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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

KATHRYNE MARTINEZ-LOPEZ, an
individual, on behalf of herself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

MEDAMERICA, INC. a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE No. **37-2020-00034393-CU-OE-CTL**

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

Hearing Date: December 16, 2022
Hearing Time: 10:30 a.m.
[Hearing scheduled by Order dated June 23, 2022]

Dept.: C-68
Judge: Hon. Richard S. Whitney

Action Filed: September 28, 2020
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action Settlement Agreement (the “Agreement”), a true and correct copy of which is attached
4 as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In accordance with the
5 Preliminary Approval Order dated June 23, 2022 (“Preliminary Approval Order”), the approved Class
6 Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiff Kathryn Martinez-Lopez (“Plaintiff”) respectfully submits this
9 memorandum in support of the unopposed motion for final approval and the proposed entry of the Final
10 Approval Order and Judgment, submitted herewith. The settlement represents an excellent result for
11 the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice to
12 the members of the Class, there were **no objections and only one request for exclusion**, which means
13 that almost the entire Class has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is
14 a positive response from the Class evidencing their collective approval of the settlement. As a result,
15 Plaintiff respectfully submits that the class settlement should be finally approved for the same reasons
16 that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

17 **II. THE SETTLEMENT BEFORE THE COURT**

18 Plaintiff and Defendant MedAmerica, Inc. (“Defendant”) reached a full and final settlement
19 of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court.
20 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is Four
21 Hundred Thousand Dollars (\$400,000). (Agreement at ¶¶ I(S) and III(B).) Under the Agreement, the
22 Gross Settlement Amount consists of the following elements: (1) Settlement Shares to the Participating
23 Class Members, (2) Settlement Administration Expenses, (3) Class Counsel Fees Payment, (4) Class
24 Counsel Litigation Expenses Payment, (5) Class Representative Service Payment, and (6) the PAGA

25

26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all current and former non-exempt employees employed by
28 MedAmerica, Inc., who worked in California at any time during the Class Period.” The “Class Period”
is defined as “April 19, 2019 through October 15, 2021.” (Preliminary Approval Order at 3:12-14.)

1 Payment, and excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares
2 allocated to wages which shall not be paid from the Gross Settlement and shall be the separate
3 additional obligation of Defendant. (Agreement at ¶ I(S) and III(B).) The Gross Settlement Amount
4 shall be all-in with no reversion to Defendant. (Agreement at ¶¶ I(S) and III(B).) Blumenthal Decl.
5 ¶3(a).

6 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
7 Defendant's share of payroll taxes within fifteen (15) days of the Effective Date. (Agreement at ¶
8 III(F)(9).) Blumenthal Decl. ¶3(b).

9 Within fifteen (15) days of the Effective Date, Defendant shall fund the Gross Settlement
10 Amount and the amount necessary to pay Defendant's share of payroll taxes within fifteen (15) days
11 of the Effective Date. (Agreement at ¶ III(F)(9).) Within fifteen (15) days after Defendant funds the
12 Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares
13 to Participating Class Members. (Agreement at ¶ III(F)(9).) Blumenthal Decl. ¶3(c).

14 The Net Settlement Amount shall equal the Gross Settlement Amount less the Court approved
15 amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class
16 Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration
17 Expenses. (Agreement at ¶ I(U).) The Net Settlement Amount will be distributed as the Settlement
18 Shares to each Participating Class Member defined at ¶I(Y) as a Class Member who does not submit
19 a valid and timely Election Not to Participate in Settlement. (Agreement at ¶¶ III(D)(1).) The
20 Settlement Share will be calculated as follows: (i) the Settlement Administrator shall divide the Net
21 Settlement Amount by the total number of pay periods worked by all Participating Class Members as
22 reflected in their dates of employment to determine a dollar amount per week ("Pay Period Rate"); and
23 (iii) the Settlement Administrator shall then take the number of pay periods worked by each
24 Participating Class Member, individually, and multiply it by the Pay Period Rate to calculate each
25 Participating Class Member's respective Settlement Share. (Agreement at ¶ III(D)(2).) Pay periods
26 are based on Defendant's records, however Class Members had the right to challenge their pay periods.
27 Blumenthal Decl. ¶ 3(d).

28 Class Members were sent the Court approved Class Notice using the procedure approved by the

1 Court by mailing the notice packets after updating class members' addresses using the National Change
2 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to
3 any forwarding address provided or updated address located. Declaration of Madely Nava ("Nava
4 Decl.") ¶¶ 6-7. Class Members were provided with the opportunity to exclude themselves or "opt out"
5 if they did not want to participate in the settlement. (Agreement at ¶ III(F)(3), Ex. A., Nava Decl. ¶7,
6 Exh. A. One (1) Class Member submitted a valid request for exclusion. Nava Decl. ¶11. The remaining
7 Class Members are deemed Participating Class Members who are bound by the Settlement and will
8 receive a Settlement Share. (Agreement at ¶ III(F)(3)(c).) An Aggrieved Employee who opts out the
9 Settlement will still be paid their allocation of the PAGA Payment and will remain subject to the release
10 of the PAGA Released Claims, regardless of their request for exclusion. (Agreement at ¶ III(F)(3)(c).)
11 Finally, the Class Notice will also advise the Class Members of their right to object to the Settlement
12 and/or dispute their Pay Periods. (Agreement at ¶ III(F)(3), Ex. A.) Blumenthal Decl. ¶ 3(e).

13 A Participating Class Member must cash his or her Settlement Share check within 180 days
14 after it is mailed. (Agreement at ¶III(F)(10).) The Settlement Administrator will send a reminder to
15 Participating Class Members who have not cashed their checks within 120 days after its last mailing
16 to the affected individual. (Agreement at ¶ III(F)(10).) Any settlement checks not cashed within 180
17 days will be voided and any the funds from such uncashed checks will be paid to the California State
18 Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not
19 cash their check. (Agreement at ¶ III(F)(10).) Blumenthal Decl. ¶3(f).

20 ILYM Group was appointed by the Court as the Settlement Administrator for the Settlement.
21 (Preliminary Approval Order at ¶ 9; Agreement at ¶ III(E).) From the Gross Settlement Amount, the
22 Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount
23 not to exceed \$10,000. (Agreement at ¶ III(C)(4).) As set forth in the Nava Decl. at ¶ 15, the
24 Settlement Administration Expenses, including fees and costs incurred to-date, as well as anticipated
25 fees and costs for completion of the settlement administration, are \$9,967.38. Blumenthal Decl. ¶3(g).

26 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
27 to exceed one-third (1/3) of the Gross Settlement Amount, as the Class Counsel Fees Payment.
28 (Agreement at ¶ III(C)(2).) Class Counsel will also be allowed to apply separately for an award of

1 Class Counsel Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶
2 III(C)(2).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
3 to the Plaintiff as the Class Representative Service Payment. (Agreement at ¶ III(C)(1).) In support
4 of this separate motion for attorneys' fees, reimbursement of expenses and service awards, Class
5 Counsel is providing evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

6 Subject to Court approval, Twenty Thousand Dollars (\$25,000) will be paid from the Gross
7 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
8 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
9 the PAGA Payment shall be allocated as follows: 75% (\$18,750) to the LWDA as the LWDA's share
10 of the PAGA Payment pursuant to PAGA and 25% (\$6,250) will be distributed to the Aggrieved
11 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
12 III(C)(3).) As set forth in the accompanying proof of service, the LWDA has been served with this
13 motion and the Agreement. Blumenthal Decl. ¶3(i).

14 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
15 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
16 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
17 at \$400,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
18 that liability and class certification in this case were far from certain in light of the defenses asserted
19 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
20 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
21 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

22 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL** 23 **OF CLASS ACTION SETTLEMENTS**

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

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

12 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
13 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
14 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
15 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
16 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
17 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th
18 at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here,
19 all of these factors support a presumption of fairness. The essential evaluation is whether, given the
20 risks of litigation and the range of probable results, the settlement, taken as a whole, is fair, reasonable
21 and adequate to all concerned. Here, the facts and circumstances compel the conclusion that the
22 proposed settlement satisfies that standard and should be finally approved.

23 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

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

1 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
2 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the
3 trial court should consider in evaluating the reasonableness of a class action settlement agreement
4 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
5 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
6 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
7 the presence of a governmental participant, and the reaction of the class members to the proposed
8 settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations
9 omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

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

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

19 **A. The Settlement Satisfies the California Test for Fairness**

20 1. The Investigation and Analysis of Documents are Sufficient to Allow Counsel
21 and the Court to Act Intelligently

22 Over the course of more than two years of litigation, the Parties engaged in the investigation
23 of the claims, including the production of documents, class data, and other information, allowing for
24 the full and complete analysis of liabilities and defenses to the claims in this Action. The procedural
25 history and investigation performed was detailed at length in support of the motion for preliminary
26 approval. The Settlement was the product of one arms-length mediation and contentious negotiations
27 through an all-day mediation presided over by Steven J. Rottman, Esq., a respected and experience
28 mediator of wage and hour class actions. The details of the litigation are set forth in the Blumenthal

Decl. at ¶¶ 6(a)-6(f).

2. The Settlement was Reached Through Arm's Length Bargaining

This Settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

The Parties attended an arms-length mediation session with Steven J. Rottman, a respected and experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation for the mediation, Defendant provided Class Counsel with necessary information for the members of the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties agreed to this Settlement. Blumenthal Decl. ¶7(b).

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

From September 2021 to November 2021, the settlement agreement and exhibits thereto were drafted, finalized and executed. On June 23, 2022, the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

3. Class Counsel is Experienced in Similar Litigation

Class Counsel in this matter has extensive class action experience and has represented thousands

1 of persons in class actions including employment litigation, wage and hour class actions, and complex
2 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
3 claims similar to this case and have been approved as experienced class counsel during contested
4 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
5 knowledgeable in this area of law. A list of class action cases managed and settled by the Class
6 Counsel in this action is provided to the Court as Exhibit #1 to the Blumenthal Decl. Class Counsel
7 have participated in every aspect of the settlement discussions and have concluded the settlement is fair,
8 adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

9 4. There Are No Objections and Only One Request for Exclusion

10 The reaction of the Class unequivocally supports approval of the Settlement. On August 15,
11 2022, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members,
12 which provided each class member with the terms of the Settlement, including notice of the claims at
13 issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award
14 that were being sought, how individual settlement awards would be calculated, and the specific,
15 estimated payment amount to that individual. See Nava Decl. ¶ 7, Exh. A. In disseminating the notice,
16 the Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
17 Approval Order. Significantly, there have been no objections and only one request for exclusion. Nava
18 Decl. ¶¶ 11, 12. As such, nearly the entire Class will participate in the Settlement and will be sent a
19 settlement check. See Nava Decl. at ¶¶ 13, 14; Blumenthal Decl. ¶4.

20 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
21 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
22 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
23 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
24 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
25 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
26 settlement should be considered when determining fairness of settlement). Here, where there are no
27 objections, the approval of the class is evident.

28 5. The Strength of Plaintiff's Case

1 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
2 overtime wages for hours worked, were not provided meal and rest periods, were not timely paid earned
3 wages, were not provided reimbursement for required expenses, were not provided accurate itemized
4 wage statements, were not paid all wages at the time of termination. The Action seeks unpaid wages,
5 penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and owing
6 to Plaintiff and the other Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

7 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
8 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
9 Defendant present serious threats to the claims of the Plaintiff and the other Class Members, including
10 that Class Members signed arbitration agreements and, as a result, the class claims would be have been
11 subject to a dismissal. Defendant also asserted that Defendant's practices complied with all applicable
12 Labor laws. Defendant maintained that off the clock work was contrary to company policy and was
13 not permitted in practice. Defendant contended that their meal and rest period policies fully complied
14 with California law, that Defendant's timekeeping system recorded meal periods, and that all meal
15 periods were provided and many potential facial violations seemed to have been paid by a penalty.
16 Further, Defendant argued that Defendant was not required to record rest periods, so there was no
17 evidence of missed rest periods. Finally, Defendant could argue that the Supreme Court decision in
18 *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and
19 class certifiability as to the meal and rest period claims. Defendant also argued that based on its facially
20 lawful practices, it acted in good faith and without willfulness, which if accepted would negate the
21 claims for waiting time penalties and/or inaccurate wage statements. In fact, under the current state of
22 the law, it is questionable whether these penalties could be awarded at all based upon the alleged meal
23 and rest period violations. If successful, Defendant's defenses could eliminate or substantially reduce
24 any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant
25 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.
26 Blumenthal Decl. ¶8(a).

27 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, 2009
28 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009), explained in approving an overtime class action settlement:

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

6 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
7 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
8 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
9 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

16 There was also a significant risk that, if the Actions were not settled, Plaintiff would be unable
17 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
18 Defendant also argued that the individual experience of each putative class member varied with respect
19 to the claims. Defendant could also contest class certification by arguing injury and good faith were
20 case by case determinations that precluded class certification. Plaintiff is aware of cases where class
21 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256
22 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
23 contended that individual differences in work experiences not only impacted damages but would also
24 impact certification. Finally, even if class certification was successful, as demonstrated by the
25 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
26 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
27 While other cases have approved class certification in wage and hour claims, class certification in this
28

1 action would have been hotly disputed and was by no means a foregone conclusion. Blumenthal Decl.
2 ¶8(b).

3 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
4 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
5 substantial defenses both to liability and to class certification. Currently, the maximum and average
6 class member allocation are \$1,187 and \$632, respectively. See Nava Decl. ¶ 14. Given the
7 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
8 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

9 6. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

10 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
11 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event
12 of an adverse judgment. A post-judgment appeal by Defendant would have required many more years
13 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
14 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
15 outweigh an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

16 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant
17 through possible appeals which could take at least another two or three years. Class Counsel also have
18 taken into account the uncertain outcome, the risk of litigation, especially in complex actions such as
19 this one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and
20 alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions and appeals would
21 have been inevitable. Costs would have mounted and recovery would have been delayed if not denied,
22 thereby reducing the benefits of an ultimate victory. Plaintiff and Class Counsel believe that the
23 Settlement confers substantial benefits upon the Class. Based upon their evaluation, Plaintiff and Class
24 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
25 Class. Blumenthal Decl. ¶8(c).

26 Although Plaintiff and Class Counsel believe that their case has merit, which Defendant
27 continues to vigorously deny, they recognized the potential risks both sides would face if litigation of
28 these Actions continued. As the federal court held in *Glass*, where the parties faced uncertainties

1 similar to those in this litigation:

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

10 *Id.* at *12.

11 7. The Amount Offered in Settlement

12 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
13 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
14 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
15 favorably to the value of the claims.

16 The calculations to compensate for the amount due to the Class Members at the time this
17 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
18 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
19 putative class members and determined the potential maximum damages for the class claims. For the
20 Class, Plaintiff determined that the alleged unpaid overtime wages due to the miscalculation of the
21 regular rate of pay to potentially be \$19,525, the alleged unpaid wages due based on off the clock
22 allegations to potentially be \$568,379, the maximum meal period damages were estimated to be
23 \$287,334 based upon a potential 11% violation rate observed In the time punch records, the maximum
24 rest period damages were estimated to be \$287,334 based upon the same potential violation rate, and
25 the maximum damages for unreimbursed expenses were estimated to be \$139,014 at a potential rate
26 of \$30 of unreimbursed expenses incurred each month. In total, the damages for the Class were
27 calculated to have a potential maximum total value of \$1,216,608. In addition, Plaintiff calculated that
28 the potential maximum value of the waiting time penalties were between \$406,615 and \$806,220 and
the potential maximum value of the wage statement penalties to be between \$322,150 and \$958,650,
both depending on the predicate alleged violation giving rise to the penalty. However, these wage
statement and waiting time penalties claims potentially have a much smaller value, even if damages

1 were awarded, to the extent that they are only derivative of the meal and rest break claims.³ Blumenthal
2 Decl. ¶8(d).

3 Consequently, the Gross Settlement Amount represents more than 32% of the value of the
4 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
5 proven in full at trial.⁴ The above maximum calculations should then be adjusted in consideration for
6 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
7 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
8 certainly fair and reasonable.⁵ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

9
10 **V. CONCLUSION**

11 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
12 established in California law and should therefore be finally approved as fair, reasonable and adequate

13
14 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
15 226, at mediation Plaintiff recognized that these claims were subject to various defenses asserted by
16 Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages
17 for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and the
18 putative class members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App.
19 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a
20 good faith dispute as to whether and when the wages were due."). Additionally, Courts had held that
21 violations of the meal and rest period regulations, which require payment of a "premium wage" for each
improper meal period, do **not** give rise to claims under sections 203 and 226. *See 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, at the time of mediation, the viability of Plaintiff's claims on
these theories was uncertain.

22 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the
23 PAGA claim in this discussion. The PAGA claim was addressed in the Declaration of Nordrehaug at
¶ 33, submitted in support of the motion for preliminary approval.

24 ⁵ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 and requests entry of the Final Approval Order and Judgment, submitted herewith.

2 Dated: November 18, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

3 By: /s/ Kyle Nordrehaug

4 Kyle R. Nordrehaug, Esq.

Attorneys for Plaintiff

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