510; (4) Failed to provide required meal periods in violation
22 of California Labor Code §§ 226.7 & 512; (5) Failed to provide required rest periods in violation of
23 California Labor Code §§ 226.7 & 512; (6) Failed to reimburse employees for required business
24 expenses in violation of California Labor Code § 2802; (7) Failed to provide accurate itemized wage
25 statements in violation of California Labor Code § 226; (8) Failed to provide wages when due in
26 violation of California Labor Code §§ 201, 202 and 203; and (9) Violation of the Private Attorneys
27 General Act [Labor Code §§ 2698, *et seq.*]. Plaintiffs sought to represent a putative class of all
28 individuals who are or previously were employed by Defendant as non-exempt employees during

1 the Class Period. The Class Period is defined as the period between September 25, 2016 to May
2 16, 2021. (Agreement at ¶ 3). The Action seeks unpaid wages, reimbursement for business
3 expenses, penalties, attorneys' fees and costs, and other equitable or legal relief due and owing to
4 Plaintiffs and other Class Members by virtue of the foregoing claims. (Decl. Zakay at ¶11(a)).

5 Defendant denied liability for each of Plaintiffs' claims. Defendant denies any liability or
6 wrongdoing of any kind associated with the claims alleged in the. Defendant contends, among
7 other things, that it has correctly and fully compensated the Class Members for wages and
8 gratuities, provided compliant meal and rest periods, provided complete, accurate itemized wage
9 statements, and complied at all times with the California Labor Code and Wage Orders. Further,
10 Defendant contends that class certification would be inappropriate for any reason other than for
11 settlement. (Decl. Zakay at ¶ 11(a)).

12 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
13 Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel
14 engaged in informal discovery in preparation for the mediation, and received significant responses
15 and documents to the discovery requests. Defendant produced a sample consisting of employee file
16 and pay records, hiring/review and separation documents, payroll and time records for some of the
17 Class Members for the entire Class Period. Defendant also produced Defendant's relevant
18 employment policies, including compensation policies and timekeeping policies. Class Counsel
19 conducted extensive review of time records and data with the help of an expert. Based on the
20 foregoing data and their own independent investigation, evaluation and experience, Class Counsel
21 believe that the settlement with Defendant on the terms set forth in the Agreement is fair, reasonable,
22 and adequate and are in the best interest of the Class in light of all known facts and circumstances,
23 including the risk of significant delay, the defenses asserted by Defendant, and potential appellate
24 issues.

25 **2. The Settlement Was Reached Through Arm's Length Bargaining**

26 This Settlement was the result of arm's-length negotiations as well as informal settlement
27 conferences between the Parties through their respective attorneys. After comprehensive legal and
28 factual analysis, Class Counsel possessed sufficient information for intelligent evaluation of the

1 case for purposes of settlement. Prior to the initiation of settlement discussions, Class Counsel
2 reviewed and outlined the case based upon the information for the Class, and determined the
3 conditions of settlement that would be fair and reasonable to the Class. Class Counsel was
4 experienced in the types of settlement appropriate to resolve these wage and hour claims on behalf
5 of employees. (Zakay Decl. ¶12(a)).

6 The fact that the Settlement was negotiated with the assistance of a mediator supports
7 approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS Fin.*
8 *Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
9 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
10 litigation, with the assistance of a well-respected mediator with substantial experience in
11 employment litigation[, and] this factor supports approval of the settlement.”)

12 **3. Class Counsel is Experienced in Similar Litigation**

13 California Courts have previously approved Class Counsel as experienced Class Counsel.
14 As set forth in the declarations submitted in support of preliminary approval and this motion, all
15 Class Counsel have extensive experience litigating wage and hour class actions involving
16 employees and claims similar to this case. All Class Counsel support approval of the Settlement
17 based upon their experience in wage and hour litigation.

18 **4. There Are No Objections by the Class Members**

19 The reaction of the Class unequivocally supports approval of the Settlement. On December
20 3, 2021, the Settlement Administrator Court-approved Class Notice to the Class Members, which
21 provided each Class Member with the terms of the Settlement, including notice of the claims at
22 issue and the financial terms of the settlement, including the attorneys’ fees, costs, and service
23 awards that were being sought, how individual settlement awards would be calculated, and the
24 specific, estimated payment amount to that individual. In disseminating the Class Notice, the
25 Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
26 Approval Order. Significantly, there have been no objections and no opt outs. (See Declaration of
27 Makenna Snow at ¶¶ 11-12). As a result, 100% of the Class has elected to participate in the
28 Settlement and will be sent a settlement check.

1 The administration process, including details regarding the mailing of the Notice Packet,
2 notices returned as undeliverable, the administrator's efforts to locate class members and re-mail
3 notices, and the final administration results, are all documented in the Declaration of Makenna
4 Snow, which is filed concurrently herewith. (*See* Decl. of Makenna Snow).

5 The absence of any objector strongly supports the fairness, reasonableness and adequacy of
6 the Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
7 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
8 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-
9 119 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey*
10 *v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to
11 the proposed settlement should be considered when determining fairness of settlement). Here,
12 where there are no objections, the approval of the Class is evident.

13 **5. The Risk, Expense, Complexity and Likely Duration of Further Litigation**

14 The risks and complexity of the alleged claims are discussed in detail in the Declaration of
15 Zakay at ¶ 13. Where both sides face significant uncertainty, the attendant risks favor settlement.
16 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted
17 by Defendant presented serious threats to the claims of the Plaintiff and the other Class Members.
18 Defendant asserted that the employment practices complied with all applicable Labor Laws.

19 Defendant argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th
20 1004 (2012) weakened, if not eliminated, Plaintiffs' claims, on liability, value, and class
21 certifiability as to the meal and rest period claims. A major component of the damages alleged to
22 have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and
23 during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded
24 the Class Members an opportunity to take timely meal and rest breaks, and that employees like
25 Plaintiffs *chose* not to take compliant breaks. Defendant argued, therefore, that under the *Brinker*
26 decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and
27 strictly enforced lawful policies, afforded Plaintiffs and the Class Members compliant meal and rest
28 breaks, and had a system in place to pay premiums when breaks were missed, short or untimely.

1 Finally, the court may find remitter/reduction of the statutory damages appropriate. See e.g.
2 *Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505,
3 at *5 (E.D. Pa. 2007). If successful, these defenses could eliminate or substantially reduce any
4 recovery to the Class. While Plaintiffs believe that these defenses, and others, could be overcome,
5 Defendant maintains these defenses have merit and therefore present a serious risk to recovery for
6 the Class. (Decl. Zakay at ¶13(a)).

7 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
8 to obtain class certification and thereby not recover on behalf of any employee other than
9 themselves. Defendant argued that the individual experience of each employee varied with respect
10 to the alleged claims. While other cases have approved class certification of wage and hour claims,
11 class certification in this action would have been hotly disputed and was by no means a foregone
12 conclusion. Finally, even if class certification was successful, as demonstrated by the California
13 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
14 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
15 (Decl. Zakay at ¶13(b)).

16 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and
17 trying the Action against Defendant through possible appeals which even if successful could take
18 several years. Class Counsel have also taken into account the uncertain outcome and risk of
19 litigation, especially in complex actions such as this Action. Class Counsel are also mindful of and
20 recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the
21 Action. As demonstrated by the decision in *Duran*, the complexities and duration of further
22 litigation cannot be overstated. There is little doubt that Defendant would post a bond and appeal
23 in the event of an adverse judgment. A post-judgment appeal by Defendant would have required
24 many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed
25 in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed
26 recovery today outweigh an uncertain result three or more years in the future. Moreover, post-trial
27 motions and appeals would have been inevitable. Costs would have mounted and recovery would
28 have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiffs and

1 Class Counsel believe that the Settlement confers substantial benefits upon the Class. Based upon
2 their evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the
3 Agreement is in the best interest of the Class Members. (Decl. Zakay ¶13(c)).

4 In sum, the Settlement is a fair and reasonable result, and provides the Class with a
5 significant recovery, particularly when viewed in light of the fact that Defendant asserted serious
6 and substantial defenses both to liability and to class certification. Given the complexities of this
7 case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
8 reasonable and adequate, and should be finally approved. (Decl. Zakay ¶13(d)).

9 **6. The Amount Offered in Settlement**

10 The Settlement in this case is fair, reasonable and adequate considering Defendant's
11 significant defenses, which it believes to be valid, to Plaintiffs' claims. As detailed during
12 preliminary approval, the Gross Settlement Amount compares favorably to the value of the claims.
13 Class Members will receive immediate and certain payments of considerable amounts under the
14 Settlement. Currently, the overall maximum and average Participating Class Member allocations
15 are estimated to be \$2,788.89 and \$652.91 respectively (Decl. Snow at ¶ 14).

16 Faced with the serious doubts as to recovery, the Settlement of \$175,000 plus the employer's
17 share of payroll taxes compares favorably to the damage estimates alleged to have been suffered by
18 the Class. Considered as a whole, the \$175,000 in Settlement represents approximately 14% of
19 Defendant's liability exposure for damages, and 11.76% of Defendant's liability exposure for
20 damages and statutory penalties (excluding PAGA Penalties) for violations of Labor Code Sections
21 226 and 203.

22 If they could prove the claims, Plaintiffs estimate that Defendant was subject to maximum
23 liability for damages in the amount of \$4,096,305 consisting of \$370,156 for unpaid wages, and
24 \$790,837 for meal and rest break periods. In addition, Plaintiffs calculated that Defendant could be
25 liable for \$81,936 for unreimbursed business expenses and \$102,600 for wage statement penalties
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1 and \$142,526 in waiting time penalties. ⁴ Finally, Plaintiffs' expert calculated that Defendant could
2 be liable for PAGA penalties in an amount of \$2,608,250.⁵

3 Given the amount of the Settlement as compared to the potential value of claims in this case,
4 the Settlement is fair and reasonable. (Decl. Zakay ¶14(c)).

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13 ⁴Plaintiffs' claims pursuant to Labor Code Section 226 and various PAGA penalties are also subject
14 to a good faith defense as to whether any premium wages for meal or rest periods or other wages
15 were owed given Defendant's position that Plaintiffs and the Class were properly compensated. *See*
16 *Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008)
17 (granting defendant's motion for summary judgment on claim for failure to provide accurate
18 itemized wage statements "because a good faith dispute exists... [therefore, defendant] was not
19 'knowing and intentional' in failing to provide [Section 226] statements"); *see also Nordstrom*
20 *Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if
21 the employer and employee have a good faith dispute as to whether and when the wages were due.").
22 Additionally, there is serious doubt as to whether violations of the meal/rest period regulations,
23 which require payment of a "premium wage" for each improper meal period, give rise to claims
24 under sections 203 and 226. *See Ling v. P.F. Chang's China Bistro, Inc.*, 245 Cal. App. 4th 1242,
25 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018). This
26 issue was decided in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444, 474, (Ct. App.
27 2019), which held that actions for meal break and rest break premiums "do not entitle employees to
28 pursue the derivative penalties in sections 203 and 226."

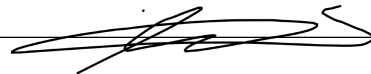
⁵ Plaintiffs recognize that the PAGA penalties claim is also subject to various defenses by
Defendant, including that Class Members may not be able to recover subsequent penalties until, at
a minimum, Plaintiffs provided PAGA notice. *See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
1209 (2008) ("Until the employer has been notified that it is violating a Labor Code provision
(whether or not the commissioner or court chooses to impose penalties), the employer cannot be
presumed to be aware that its continuing underpayment of employees is a "violation" subject to
penalties."). In addition, Plaintiffs recognize that PAGA claims bear some risk. *See Carrington v.*
Starbucks Corp., 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his
PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after
Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

1 **V. CONCLUSION**

2 Plaintiffs respectfully submit that the proposed Settlement satisfies the standard of fairness
3 established in California law and should therefore be finally approved as fair, reasonable and
4 adequate and request entry of the Final Approval Order and Judgment.

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6 DATED: April 25, 2022

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8 **ZAKAY LAW GROUP, APLC**

9
10 By: 

11 Shani O. Zakay
12 Attorney for Plaintiffs