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

CHRISTINE ROSE, an individual, on behalf
of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

IMPACT GROUP, LLC., a Limited Liability
Company, and DOES 1-50, inclusive,

Defendants.

Case No: 30-2020-01141107-CU-OE-CXC

[Related Case: 30-2020-01166291-CU-OE-CXC]

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

Hearing Date: July 8, 2022
Hearing Time: 10:00 a.m.

Honorable Judge Randall J. Sherman
Department CX-105

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE SETTLEMENT BEFORE THE COURT.....	2
III.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	4
IV.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.....	5
	1. The Investigation and Discovery are Sufficient to Allow Counsel and the Court to Act Intelligently	6
	2. The Settlement Was Reached Through Arm's Length Bargaining	7
	3. Class Counsel is Experienced in Similar Litigation	8
	4. There Are No Objections by The Class Members..	8
	5. The Risk, Expense, Complexity and Likely Duration of Further Litigation	9
	6. The Amount Offered in Settlement	11
V.	CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases:	Page:
<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i> , 85 Cal. App. 4th 1135, 1151 (2000)	4-5
<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008).	8
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018).....	12-13
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110, 1117 (2009).....	5
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1801 (1996).....	4-6
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	10-11
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. January 27, 2007)	8
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	9
<i>Huens v. Tatum</i> , 52 Cal. App. 4th 259, 265 (1997)	4
<i>In re Austrian & German Bank Holocaust Litigation</i> , 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000)	9
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 128 (2008)	1, 6
<i>Laskey v. Int'l Union</i> , 638 F.2d 954 (6 th Cir. 1981).....	9
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573, 578-579 (1980)	5
<i>Munoz v. BCI Coca-Cola Bottling Co. of L. A.</i> , 186 Cal. App. 4th 399, 408 (2010)	6
<i>Officers for Justice v. Civil Service Com'n, etc.</i> , 688 F.2d. 615 (9 th Cir. 1982)	5

1	<i>Stoetzner v. U.S. Steel Corp.</i> ,	
2	897 F.2d 115, 118-119 (3d. Cir. 1990)	9
3	<i>Wershba v. Apple Computer, Inc.</i> ,	
4	91 Cal.App.4th 224 (2001)	5
5	Statutes, Rules and Regulations:	
6	California Labor Code §203	1, 6-7, 12
7	California Labor Code §226	1, 6-7, 12
8	California Labor Code §2698	3
9	Secondary Sources:	
10	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91.....	5
11		
12		
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1 **I. INTRODUCTION**

2 Plaintiff Christine Rose (“Plaintiff”) and Defendant Impact Group, LLC (“Defendant”),
3 have reached a full and final settlement of the above-captioned action, which is set forth in the Joint
4 Stipulation of Class Action and PAGA Settlement Agreement and Release, as amended by
5 Amendment #1 to Joint Stipulation of Class Action and PAGA Settlement and Release (hereinafter
6 the “Agreement”) filed herewith.¹ The Court preliminarily approved the Agreement via its
7 Preliminary Approval Order dated February 18, 2022 (“Preliminary Approval Order”); and
8 pursuant to the Preliminary Approval Order the approved Class Notice has been disseminated to
9 the Class Members.²

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

14 This \$600,000 settlement is an excellent result for the Class Members in light of the serious
15 doubts as to the result of the adjudication of their claims, along with further uncertainty as to
16 whether class certification can be maintained through trial. Considered as a whole, the \$600,000 in
17 Settlement represents more than 30% of Defendant’s potential liability exposure for damages as
18 calculated by Plaintiff, and 25.25% of Defendant’s potential liability exposure for damages and
19 statutory penalties, as estimated by Class Counsel at the time of mediation, which Class Counsel
20 calculated to be \$1,996,360 (inclusive of interest) for damages and \$2,375,866 for damages and
21 statutory penalties for violations of Labor Code Sections 226 and 203.³ Under *Kullar v. Foot*
22 *Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), this proposed Settlement is a fair and reasonable
23 recovery on these claims (which were subject to considerable uncertainty, both as to the merits and
24

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

27 ² The “Class Members” means all persons who were employed by Defendant in California in non-
28 exempt, hourly-paid positions at any time during the Class period, including current and former
employees. The “Class Period” is defined as the period from May 27, 2016 through June 13, 2021.

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

1 certification). The response of the Class Members has been positive. Accordingly, Plaintiff
2 respectfully submits that the Settlement should be finally approved as fair, reasonable, and
3 adequate.

4 **II. THE SETTLEMENT BEFORE THE COURT**

5 Plaintiff and Defendant reached a full and final proposed Settlement of the above-captioned
6 action, which is embodied in the Agreement filed concurrently with the Court. As consideration
7 for this Settlement, Defendant has agreed to pay the all-in, non-reversionary amount of Six Hundred
8 Thousand Dollars and No Cents (\$600,000) (“Gross Settlement Amount”). The Gross Settlement
9 Amount includes all Individual Settlement Awards to Participating Class Members, the Class
10 Representative Service Award to Plaintiff, Settlement Administration Costs, the PAGA Payment,
11 and Court-approved Class Counsel Award for attorneys’ fees and costs. Defendant will separately
12 pay the employer’s share of payroll taxes to the Qualified Settlement Fund, per the Agreement.
13 (Decl. Zakay ¶3(a).)

14 The Net Settlement Amount shall equal the net amount available for Individual Settlement
15 Awards to Participating Class Members from the Gross Settlement Amount after deducting the
16 Court-approved amounts for the Class Representative Service Award, the Class Counsel Award,
17 the PAGA Payment, and the Settlement Administration Costs. The Settlement Administrator will
18 pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class
19 Member. The submission of a claim form is not required to be paid. The Individual Settlement
20 Share for each Participating Class Member will be calculated based on the Workweeks worked by
21 each Participating Class Member during the Class Period. The entire Net Settlement Amount shall
22 be distributed to Participating Class Members. (Decl. Zakay ¶3(b).)

23 Class Members were sent the Court approved Settlement Notice, using the procedure
24 approved by the Court, by mailing the Settlement Notices after updating Class Members’ addresses
25 using the National Change of Address database and, for any Settlement Notices returned as
26 undeliverable, re-mailing such notices to any forwarding address provided or updated address
27 located through skip tracing. Class Members were provided with the opportunity to submit a
28 Request for Exclusion (“opt out”) if they did not want to participate in the proposed Settlement.

1 Class Members who did not “opt out” were deemed Participating Class Members who are bound
2 by the Settlement and will be mailed an Individual Settlement Share. The Settlement Notice also
3 advised Class Members of their right to submit disputes and to object to the Settlement. This notice
4 process is documented in the accompanying Declaration of Christina Fowler (on behalf of the
5 Settlement Administrator), which is filed concurrently herewith. (Decl. Zakay ¶3(c).)

6 If a Participating Class Member’s Individual Settlement Share check is not cashed within
7 180 days after its last mailing to the Participating Class Member, the funds from such uncashed
8 checks will be paid to the Controller of the State of California to be held pursuant to the Unclaimed
9 Property Law, California Civil Code § 1500, *et seq.* (Decl. Zakay ¶4).

10 The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the
11 Gross Settlement Amount as the attorneys’ fees portion of the Class Counsel Award. Class Counsel
12 will also be allowed to apply separately for the litigation expenses portion of the Class Counsel
13 Award incurred in the prosecution and settlement of the Action in an amount not exceeding \$15,000.

14 **In support of this request, Class Counsel is providing evidentiary support, including lodestar,**
15 **in the declarations submitted concurrently herewith.** The Agreement provides for payment of
16 a Class Representative Service Award of no more than \$10,000 for Plaintiff, or such lesser amount
17 as may be approved by the Court in compensation for her services. Defendant does not oppose a
18 motion for approval of the Class Counsel Award consistent with the Agreement. (Decl. Zakay ¶5).

19 The Parties allocated \$30,000 from the Gross Settlement Amount for the PAGA Payment –
20 *i.e.*, settlement of civil penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant to the
21 requirements of Labor Code §2699(i) seventy-five percent (75%) of the PAGA Payment (\$22,500)
22 shall be allocated to the Labor Workforce Development Agency (“LWDA”) as the LWDA’s share
23 of the settlement of civil penalties and twenty-five percent (25%) of the PAGA Payment (\$7,500)
24 shall be distributed as Individual PAGA Payments to Class Members. (Decl. Zakay ¶6).

25 The proposed Settlement was reached through arm’s length negotiations. On May 13, 2021,
26 the Parties participated in mediation presided over by Jeffrey Ross, Esq., a respected and
27 experienced mediator of wage and hour class and PAGA actions. Prior to the mediation, the Parties
28 prepared by exchanging data, calculating potential damages, and submitting mediation briefs to the

1 mediator. Defendant provided Class Counsel with necessary records and information for the
2 members of the Class. Defendant also produced a sample set consisting of pay records and time
3 records for some of the Class Members for the entire Class Period. Defendant also produced
4 Defendant's relevant employment policies, including compensation policies and timekeeping
5 policies. Plaintiff analyzed the data with the help of an expert and prepared and submitted a
6 mediation brief to Mr. Ross. At the conclusion of the mediation, the Parties reached a settlement,
7 which was supported by Mr. Ross. The Parties documented the agreement in the form of an MOU.
8 The Parties then prepared the full Agreement that was signed by the Parties, as amended, and
9 received Preliminary Approval from the Court by Order dated February 18, 2021. (Decl. Zakay ¶7).

10 The proposed Settlement is fair, adequate and reasonable to the Class and should be finally
11 approved for the same reasons the Court granted preliminary approval to the Settlement, finding
12 that it is fair, adequate, and reasonable as to all potential Class Members. In sum, this Settlement
13 valued at \$600,000 is an excellent result for the Class Members. This result is particularly favorable
14 in light of the fact that liability in this case was far from certain in light of the defenses asserted by
15 Defendant. There have been no objections and no Requests for Exclusion. Given the complexities
16 of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties
17 of proof at trial and appeal, the proposed Settlement is fair, reasonable and adequate, and should be
18 finally approved. (Decl. Zakay ¶8).

19 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND** 20 **APPROVAL OF CLASS ACTION SETTLEMENTS**

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

27 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
28 class action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)

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

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

19 IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

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

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

1 of further litigation, the risk of maintaining class action status through trial, the amount offered in
2 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
3 views of counsel, the presence of a governmental participant, and the reaction of the class members
4 to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
5 (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App.
6 4th 399, 408 (2010).

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

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

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

18 On May 27, 2020, Plaintiff filed the Class Action Complaint in the Superior Court of the
19 State of California County of Orange, asserting claims for: (1) unfair competition in violation of
20 Cal. Business & Professions Code § 17200; (2) failure to pay minimum wages in violation of Cal.
21 Labor Code §§ 1194, 1197, and 1197.1; (3) failure to pay overtime wages in violation of Cal. Labor
22 Code § 510; (4) failure to provide required meal breaks in violation of Cal. Labor Code §§ 226.7 &
23 512 and the applicable IWC Wage Order; (5) failure to provide required rest breaks in violation of
24 Cal. Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) failure to provide
25 accurate itemized wage statements in violation of Cal. Labor Code § 226; (7) failure to provide
26 wages when due in violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) failure to reimburse
27 employees for required business expenses in violation of Cal. Lab. Code § 2802. On October 19,
28 2020, Plaintiff filed the PAGA Complaint (Case No. 30-2020-01166291- CU-OE-CXC) in the

1 Superior Court of the State of California County of Orange, asserting a single cause of action for
2 civil penalties pursuant to Cal. Labor Code § 2699, *et seq.* for violations of Cal. Labor Code §§ 201,
3 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
4 2802, and Cal. Code of Regulations, Title 8, section 11040, Subdivision 5(A)-(B). (Decl. Zakay at
5 ¶11(a)).

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

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

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

27 This Settlement was the result of arm's-length negotiations as well as informal settlement
28 conferences between the Parties through their respective attorneys. After comprehensive legal and

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

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

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

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

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

20 The reaction of the Class Members, so far, unequivocally supports approval of the
21 Settlement. On March 18, 2022, the Settlement Administrator Court-approved Settlement Notice
22 to the Class Members, which provided each Class Member with the terms of the Settlement,
23 including notice of the claims at issue and the financial terms of the settlement, including the
24 attorneys’ fees, costs, and service awards that were being sought, how individual settlement awards
25 would be calculated, and the specific, estimated payment amount to that individual. In
26 disseminating the Settlement Notice, the Settlement Administrator followed the notice procedures
27 authorized by the Court in its Preliminary Approval Order. Significantly, to date, there have been
28 no objections and no Requests for Exclusion (*i.e.*, opt outs). (See Declaration of Christina Fowler

1 at ¶¶ 12-13). As a result, all of the Class Members have elected to participate in the proposed
2 Settlement so far, and will be sent an Individual Settlement Share.

3 The administration process, including details regarding the mailing of the Settlement Notice,
4 Settlement Notices returned as undeliverable, the Settlement Administrator's efforts to locate Class
5 Members and remail Settlement Notices, and the final administration results, are all documented in
6 the Declaration of Christina Fowler, which is filed concurrently herewith. (See Decl. of Christina
7 Fowler).

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

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

17 The risks and complexity of the alleged claims are discussed in detail in the Declaration of
18 Zakay at ¶ 13. Where both sides face significant uncertainty, the attendant risks favor settlement.
19 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted
20 by Defendant presented serious threats to the claims of the Plaintiff and the other Class Members.
21 For instance, Defendant asserted that the employment practices complied with all applicable Labor
22 Laws. Defendant also argued that (1) there were vast differences across different types of Class
23 Members (ranging from retail associates to office-based administrative assistants and customer
24 support); (2) it maintained robust, compliant off-the-clock policies; (3) it had high compliance rates
25 for meal periods; and (4) it in fact provided company-issued cell phones or tablets to employees
26 who specifically needed them to perform their jobs and offered monthly reimbursements to those
27 employees who did not, but who were required to use their personal cell phone in any given month.

1 Defendant also argued that the Supreme Court decision in *Brinker v. Superior Court*, 53
2 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value, and class
3 certifiability as to the meal and rest period claims. A major component of the damages alleged to
4 have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and
5 during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded
6 the Class Members an opportunity to take timely meal and rest breaks, and that employees like the
7 Plaintiff *chose* not to take compliant breaks. Defendant argued, therefore, that under the *Brinker*
8 decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and
9 strictly enforced lawful policies, and afforded Plaintiff and the Class Members compliant meal and
10 rest breaks. If successful, these defenses could eliminate or substantially reduce any recovery to
11 the Class. While Plaintiff believes that these defenses, and others, could be overcome, Defendant
12 maintains these defenses have merit and therefore present a serious risk to recovery for the Class.

13 With respect to Plaintiff's argument that Defendant failed to accurately calculate some Class
14 Members' overtime rate by failing to include non-discretionary bonuses into the employees' regular
15 rate of pay for purposes of the overtime calculation, Defendant argued that payment of such bonuses
16 was infrequent, and employees rarely earned a bonus and overtime pay in the same pay period.
17 Defendant argued that the damages for this claim are therefore minimal. In reviewing the records
18 provided by Defendant to Plaintiff for the mediation, Plaintiff's expert confirmed that incentive
19 compensation was infrequent, and concluded that damages on this claim are likely limited to no
20 more than \$1,000-\$2,000. (Decl. Zakay at ¶13(a)).

21 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
22 to obtain class certification and thereby not recover on behalf of any employee other than
23 themselves. Defendant argued that the individual experience of each employee varied with respect
24 to the alleged claims. While other cases have approved class certification of wage and hour claims,
25 class certification in this action would have been hotly disputed and was by no means a foregone
26 conclusion. Finally, even if class certification was successful, as demonstrated by the California
27 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
28

1 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
2 (Decl. Zakay at ¶13(b)).

3 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
4 trying the Action against Defendant through possible appeals which even if successful could take
5 several years. Class Counsel have also taken into account the uncertain outcome and risk of
6 litigation, especially in complex actions such as this Action. Class Counsel are also mindful of and
7 recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the
8 Action. As demonstrated by the decision in *Duran*, the complexities and duration of further
9 litigation cannot be overstated. There is little doubt that Defendant would post a bond and appeal
10 in the event of an adverse judgment. A post-judgment appeal by Defendant would have required
11 many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed
12 in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed
13 recovery today outweigh an uncertain result three or more years in the future. Moreover, post-trial
14 motions and appeals would have been inevitable. Costs would have mounted and recovery would
15 have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and
16 Class Counsel believe that the proposed Settlement confers substantial benefits upon the Class.
17 Based upon their evaluation, Plaintiff and Class Counsel have determined that the proposed
18 Settlement set forth in the Agreement is in the best interest of the Class Members. (Decl. Zakay
19 ¶13(c)).

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

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

26 The Settlement in this case is fair, reasonable and adequate considering Defendant's
27 significant defenses, which it believes to be valid, to Plaintiff's claims. As detailed during
28 preliminary approval, the Gross Settlement Amount compares favorably to the value of the claims.

1 Class Members will receive immediate and certain payments of considerable amounts under the
2 proposed Settlement. Currently, the overall maximum and average Participating Class Member
3 allocations (by way of Individual Settlement Shares) are estimated to be \$7,187.44 and \$3,726.44
4 respectively (Decl. Fowler at ¶ 10).

5 Faced with the serious doubts as to recovery, the Settlement of \$600,000 plus the employer's
6 share of payroll taxes compares favorably to the damage estimates alleged to have been suffered by
7 the Class. Considered as a whole, the \$600,000 in Settlement represents more than 30% of the
8 maximum potential estimated *damages* and interest, and 25.25% of the maximum potential
9 combination of damages and penalties to the Class, assuming all of these amounts could be proved
10 at trial, which Class Counsel estimated to be \$1,996,360 for damages and \$2,375,866 for damages
11 and statutory penalties for violations of Labor Code Sections 226 and 203.

12 If she could prove the claims, Plaintiff estimates that Defendant was subject to maximum
13 potential liability for damages in the amount of \$1,996,360 (inclusive of interest) consisting of
14 \$1,257 for unpaid overtime wages, \$1,234,540 for rest periods, and \$760,583 for meal periods. In
15 addition, Plaintiff's expert calculated \$127,936 in waiting time penalties and \$251,550 for wage
16 statement penalties.⁴ Finally, Plaintiffs' expert calculated that Defendant could be liable for PAGA
17 penalties in an amount of up to \$2,222,900⁵.

18 ⁴Plaintiffs' claims pursuant to Labor Code Section 226 and various PAGA penalties are also subject
19 to a good faith defense as to whether any premium wages for meal or rest periods or other wages
20 were owed given Defendant's position that Plaintiffs and the Class were properly compensated. *See*
21 *Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008)
22 (granting defendant's motion for summary judgment on claim for failure to provide accurate
23 itemized wage statements "because a good faith dispute exists... [therefore, defendant] was not
24 'knowing and intentional' in failing to provide [Section 226] statements"); *see also Nordstrom*
25 *Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if
26 the employer and employee have a good faith dispute as to whether and when the wages were due.").

27 ⁵ Plaintiffs recognize that the PAGA penalties claim is also subject to various defenses by
28 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

Consequently, the Settlement of approximately \$600,000.00 represents approximately 30% of the value of the maximum actual damages at issue. Furthermore, the Settlement represents approximately 25.25% of the maximum combination of damages and penalties to the Class, assuming all of these amounts could be proved at trial. Given the Gross Settlement Amount as compared to the potential value of claims in this case, the proposed Settlement is fair and reasonable. (Decl. Zakay ¶14(c)).

V. CONCLUSION

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

DATED: June 15, 2022

ZAKAY LAW GROUP, APLC

By: 

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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%.