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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

JUSTIN PRICE and BRENDA PRICE,
individuals, on behalf of themselves, and
on behalf of all persons similarly
situated,

Plaintiffs,

vs.

MISTRAS GROUP, INC., a
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Lead Case No.: **20STCV22485**
[Consolidated with Case No. 20LBCV00408]

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

Hearing Date: September 26, 2022

Hearing Time: 10:00 a.m.

[Hearing scheduled by Order dated May 12, 2022]

Judge: Hon. Stuart M. Rice

Dept: SS-1

Action Filed: June 10, 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 First Amended Class Action Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated May 12, 2022 (“Preliminary Approval Order”),
6 the approved Class 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. Plaintiffs Justin Price and Brenda Price (“Plaintiffs”) respectfully submit
9 this memorandum in support of the unopposed motion for final approval and the proposed entry of the
10 Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent result
11 for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice
12 to the members of the Class, there were **no objections and no requests 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 Plaintiffs respectfully submit 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 Plaintiffs and Defendant Mistras Group, 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 Two
21 Million Three Hundred Thousand Dollars (\$2,300,000). (Agreement at ¶¶ 19 and 38.) Under the

23 ¹ Capitalized terms are defined in the Agreement.

24 ² The “Class” is defined as “all individuals who are or previously were employed by Defendant
25 Mistras Group, Inc. in California and who were classified as non-exempt employees at any time during
26 the Class Period.” The “Class Period” is defined as “June 10, 2016 through July 31, 2021, with the
27 exception of any Class members who were part of the California settlement class of *Viceral and*
28 *Krueger, et al. v. Mistras Group, Inc., et al.*, N.D. Cal. Case No. 3:15-cv-02198-EMC (“Viceral”) whose Class Period is limited to February 18, 2017 through July 31, 2021.” (Preliminary Approval Order at ¶6.)

1 Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the
2 Settlement Shares to the Participating Class Members; (2) Class Counsel Fees Payment and Class
3 Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) Class
4 Representative Service Payments to Plaintiffs; and (5) the PAGA Payment. (Agreement at ¶¶ 19 and
5 38-40.) The Gross Settlement Amount does not include Defendant's share of payroll taxes.
6 (Agreement at ¶ 38.) The Gross Settlement Amount shall be all-in with no reversion to Defendant.
7 (Agreement at ¶ 38.) Blumenthal Decl. ¶3(a).

8 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
9 Defendant's share of payroll taxes within fifteen (15) calendar days of the Effective Date. (Agreement
10 at ¶ III(45).) The Settlement Shares to Participating Class Members will be mailed by the Settlement
11 Administrator within fifteen (15) calendar days after the funding of the Gross Settlement Amount.
12 (Agreement at ¶ III(45).) Blumenthal Decl. ¶3(c).

13 The Net Settlement Amount shall equal the net amount available for payment to the Class after
14 deducting the Court-approved amounts for the Class Representative Service Payment, the Class
15 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the
16 Settlement Administration Expenses. (Agreement at ¶ I(21).) The Net Settlement Amount will be
17 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
18 ("Participating Class Members"). (Agreement at ¶¶ I(24) and III(40)(a).) The Settlement Share will
19 be calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by
20 the total number of Qualifying Workweeks for all the Participating Class Members to determine a
21 dollar amount per week ("Weekly Rate"); and (iii) the Settlement Administrator shall then take the
22 number of Qualifying Workweeks worked by each Participating Class Member and multiply it by the
23 Weekly Rate to calculate their Settlement Share. (Agreement at ¶ III(40)(b).) Workweeks will be
24 based on Defendant's records, however Class Members had the right to challenge the number of
25 workweeks. Blumenthal Decl. ¶ 3(d).

26 Class Members were sent the Court approved Class Notice using the procedure approved by the
27 Court by mailing the notice packets after updating class members' addresses using the National Change
28 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to

1 any forwarding address provided or updated address located. Declaration of Christina Fowler ("Fowler
2 Decl.") ¶¶ 6-9. Class Members were provided with the opportunity to exclude themselves or "opt out"
3 if they did not want to participate in the settlement. (Agreement at ¶ 42(c), Ex. A.) Fowler Decl. ¶ 5,
4 Exh. A. No Class Members submitted a request for exclusion. Fowler Decl. ¶ 11. As a result, all Class
5 Members are deemed Participating Class Members who are bound by the Settlement and will be
6 entitled to receive a Settlement Share. (Agreement at ¶ 44(c).) All Aggrieved Employees will be paid
7 their allocation of the PAGA Payment and will remain bound by the release of the PAGA Released
8 Claims regardless of their request for exclusion. (Agreement at ¶ 42(c).) The Class Notice also advised
9 Class Members of their right to object to the Settlement and/or dispute their workweeks. (Agreement
10 at ¶ 42(c)); Fowler Decl. ¶ 5, Exh. A.) Blumenthal Decl. ¶ 3(e).

11 A Participating Class Member must cash his or her Settlement Share check within 180 days
12 after it is mailed. (Agreement at ¶ 46.) The Settlement Administrator will send a reminder to
13 Participating Class Members who have not cashed their checks 60 days before the expiration date.
14 (Agreement at ¶ 46.) Any settlement checks not cashed within 180 days will be voided and any funds
15 from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund
16 in the name of the Participating Class Member. (Agreement at ¶ 46.) Blumenthal Decl. ¶ 3(f).

17 Simpluris was appointed by the Court as the Settlement Administrator for the Settlement.
18 (Agreement at ¶ 41). From the Gross Settlement Amount, the Settlement Administrator shall be paid
19 for the expenses of administering the Settlement in an amount not to exceed \$20,000. (Agreement at
20 ¶ 39(d).) As set forth in the Fowler Decl. at ¶ 15, the Settlement Administration Expenses, including
21 fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement
22 administration, are \$13,500. Blumenthal Decl. ¶ 3(g).

23 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
24 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
25 at ¶ 39(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
26 Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶ 39(b).) Subject
27 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to Plaintiffs
28 as the Class Representative Service Payments. (Agreement at ¶ 39(a).) In support of this separate

1 motion for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is providing
2 evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

3 Subject to Court approval, Fifty Thousand Dollars (\$50,000) will be paid from the Gross
4 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
5 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
6 the PAGA Payment shall be allocated as follows: 75% (\$37,500) to the LWDA as the LWDA's share
7 of the PAGA Payment pursuant to PAGA and 25% (\$12,500) will be distributed to the Aggrieved
8 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
9 39(c).) As set forth in the accompanying proof of service, the LWDA has been served with this motion
10 and the Agreement. Blumenthal Decl. ¶3(i).

11 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
12 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
13 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶3.) In sum, the Settlement valued
14 at \$2,300,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
15 that liability and class certification in this case were far from certain in light of the defenses asserted
16 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
17 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
18 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

26 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
27 action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (*citing*
28 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The

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

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

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

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

26 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
27 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the
28 trial court should consider in evaluating the reasonableness of a class action settlement agreement

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

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

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

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

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

19 Over the course of more than two years of litigation, the Parties engaged in the investigation
20 of the claims, including the production of documents, class data, and other information, allowing for
21 the full and complete analysis of liabilities and defenses to the claims in this Action. The procedural
22 history and investigation performed was detailed at length in support of the motion for preliminary
23 approval. The Settlement was the product of one arms-length mediation and contentious negotiations
24 through an all-day mediation presided over by Jeffrey Krivis, Esq., a respected and experience mediator
25 of wage and hour class actions. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶
26 6(a)-6(g).

27 2. The Settlement was Reached Through Arm’s Length Bargaining

28 This Settlement is the result of extensive and hard-fought litigation as well as negotiations

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

8 The Parties attended an arms-length mediation session with Jeffrey Krivis, Esq., a respected and
9 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
10 for the mediation, Defendant provided Class Counsel with necessary information for the members of
11 the Class, including a sampling of handwritten punch cards, time and payroll data, and data concerning
12 the composition of the Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger
13 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator. At
14 the conclusion of the all-day mediation, the Parties agreed to this Settlement based upon the Mediator's
15 proposal. Blumenthal Decl. ¶7(b).

16 The fact that the settlement was negotiated with the assistance of an experienced mediator
17 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
18 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
19 2007) ("The settlement was negotiated and approved by experienced counsel on both sides of the
20 litigation, with the assistance of a well-respected mediator with substantial experience in employment
21 litigation[, and] this factor supports approval of the settlement").

22 From July 2021 to October 2021, the settlement agreement and exhibits thereto were finalized
23 and executed. In an Order dated March 30, 2022, the Court issued a tentative ruling identifying issues
24 to be addressed by the Parties. The Parties corrected the issues and finalized and executed the First
25 Amended Class Action Settlement Agreement, which was revised to clarify the allocation of the PAGA
26 Payment is based on the number of pay periods for Aggrieved Employees worked during the PAGA
27 Period and to revise the definition of Released Class Claims. On May 12, 2022, the Court issued its
28 Order granting preliminary approved of the settlement as fair and reasonable to the Class. Blumenthal

1 Decl. ¶7(c).

2 3. Class Counsel is Experienced in Similar Litigation

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

12 4. There Are No Objections and No Requests for Exclusion

13 The reaction of the Class unequivocally supports approval of the Settlement. On June 9, the
14 Settlement Administrator mailed the Court-approved Class Notice to the Class Members, which
15 provided each class member with the terms of the Settlement, including notice of the claims at issue
16 and the financial terms of the settlement, including the attorneys' fees, costs, and service award that
17 were being sought, how individual settlement awards would be calculated, and the specific, estimated
18 payment amount to that individual. See Fowler Decl. ¶ 8, Exh. A. In disseminating the notice, the
19 Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
20 Approval Order. Significantly, there have been no objections and no requests to opt-out. Fowler Decl.
21 ¶¶11, 13. As such, the entire Class will participate in the Settlement and will be sent a settlement
22 check. See Fowler Decl. at ¶ 10; Blumenthal Decl. ¶4.

23 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
24 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
25 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
26 indicative of the adequacy of the settlement."); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
27 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
28 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed

1 settlement should be considered when determining fairness of settlement). Here, where there are no
2 objections, the approval of the class is evident.

3 5. The Strength of Plaintiffs' Case

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

10 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
12 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
13 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
14 argued that all work time was paid for and that the regular rate calculation was lawful. Defendant
15 contend that their meal and rest period policies fully complied with California law and that although
16 Defendant's timekeeping system recorded meal periods, all meal periods were provided. Further,
17 Defendant argued that Defendant was not required to record rest periods. Finally, Defendant could
18 argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened
19 Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims.
20 Defendant also argues that based on their facially lawful practices, they acted in good faith and without
21 willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate
22 wage statements. In fact, under the current state of the law, it is questionable whether these penalties
23 could be awarded at all based upon the alleged meal and rest period violations. If successful,
24 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While
25 Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses have merit
26 and therefore present a serious risk to recovery by the Class. 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, Plaintiffs would be unable
17 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
18 Defendant argued that the individual experience of each putative class member varied with respect to
19 the claims. Defendant could also contest class certification by arguing injury and good faith were case
20 by case determinations that precluded class certification. Plaintiffs are 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 \$2,854 and \$1,134, respectively. See Fowler Decl. ¶10. 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 Plaintiffs 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. Plaintiffs and Class Counsel believe that the
23 Settlement confers substantial benefits upon the Class. Based upon their evaluation, Plaintiffs and
24 Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of
25 the Class. Blumenthal Decl. ¶8(c).

26 Although Plaintiffs 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 Plaintiffs' 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 Plaintiffs' expert, Berger Consulting, in advance of
18 mediation. For the individuals whose claims are at issue in this Actions, Plaintiffs analyzed the data for
19 putative class members and determined the potential maximum damages for the class claims. For the
20 Class, Plaintiffs determined that the unpaid wages due to the alleged miscalculation of the regular rate
21 was \$385,102, the potential off-the-clock damages were \$6,184,474, the maximum potential meal
22 period damages were estimated to be \$3,909,067 based on a violation rate affecting 31% of all shifts,
23 and rest period damages were estimated to be \$6,142,972.60 based on the same violation rate as with
24 meal periods, and, the maximum damages for unreimbursed expenses were estimated to be \$2,136,086
25 estimating unreimbursed expenses at \$50 a month. In total, the damages for the Class were calculated
26 to have a maximum total value of \$16,523,796. In addition, Plaintiffs calculated that the maximum
27 value of the waiting time penalties were between \$848,737 and \$3,492,880, depending on the predicate
28 violation for the penalties, and the maximum value of the wage statement penalties to be \$2,329,950.
These claims for wage statement and waiting time penalties, however, potentially have a much smaller
value, even if damages were awarded, to the extent that they are only derivative of the meal and rest

break claims.³ Blumenthal Decl. ¶8(d).

Consequently, the Gross Settlement Amount represents more than 13.9% of the value of the potential maximum damages at issue for the Class in this case, assuming these amounts could all be proven in full at trial.⁴ The above maximum calculations should then be adjusted in consideration for both the risk of certification and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁵ Blumenthal Decl. ¶8(d). Clearly, the goal of this litigation has been met.

V. CONCLUSION

Plaintiffs respectfully submit 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 requests entry of the Final Approval Order and Judgment, submitted herewith.

³ Importantly, while Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiffs recognized that these claims were subject to various defenses asserted by Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due."). Additionally, at the time of mediation Courts had held that 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, the viability of Plaintiffs' claims on these theories was uncertain.

⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included the PAGA claim in this discussion. The PAGA claim was addressed in Motion for Preliminary Approval.

⁵ *See e.g. Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement which represented "roughly one-sixth of the potential recovery"); *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."); *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 Dated: August 29, 2022

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