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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JAKARI WILSON, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

WHOLESOME HARVEST
BAKING, LLC, a Limited Liability
Company; BIMBO BAKEHOUSE
LLC, a Limited Liability Company;
and DOES 1 through 50, inclusive,

Defendants.

CASE No. **4:20-cv-05186-YGR**

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS
SETTLEMENT;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Hearing Date: September 13, 2022
Hearing Time: 2:00 p.m.

District Judge: Hon. Yvonne Gonzalez
Rogers

Oakland Courthouse,
Courtroom 1 - 4th Floor

Action Filed: June 1, 2020

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on September 13, 2022, at 2:00 p.m. in the
3 United States District Court for the Northern District of California, located at the
4 Oakland Courthouse, Courtroom 1 - 4th Floor, 1301 Clay Street, Oakland, CA 94612,
5 before District Judge Yvonne Gonzalez Rogers, Plaintiff Jakari Wilson ("Plaintiff") will
6 move for final approval of the proposed class settlement with Defendants Wholesome
7 Harvest Baking, LLC and Bimbo Bakehouse LLC ("Defendants").

8 This motion is brought pursuant to the Orders dated December 17, 2021 [Doc. No.
9 43] and March 30, 2022 [Doc. No. 45], and Fed. R. Civ. P. Rule 23(h). This motion is
10 unopposed and based on the Class Action Settlement Agreement ("Settlement" or
11 "Agreement") between the parties filed concurrently with this motion. There have been
12 no objections to the Settlement by any member of the Class.

13 The motion will be based on this Notice of Motion, the Memorandum of Points
14 and Authorities, the Declaration of Norman Blumenthal and attached exhibits, the
15 Declaration of the Plaintiff, the Declaration of Madely Nava (the Settlement
16 Administrator, the argument of counsel and upon such other material contained in the
17 file and pleadings of this action.

18
19 Respectfully submitted,

20
21 Dated: August 5, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW

22 By: /s/ Kyle Nordrehaug
23 Kyle R. Nordrehaug
24 Attorneys for Plaintiff
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1 **I. INTRODUCTION**

2 Plaintiff Jakari Wilson ("Plaintiff") and Defendants Wholesome Harvest Baking,
3 LLC and Bimbo Bakehouse LLC ("Defendants") reached a full and final settlement of
4 the above-captioned class action and PAGA action (the "Action"). Under the terms of
5 the Class Action Settlement Agreement ("Agreement"), Defendants agree to pay One
6 Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) (the "Gross Settlement
7 Amount") with no reversion in consideration for the settlement and the release of claims
8 as described in the Agreement. This Court preliminarily approved the settlement by
9 Order dated December 17, 2021. (Doc. No. 43.) In accordance with the Preliminary
10 Approval Order and the Order to Shorten Class and PAGA Release Period and Reset
11 Class Notice Period (Doc. No. 45), the required Class Notice of the proposed settlement
12 was disseminated to the Class of 729 members. The results are that there are no
13 objections and only one opt-out.

14 The purpose of this Final Approval Hearing is to determine whether the proposed
15 settlement of the Action should be finally approved and for approval of the award of
16 attorneys' fees and costs to be paid to Class Counsel and the Plaintiff's service award.¹
17 Plaintiff respectfully submits this Memorandum in support of his motion for final
18 approval and the proposed entry of the Order granting final approval and judgment in
19 this Action.

20 **II. SUMMARY OF THE LITIGATION**

21 The procedural history is set forth at length in the accompanying Declaration of
22 Blumenthal ("Decl. Blumenthal") at paragraphs 6(a) through 6(i). Plaintiff initially filed
23 the Class Action against Defendant in the Superior Court of California, Contra Costa
24 County, and then also filed a separate PAGA Action against Defendant in the same Court
25 based on the same factual allegations. Decl. Blumenthal, ¶¶ 6(a)-6(c). On July 29, 2021,
26 Plaintiff filed an amended complaint ("Amended Complaint") [Doc. No. 32] which adds
27

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

1 the Fair Labor Standards Act ("FLSA") claim as a predicate violation to the Unfair
2 Competition Law ("UCL") cause of action in the Action, and the PAGA claims as set
3 forth in the PAGA Action, and the PAGA Action will be dismissed without prejudice so
4 that approval of the entire settlement could be sought in this Action. (Decl. Blumenthal,
5 ¶ 6(b).)

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

27 Defendants deny all allegations of wrongdoing and allege numerous affirmative
28 defenses relating not only to Plaintiff's claims, but also to class certification. Defendants

1 assert facts that could negate essential elements of Plaintiff's claims. Defendants contend,
2 for example, that their employees were able to take meal and rest breaks. Further, there
3 could be significant problems of proof regarding the extent to which Class Members and
4 Aggrieved Employees allegedly missed meal and rest breaks during the Class Period.
5 (Decl. Blumenthal, ¶ 6(f).)

6 Following the investigation of the claims by both Parties, the Parties agreed to
7 engage in private mediation. The Parties attended an all-day mediation on April 14,
8 2021 before Tripper Ortman, a respected and experienced mediator. The mediation
9 included discussion and examination of the parties' respective positions on the legal and
10 factual issues raised on behalf of the Class. At all times, the parties' settlement
11 negotiations have been non-collusive, adversarial, and at arm's length. At the conclusion
12 of the mediation, the Parties were unable to reach a settlement. Through continued
13 negotiations through the Mediator, culminating in a mediator's proposal, the Parties
14 agreed on the basic terms of a class settlement. Class Counsel filed the motion
15 requesting preliminary approval of the settlement on October 29, 2021. [Doc. No. 39.]
16 (Decl. Blumenthal ¶ 6(g).)

17 By the Order of December 17, 2021, the Court granted preliminary approval of the
18 settlement and approved the mailing of the Class Notice to the Class. [Doc. No. 43.] On
19 March 30, 2022, the Court granted the Parties' joint stipulation to shorten the Class
20 Period and PAGA Period to end on April 14, 2021. [Doc. No. 45]. On May 13, 2022, the
21 Settlement Administrator mailed to the Class Members the Class Notice, which provided
22 notice of the settlement and an explanation of monetary relief and the right to opt out of
23 the Class, or object to the Settlement. (Decl. Blumenthal ¶ 6(h).)

24 Currently, out of the 729 individuals in the Class, not one Class Member objected,
25 and only one (1) Class Member opted out of the Class, which means that currently
26 99.86% of the Class has elected to participate in the Settlement. The final results are
27 detailed in the Declaration of the Settlement Administrator, Madely Nava ("Decl.
28 Naca") filed and served herewith. (Decl. Blumenthal ¶ 6(i).)

1 **III. THE SETTLEMENT BEFORE THE COURT**

2 To implement the terms of this Settlement, Defendants agree to pay the Gross
3 Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000)
4 in full and complete satisfaction of the Released Class Claims. (Agreement at ¶ III(B).)
5 The Gross Settlement Amount consists of all payments to Class Members from the Net
6 Settlement Amount, plus (i) the Settlement Administration Expenses, (ii) the Class
7 Counsel Fees Payment and Class Counsel Litigation Expenses Payment, (iii) the PAGA
8 Payment, and (iv) the Class Representative Service Payment. (Agreement at ¶
9 III(C)-(D).) (Decl. Blumenthal ¶ 3(a).)

10 The amount remaining in the Gross Settlement Amount after the deduction of
11 Court-approved amounts for Settlement Administration Expenses, Class Counsel Fees
12 Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment and the Class
13 Representative Service Payment (called the "Net Settlement Amount"), shall be
14 distributed to Participating Class Members as their Settlement Shares. (Agreement at ¶¶
15 I(U) and (III)(D).) (Decl. Blumenthal ¶ 3(b).)

16 From the Net Settlement Amount, the Settlement Share for each Participating
17 Class Member will be calculated by (a) dividing the Net Settlement Amount by the total
18 number of workweeks the Participating Class Members were employed by Defendants
19 during the Class Period to determine a dollar amount per week ("Weekly Rate"); and (ii)
20 multiplying the number of workweeks each Participating Class Member was employed
21 by Defendants by the Weekly Rate to calculate each Participating Class Member's
22 individual Settlement Share. (Agreement at ¶ III(D)(2).) (Decl. Blumenthal ¶ 3(c).)

23 Subject to Court approval, the Parties have agreed that \$25,000 of the Gross
24 Settlement Amount will be allocated to the resolution of the PAGA Claim, of which 75%
25 (\$18,750) shall be allocated to the Labor and Workforce Development Agency
26 ("LWDA") as the LWDA's share of the settlement of civil penalties and 25% (\$6,250)
27 will be distributed *pro rata* to the Aggrieved Employees based on their respective pay
28 periods worked during the PAGA Period. (Agreement at ¶ III(C)(3).) The LWDA was

1 served with the Agreement both at the time of preliminary approval and again with this
2 motion, and the LWDA has not indicated any objection to this Settlement. (Decl.
3 Blumenthal ¶3(d).)

4 ILYM Group was appointed as Settlement Administrator (Agreement at ¶ III(G).)
5 All administrative fees, costs and expenses incurred by the Settlement Administrator in
6 connection with administering the Settlement will be deducted from the Gross Settlement
7 Amount. The actual expenses of the Settlement Administrator are \$20,000 as outlined
8 in the Declaration of the Madely Nava at ¶16. (Decl. Blumenthal ¶ 3(e).)

9 Class Counsel has applied to the Court for an award of reasonable attorneys' fees
10 in an amount not to exceed one-third (1/3) of the Gross Settlement Amount, and for
11 reimbursement of reasonable expenses in the amount of \$16,477.55, both subject to
12 Court approval. (Agreement at ¶ III(C)(2)). The Plaintiff has also applied for Court
13 approval of service awards in an amount not to exceed \$10,000 in consideration for his
14 service as the class representative. (Agreement at ¶ III(C)(1).) The motion is scheduled
15 for the Final Approval Hearing and was filed and posted on June 10, 2022, which was
16 well before the deadline for written objections to the Settlement. (Decl. Blumenthal ¶
17 3(f).)

18 The scope of the release by all Class Members who do not opt out tracks the scope
19 of the allegations in the Action. As of the Effective Date, Defendants shall be entitled
20 to a release from the Participating Class Members of all Released Class Claims, which
21 are:

22 any and all wage and hour claims, obligations, demands, actions, rights,
23 causes of action, and liabilities (including state statutory and common law
24 claims) alleged in the Action, or that could have been alleged based on the
25 facts alleged in the Action, that arose during the Class Period, including: (a)
26 failure to pay overtime; (b) failure to pay minimum wages; (c) failure to
27 timely pay wages during employment; (d) failure to pay final wages on
28 termination; (e) failure to provide accurate itemized wage statements; (f)
failure to provide compliant meal and rest periods; (g) failure to pay meal
and rest period premiums; (h) failure to reimburse for business-related
expenses; (i) failure to pay wages due to discharged and quitting
employees; (j) failure to maintain required records; (k) claims that are or
were asserted or that could have been asserted based on the facts alleged in
the Action; and (l) penalties (including civil and statutory penalties,

1 including penalties under PAGA), liquidated damages, punitive damages,
2 interest, attorneys' fees, litigation costs, restitution, equitable relief, or
3 additional damages which allegedly arise from the claims described in (a)
4 through (k) above under any applicable law, which arose during the Class
5 Period, and expressly excluding all other claims, including claims for
6 wrongful termination, unemployment insurance, disability, social security,
7 workers' compensation, and class claims outside of the Class Period and
8 PAGA claims outside of the PAGA Period.

9 (Agreement at ¶ III(I)(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. As of the Effective Date, all Aggrieved Employees shall
12 irrevocably release the following claims against Defendants and the Released Parties
13 from:

14 all PAGA claims for civil penalties alleged in any versions of the
15 complaints filed in the Action and letters to the LWDA which arose during
16 the PAGA Period, excluding all other claims and PAGA claims outside of
17 the PAGA Period ("Released PAGA Claims"). The release of the Released
18 PAGA Claims shall be effective as to all Aggrieved Employees regardless
19 of whether an Aggrieved Employee submitted a request for an exclusion
20 from the Class, objected to the Settlement, and/or cashed their check(s) for
21 their individual Settlement Share and/or allocation of the PAGA Payment,
22 and the Action shall be dismissed with prejudice as to the Released PAGA
23 Claims.

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

25 Class Members were permitted the opportunity to object to or comment on the
26 Settlement; or elect not to participate in the Settlement. Class Members who wished to
27 exclude themselves from the Settlement must either have mailed a signed Election Not
28 to Participate in Settlement to the Settlement Administrator no later than forty-five (45)
days after the Settlement Administrator mailed the Class Notice. (Agreement at ¶
III(H)(3)(b).) (Decl. Nava, Exh. A.) Class Members who wished to object to the
Settlement must have submitted their written objections to the Settlement Administrator
not later than forty-five (45) days after the mailing of the Class Notice or alternatively
may appear at the Final Approval Hearing to make an oral objection. (Agreement at ¶
III(H)(3)(a).) To date, there have been no objections and only one opt out. (Decl.
Blumenthal ¶ 3(h); Decl. Nava at ¶¶ 13-14.)

The Settlement is fair, adequate and reasonable to the Class and Aggrieved

1 Employees and should be finally approved. In sum, this settlement valued at \$1.750,000
2 provides the Class Members and Aggrieved Employees with the opportunity to receive
3 a substantial monetary recovery. This result is particularly remarkable in light of the fact
4 that there was also a risk that, if the matter was not settled, Plaintiff would be unable to
5 certify the class action, demonstrate the manageability of the PAGA action, or prevail
6 at trial on behalf of the entire Class and Aggrieved Employees, and thereby not recover
7 on behalf of any individual. As such, liability in this case was far from certain in light
8 of the defenses asserted by Defendants. Finally, the pandemic circumstances impacting
9 many employees only further underscores the importance of distributing these settlement
10 payments to the Class Members and Aggrieved Employees. (Decl. Blumenthal ¶ 3(i).)
11

12 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 13 **COURT TO GRANT FINAL APPROVAL**

14 When a proposed class-wide settlement is reached, it must be submitted to the
15 court for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992)
16 at §11.41, p.11-87. Court approval of a class settlement is considered at a final settlement
17 approval hearing, at which evidence and argument concerning the fairness, adequacy,
18 and reasonableness of the settlement may be presented and class members may be heard
19 regarding the settlement. *See Manual for Complex Litigation, Second* §30.44 (1993).
20 During final approval, the court must determine whether the settlement is fair, reasonable
21 and adequate. *See Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d. 615, 625
22 (9th Cir. 1982) and Fed. Rules Civ. Proc., rule 23(e).

23 Governing the settlement of class actions, the Federal Rules of Civil Procedure,
24 §23 (e) specifically provides for the Court to consider the following factors:

- 25 (A) the class representatives and class counsel have adequately represented
26 the class;
- 26 (B) the proposal was negotiated at arm's length;
- 27 (C) the relief provided for the class is adequate, taking into account:
 - 27 (i) the costs, risks, and delay of trial and appeal;
 - 28 (ii) the effectiveness of any proposed method of distributing relief to
the class, including the method of processing class-member claims;

1 (iii) the terms of any proposed award of attorneys' fees, including
2 timing of payment; and
3 (iv) any agreement required to be identified under Rule 23(e)(3); and
4 (D) the proposal treats class members equitably relative to each other.

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

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

17 Settlements of disputed claims are favored by the courts. *Waits v. Weller*, 653 F.2d
18 1288, 1291 (9th Cir 1981) ("settlement encouraged in appropriate class action
19 settlements"). In evaluating settlements, the courts have long recognized that
20 compromise is particularly appropriate since such litigation is difficult and notoriously
21 uncertain. Settlement is especially favored in class actions because it minimizes the
22 litigation expenses of all parties and reduces the strain on judicial resources. *Officers for*
23 *Justice*, 688 F.2d at 625 ("voluntary conciliation and settlement are the preferred means
24 of dispute resolution. This is especially true in complex class action litigation"); *Class*
25 *Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) ("This is especially true in light
26 of the strong judicial policy that favors settlements, particularly where complex class
27 action litigation is concerned."); *Garcia v. L.A. County Sheriff's Dep't*, 2015 U.S. Dist.
28 LEXIS 192443, *40 (C.D. Cal. 2015) (citing policy favoring settlement in complex class
litigation).

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

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

17 The essential evaluation is whether, given the risks of litigation and the range of
18 probable results, the settlement, taken as a whole, is fair, reasonable and adequate to all
19 concerned. *Officers for Justice*, 688 F.2d at 625; *Hanlon v. Chrysler Corp.*, 150 F.3d
20 1011, 1026 (9th Cir. 1998). Here, the facts and circumstances compel the conclusion that
21 the proposed settlement satisfies that standard.

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

23 **A. The Test for Fairness**

24 To determine whether a settlement is fair, reasonable, and adequate, courts
25 consider factors such as: "(1) the strength of the plaintiffs' case; (2) the risk, expense,
26 complexity, and likely duration of further litigation; (3) the risk of maintaining class
27 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of
28 discovery completed and the stage of the proceedings; (6) the experience and views of

1 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
2 members to the proposed settlement." *Churchill v. Gen. Elec.*, 361 F.3d 566, 575 (9th
3 Cir. 2004); *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

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

12 The question whether a proposed settlement is fair, reasonable and adequate
13 necessarily requires a judgment and evaluation by the attorneys for the parties based
14 upon a comparison of "the terms of the compromise with the likely rewards of
15 litigation." *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464
16 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
17 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts recognize
18 that the opinion of experienced counsel supporting the settlement is entitled to
19 considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Reed*
20 *v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d at
21 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher*
22 *Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985). For
23 example, in *Lyons v. Marrud, Inc.*, 1972 U.S. Dist. LEXIS 13401, *5 (S.D.N.Y. 1972),
24 the court noted that "[e]xperienced and competent counsel have assessed these problems
25 and the probability of success on the merits. They have concluded that compromise is
26 well-advised and necessary. The parties' decision regarding the respective merits of their
27 position has an important bearing on this case." *Id.* at *5.

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

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

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

14 Plaintiff and Class Counsel recognize the expense and length of continuing to
15 litigate and trying this Action against Defendant through possible appeals which could
16 take several years, especially in complex actions such as this litigation. Class Counsel
17 is also mindful of and recognize the inherent problems of proof under, and alleged
18 defenses to, the claims asserted in the Action. Based on the foregoing documents and
19 data, and their own independent investigation and evaluation, Class Counsel is of the
20 opinion that the settlement with Defendants for the consideration and on the terms set
21 forth in the Settlement is fair, reasonable, and adequate in light of all known facts and
22 circumstances, including the risk of significant delay, defenses asserted by Defendants,
23 and numerous potential appellate issues. Based upon their evaluation, Plaintiff and Class
24 Counsel have determined that the settlement set forth in the Agreement is in the best
25 interest of the Class Members and Aggrieved Employees. (Decl. Blumenthal at ¶ 8(d).)

26 Class Counsel has litigated similar wage and hour cases against other employers.
27 (Decl. Blumenthal at ¶ 2.) Although Plaintiff and Class Counsel believed that the case
28 had merit, they recognized the potential risks both sides would face if litigation of this

1 Action continued. As the federal court held in *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist.
2 LEXIS 8476 (N.D.Cal. 2007), where the parties faced uncertainties similar to those in
3 this litigation:

4 In light of the above-referenced uncertainty in the law, the risk, expense,
5 complexity, and likely duration of further litigation likewise favors the
6 settlement. Regardless of how this Court might have ruled on the merits of
7 the legal issues, the losing party likely would have appealed, and the parties
8 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.

9 *Id.* at *12.

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

15 Based on the complexity of the case, the novelty of the legal issues, the substantial
16 risks and uncertainty of the outcome on both liability and certification issues, as well as
17 the need to establish damages, Plaintiff believes that the Settlement is fair, reasonable
18 and in the best interests of the Class Members. There can be no doubt that counsel for
19 both the Parties possessed sufficient information to make an informed judgment
20 regarding the likelihood of success on the merits and the results that could be obtained
21 through further litigation, given the relative strengths and weaknesses of their position.
22 (Decl. Blumenthal at ¶ 7(e).)

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

25 Settlement negotiations took place between experienced counsel and were
26 contentious and arm's length. Plaintiff and Class Counsel recognize the expense and
27 length of continuing to litigate and trying this Action against Defendant through possible
28 appeals which could take several years. Class Counsel has also taken into account the

1 uncertain outcome and risk of litigation, especially in complex actions such as this
2 litigation. Class Counsel is also mindful of and recognize the inherent problems of proof
3 under, and alleged defenses to, the claims asserted in the Action. Based upon their
4 evaluation, Plaintiff and Class Counsel believe that the settlement with Defendants for
5 the consideration and on the terms set forth in the Agreement is fair, reasonable, and
6 adequate and is in the best interest of the Class Members and Aggrieved Employees in
7 light of all known facts and circumstances, including the risk of significant delay, the
8 likelihood that Defendants would prevail on one or more of its defenses, and numerous
9 potential appellate issues. By reason of the settlement, Defendants agree to pay the Gross
10 Settlement Fund of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000)
11 as provided by the Agreement. (Decl. Blumenthal at ¶7(b).)

12 In advance of settlement negotiations, Class Counsel received class data
13 concerning the Class, which permitted Class Counsel to make an intelligent evaluation.
14 For the individuals whose claims are at issue in this Action, Class Counsel reviewed the
15 data and used information provided by Defendants to determine the potential damage
16 valuation. The calculations to compensate for the amount due for the Class at the time
17 of the mediation were calculated by Berger Consulting, Plaintiff's damage expert. Using
18 the class data, based upon the analysis of Plaintiff's expert, Plaintiff calculated that the
19 maximum valuation for mediation as follows: off the clock damages due to rounding
20 were \$188,768, unpaid overtime wages dues to the miscalculation of the regular rate
21 were \$39,733, meal period damages were \$2,219,198 based upon an alleged 58%
22 potential violation rate from time punch data, rest period damages were \$3,660,320
23 based upon an alleged 100% violation rate under Plaintiff's theory of rest periods being
24 cut short, and unreimbursed expenses damages were \$325,346. As a result, Plaintiff's
25 total damage valuation at mediation, not counting potential penalties, was \$6,433,364.
26 As to penalties, Plaintiff's expert calculated the maximum wage statement penalties to
27 be \$1,083,700 and the maximum waiting time penalties to be \$2,035,683, however, these
28 wage statement and waiting time penalties claims potentially have a much smaller value,

1 even if damages were awarded, to the extent that they are derivative of the meal and rest
2 break claims.² Plaintiff's exposure theories and calculations regarding the maximum
3 damages and/or penalties purportedly owed to the Class are vigorously disputed by
4 Defendants. (Decl. Blumenthal ¶ 7(d).)

5 Consequently, the Gross Settlement Amount of \$1,750,000 represents more than
6 27% of Plaintiff's calculated value of the damages at issue in this case at the time this
7 Settlement was negotiated, assuming these amounts could be proven at trial. Given the
8 amount of the settlement as compared to the potential value of claims in this case and the
9 defenses asserted by Defendants, this settlement is fair and reasonable.³ (Decl.
10 Blumenthal ¶ 7(d).)

11 The Parties attended an all-day mediation on April 14, 2021 before Tripper
12 Ortman, a respected and experienced mediator. The mediation included discussion and
13

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

27 ³ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007)
28 (approving a settlement where the settlement amount constituted approximately 25% of
the estimated overtime damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*,
2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where
"the proposed Total Settlement Amount represents approximately 10% of what class
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 examination of the parties' respective positions on the legal and factual issues raised on
2 behalf of the Class. At all times, the parties' settlement negotiations have been
3 non-collusive, adversarial, and at arm's length. At the conclusion of the mediation, the
4 Parties were unable to reach a settlement. Through continued negotiations through the
5 Mediator, culminating in a mediator's proposal, the Parties agreed on the basic terms of
6 a class settlement. (Decl. Blumenthal ¶ 6(g).)

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

14 Plaintiff filed the motion for preliminary approval of the settlement, and by the
15 Order dated December 17, 2022, the Court granted preliminary approval of the
16 settlement and approved the mailing of the Class Notice to the Class. (Doc. No. 43.) On
17 May 13, 2022, the Settlement Administrator mailed the Class Notice to the 729 Class
18 Members, which gave them notice of the Parties' settlement and an opportunity to claim
19 monetary relief, object, or opt out. (Decl. Blumenthal at ¶6(i).)

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

22 Class Counsel in this matter has extensive class action experience in many fields
23 and has represented thousands of employees in actions including labor and employment
24 litigation, wage and hour class actions, representative PAGA actions and complex
25 litigation. Class Counsel has been previously approved as experienced Class Counsel by
26 state and federal courts throughout California, and courts have found that Class Counsel
27 has substantial experience handling large employment related class actions and has been
28 found to be qualified class counsel in prior actions. A list of previous and current class

1 action cases managed and settled by the Class Counsel in this action is provided to the
2 Court by way of the Declaration of Norman Blumenthal. Class Counsel have participated
3 in every aspect of the settlement discussions and have concluded the settlement is fair,
4 adequate and reasonable and in the best interests of the Class. (Decl. Blumenthal at ¶ 2.)

5 4. The Reaction of the Class Is Positive

6 After dissemination of the Class Notice to the 729 members of the Class, which
7 provided each Class Member with the terms of the settlement, to date, not a single Class
8 Member has filed an objection to the settlement, and only one has requested exclusion.
9 As a result, 99.86% of the Class will be participating in the Settlement and will be sent
10 a payment. (Decl. Blumenthal ¶ 4.) The absence of any objector strongly supports the
11 fairness, reasonableness and adequacy of the Settlement. *See In re Austrian & German*
12 *Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) ("If only a small
13 number of objections are received, that fact can be viewed as indicative of the adequacy
14 of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990)
15 (29 objections out of 281 member class 'strongly favors settlement'); *Laskey v. Int'l*
16 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected
17 to the proposed settlement should be considered when determining fairness of
18 settlement.)

19 Importantly, every Class Member was given the opportunity to participate in the
20 Settlement under the same terms. To date, almost the entire Class has elected to
21 participate in the Settlement and will be mailed a check for their settlement share.
22 Similarly, every Aggrieved Employee will be mailed a check of their share of the PAGA
23 Payment. The details of the notice process are set forth in the Declaration of Madely
24 Nava, the Settlement Administrator. Here, given the fact that not one Class Member
25 objected, the Court should conclude that the settlement is fair, reasonable and adequate.
26 (Decl. Blumenthal ¶ 4.)

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

28 In advance of settlement negotiations and mediation, Class Counsel conducted a

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

16 The risks, complexities and duration of further litigation cannot be overstated.
17 Defendants asserted a number of defenses that presented serious threats to the claims of
18 the Plaintiff and the other Class Members. Here, a number of defenses asserted by
19 Defendants presented serious threats to the claims of Plaintiff and the other Class
20 Members. Defendants argued that all work time was paid for and that the regular rate
21 calculation was lawful. Defendants contend that their meal and rest period policies fully
22 complied with California law and that Defendants' timekeeping system recorded meal
23 periods, and was not required to record rest periods. Defendants argued that the
24 California Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
25 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability.
26 Defendants argued that any late or short meal periods were the voluntary decision of the
27 employee, and not the result of a failure of Defendants to provide a meal or rest period.
28 Defendants also argue that based on their facially lawful practices, they acted in good

1 faith and without willfulness, which if accepted would negate the claims for waiting time
2 penalties and/or inaccurate wage statements. In fact, under the current state of the law,
3 it is questionable whether these penalties could be awarded at all based upon the alleged
4 meal and rest period violations as several Courts have held that meal and rest period
5 violations do not give rise to wage statement or waiting time penalties. *See e.g. Ling v.*
6 *P.F. Chang's China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). Finally,
7 Defendants assert defenses to the amount of damages claimed and the imposition of any
8 penalties. If successful, Defendants' defenses could eliminate or substantially reduce any
9 recovery to the Class. While Plaintiff believes that these defenses could be overcome,
10 Defendants maintain these defenses have merit and therefore present a serious risk to
11 recovery for Plaintiff, the Class Members, and the Aggrieved Employees. (Decl.
12 Blumenthal ¶ 8(a).)

13 Moreover, there was also a significant risk that, if the Action was not settled,
14 Plaintiff would be unable to obtain class certification and maintain a certified class
15 through trial or demonstrate that his PAGA claim is manageable, and thereby not recover
16 on behalf of any employees other than himself. Plaintiff is aware of cases where class
17 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App.
18 5th 885 (2019) (denying certification of meal and rest break claims). At the time of the
19 mediation, Defendants forcefully opposed the propriety of class certification and the
20 manageability of Plaintiff's PAGA claim, arguing that individual issues precluded such
21 findings. Further, as demonstrated by the California Supreme Court decision in *Duran*
22 *v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to
23 overcome for a class-wide recovery even where the class has been certified. While other
24 cases have approved class certification in wage and hour claims, class certification in this
25 action would have been hotly disputed and was by no means a foregone conclusion.
26 (Decl. Blumenthal at ¶ 8(b).)

27 Plaintiff and Class Counsel recognize the expense and length of continuing to
28 litigate and trying this Action against Defendant through possible appeals which could

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

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

13 14 **VI. CONCLUSION**

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

19
20 Dated: August 5, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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22 By: /s/ Kyle Nordrehaug
23 Kyle R. Nordrehaug
24 Attorneys for Plaintiffs
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