

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Email: norm@bamlawca.com
Website: www.bamlawca.com

Attorneys for Plaintiffs

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

JACQUELINE MARSHALL, LANCE
PHILLIPS, KRISTIN KNOWLES,
CHRIS ANDERSON, KAYVAN
MARSHALL, KANE EDWARDS,
JORDAN MOSER, KYLE EVANS,
JENNA DIAZ, TERRI MAURICIO,
JOANN LEE, TEISLEYE SMITH,
LAUREN YOUNG, HEATHER IMHOF,
STEPHANIE SWISHER, JOHN
SICKMAN and MARK HARMON,
individuals, on behalf of themselves and
on behalf of all persons similarly situated,

Plaintiffs,

v.

PHI AIR MEDICAL, LLC, a Limited
Liability Company; PHI HEALTH, LLC,
a Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

Case No.: **63485**

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

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

Dept: 2 / Courtroom A
Judge: Hon. Mark R. Nareau

Action Filed: March 17, 2021
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action Settlement Agreement (the “Agreement”), a true and correct copy of which is attached
4 as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In accordance with the
5 Preliminary Approval Order dated July 26, 2022 (“Preliminary Approval Order”), the approved Class
6 Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiffs Jacqueline Marshall, Lance Phillips, Kristin Knowles,
9 Christopher Anderson, Kayvan Marshall, Kane Edwards, Jordan Moser, Kyle Evans, Jenna Diaz,
10 Terrienne Mauricio, Joann Lee, Teisleye Smith, Lauren Young, Heather Imhof, Stephanie Swisher,
11 John Sickman, and Mark Harmon (“Plaintiffs”) respectfully submit this memorandum in support of the
12 unopposed motion for final approval and the proposed entry of the Final Approval Order and Judgment,
13 submitted herewith. The settlement represents an excellent result for the Class and avoids the delays,
14 risks, and costs of further litigation. After disseminating the notice to the members of the Class, there
15 were **no objections and only one (1) request for exclusion**, which means that almost the entire Class
16 has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a positive response from the
17 Class evidencing their collective approval of the settlement. As a result, Plaintiffs respectfully submit
18 that the class settlement should be finally approved for the same reasons that the Court preliminarily
19 approved the settlement as fair, reasonable, and adequate.

20 **II. THE SETTLEMENT BEFORE THE COURT**

21 Plaintiffs and Defendant PHI Health, LLC (“Defendant”) reached a full and final settlement of
22 the above-captioned action, which is embodied in the Agreement filed concurrently with the Court.
23 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is Three

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who are or previously were employed by Defendant in
27 California who were classified as non-exempt employees at any time during the Class Period.” The
28 “Class Period” is defined as “August 2, 2019 through October 27, 2021.” (Preliminary Approval Order
at 3:18-21.)

1 Hundred Thirty Thousand Dollars (\$330,000). (Agreement at ¶III(38).) Under the Settlement, the
2 Gross Settlement Amount includes all Settlement Shares to Participating Class Members, all Settlement
3 Administration Expenses, Class Counsel Fees Payment and Class Counsel Litigation Expenses
4 Payment, PAGA Payment, and the Class Representative Service Payments. (Agreement at ¶ III(38)-
5 (41).) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement
6 at ¶III(38).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement
7 at ¶ III(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) days of the Effective Date. (Agreement at ¶
10 III(42)(e).) Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the
11 Settlement Administrator will pay the Settlement Shares to Participating Class Members, Class
12 Counsel's attorneys' fees and costs, the PAGA Payment, the Class Representative Service Payment, and
13 employer and employee tax withholdings applicable to the Net Settlement Amount allocated to
14 wages. (Agreement at ¶ III(42)(e).) Blumenthal Decl. ¶3(c).

15 The Net Settlement Amount shall equal the Gross Settlement Amount less Court-approved the
16 Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel Litigation
17 Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses. (Agreement at
18 ¶ I(22).) The Net Settlement Amount will be distributed as the Settlement Shares to each Participating
19 Class Member defined at ¶I(26) as a Class Member who does not timely exclude himself or herself
20 from the Settlement and will therefore receive his or her share of the Net Settlement Amount
21 automatically without the need to return a claim form. (Agreement at ¶ III(40).) The Settlement Shares
22 for Class Members will be calculated as follows: the Settlement Administrator shall divide the Net
23 Settlement Amount by the total number of weeks included in the dates of employment to determine a
24 dollar amount per week ("Weekly Rate"); and (iii) the Settlement Administrator shall then take the
25 number of weeks worked by each Participating Class Member and multiply it by the Weekly Rate to
26 calculate their Settlement Share. (Agreement at ¶ III(40)(b).) Workweeks will be based on Defendant's
27 records, however Class Members will have the right to challenge their workweeks. Blumenthal Decl.
28 ¶ 3(d).

1 Class Members were sent the Court approved Class Notice using the procedure approved by the
2 Court by mailing the notice packets after updating class members' addresses using the National Change
3 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to
4 any forwarding address provided or updated address located. Declaration of Stephen Gomez ("Gomez
5 Decl.") ¶ 7. Class Members were provided with the opportunity to exclude themselves or "opt out" if
6 they did not want to participate in the settlement. (Agreement at ¶ III(42)(c), Ex. A.) Gomez Decl. ¶
7 5, Exh. A. One (1) Class Members submitted a valid request for exclusion. Gomez Decl. ¶ 12. The
8 remaining Class Members are deemed Participating Class Members who are bound by the Settlement
9 and will be entitled to receive a Settlement Share. (Agreement at ¶ III(43)(c).) All Aggrieved
10 Employees will be paid their allocation of the PAGA Payment and will remain bound by the release
11 of the PAGA Released Claims regardless of their request for exclusion. (Agreement at ¶ III(43)(b).)
12 The Class Notice also advised Class Members of their right to object to the Settlement and/or dispute
13 their workweeks. (Agreement at ¶ III(42)(c); Gomez Decl. ¶ 5, Exh. A.) Blumenthal Decl. ¶ 3(e).

14 A Participating Class Member must cash his or her Settlement Share check within 180 days
15 after it is mailed. (Agreement at ¶ III(42)(f).) The Settlement Administrator will send a reminder to
16 Participating Class Members who have not cashed their checks within 120 days after its last mailing
17 to the affected individual. (Agreement at ¶ III(42)(f).) Any settlement checks not cashed within 180
18 days will be voided and any the funds from such uncashed checks will be paid to the California State
19 Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not
20 cash their check. (Agreement at ¶ III(44)(j).) Blumenthal Decl. ¶ 3(f).

21 Simpluris was appointed by the Court as the Settlement Administrator for the Settlement.
22 (Agreement at ¶ III(41), Preliminary Approval Order at ¶ 10.). From the Gross Settlement Amount, the
23 Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount
24 not to exceed \$5,000. (Agreement at ¶ III(39)(d).) As set forth in the Gomez Decl. at ¶ 15, the
25 Settlement Administration Expenses, including fees and costs incurred to-date, as well as anticipated
26 fees and costs for completion of the settlement administration, are \$4,295. Blumenthal Decl. ¶ 3(g).

27 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
28 to exceed one-third (1/3) of the Gross Settlement Amount, as the Class Counsel Fees Payment.

(Agreement at ¶ III(39)(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ III(39)(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$6,500 to each Plaintiff as their Class Representative Service Payments. (Agreement at ¶ III(39)(a).) In support of this separate motion for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is providing evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

Subject to Court approval, Ten Thousand Dollars (\$10,000) will be paid from the Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% (\$7,500) to the LWDA as the LWDA's share of the PAGA Payment pursuant to PAGA and 25% (\$2,500) will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶ III(39)(c).) As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement. Blumenthal Decl. ¶3(i).

The Settlement is fair, adequate and reasonable to the class and should be finally approved for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued at \$330,000 is an excellent result for the Class. This result is particularly favorable in light of the fact that liability and class certification in this case were far from certain in light of the defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*

1 v. *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
2 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

26 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
27 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); see also *Officers for Justice v. Civil Service*
28 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The purpose of the requirement is "the protection of those

1 class members, including the named plaintiffs, whose rights may not have been given due regard by
2 the negotiating parties." *Dunk, supra*, at 1801.

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

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

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

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

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

24 Over the course of two years of litigation, the Parties engaged in the investigation of the claims,
25 including the production of documents, class data, and other information, allowing for the full and
26 complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
27 investigation performed was detailed at length in support of the motion for preliminary approval. The
28 Settlement was the product of one arms-length mediation and contentious negotiations through an

1 all-day mediation presided over by Mark Rudy, Esq., a respected and experience mediator of wage and
2 hour class actions. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

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

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

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

19 The fact that the settlement was negotiated with the assistance of an experienced mediator
20 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
21 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
22 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
23 litigation, with the assistance of a well-respected mediator with substantial experience in employment
24 litigation[, and] this factor supports approval of the settlement”).

25 From September 2021 to February 2022, the settlement agreement and exhibits thereto were
26 finalized. The Class Action Settlement Agreement was thereafter executed and then presented by
27 motion to this Court for preliminary approval. On July 26, 2022, the Court issued its Order granting
28 preliminary approved of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

1 3. Class Counsel is Experienced in Similar Litigation

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

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

12 The reaction of the Class unequivocally supports approval of the Settlement. On August 23,
13 2022, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members,
14 which provided each class member with the terms of the Settlement, including notice of the claims at
15 issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award
16 that were being sought, how individual settlement awards would be calculated, and the specific,
17 estimated payment amount to that individual. See Gomez Decl. ¶ 8, Exh. A. In disseminating the
18 notice, the Settlement Administrator followed the notice procedures authorized by the Court in its
19 Preliminary Approval Order. Significantly, there have been no objections and only one (1) request for
20 exclusion. Gomez Decl. ¶¶ 12, 14. As such, nearly the entire Class will participate in the Settlement
21 and will be sent a settlement check. See Gomez Decl. at ¶¶ 12, 14; Blumenthal Decl. ¶ 4.

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

1 objections, the approval of the class is evident.

2 5. The Strength of Plaintiffs' Case

3 The Action generally alleges that Plaintiffs and other Class Members were not properly paid
4 all overtime wages for hours worked, were not provided meal and rest periods, were not timely paid
5 earned wages, were not provided reimbursement for required expenses, were not provided accurate
6 itemized wage statements, were not paid all wages at the time of termination. The Action seeks unpaid
7 wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and
8 owing to Plaintiffs and the other Class Members by virtue of the foregoing claims. Blumenthal Decl.
9 ¶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 recorded and paid, and that there was no miscalculation of the regular
15 rate. Defendant contend that its meal and rest period policies fully complied with California law in
16 light of the enactment of Labor Code §887. Defendant's timekeeping system recorded meal periods
17 and paid some meal and rest premiums which meant that Defendant could therefore argue that any
18 missed meals were compensated. Further, Defendant argued that Defendant was not required to record
19 rest periods and that there was no evidence that rest periods were not provided given the facially lawful
20 policies. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*,
21 53 Cal. 4th 1004 (2012), weakens Plaintiffs' claims, on liability, value, and class certifiability as to the
22 meal and rest period claims. Defendant also argues that based on its facially lawful practices, it acted
23 in good faith and without willfulness, which if accepted would negate the claims for waiting time
24 penalties and/or inaccurate wage statements. In fact, under the current state of the law, it is
25 questionable whether these penalties could be awarded at all based upon the alleged meal and rest
26 period violations. If successful, Defendant's defenses could eliminate or substantially reduce any
27 recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant
28 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.

1 Blumenthal Decl. ¶8(a).

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

4 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
5 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
6 Associates were misclassified as exempt. In addition to the uncertainties raised by
7 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
8 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.

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

13 The potential complexity and possible duration of trial also weigh in favor of granting
14 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
15 uncertainty of outcome, and believe defendant would appeal in the event of adverse
16 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.

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

19 There was also a significant risk that, if the Actions were not settled, Plaintiffs would be unable
20 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
21 Defendant argued that the individual experience of each putative class member varied with respect to
22 the claims. Defendant could also contest class certification by arguing injury and good faith were case
23 by case determinations that precluded class certification. Plaintiffs are aware of cases where class
24 certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256
25 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
26 contended that individual differences in work experiences not only impacted damages but would also
27 impact certification. Finally, even if class certification was successful, as demonstrated by the
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1 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
2 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
3 While other cases have approved class certification in wage and hour claims, class certification in this
4 action would have been hotly disputed and was by no means a foregone conclusion. Blumenthal Decl.
5 ¶8(b).

6 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
7 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
8 substantial defenses both to liability and to class certification. **The average Class Settlement Share**
9 **is approximately \$1,232.87 and the highest Class Settlement Share is approximately \$2,249.80.**
10 See Gomez Decl. ¶11. Given the complexities of this case, the defenses, along with the uncertainties
11 of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
12 approved. Blumenthal Decl. at ¶8(e).

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

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

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

1 the Class. Blumenthal Decl. ¶8(c).

2 Although Plaintiffs and Class Counsel believe that their case has merit, which Defendant
3 continues to vigorously deny, they recognized the potential risks both sides would face if litigation of
4 these Actions continued. As the federal court held in *Glass*, where the parties faced uncertainties
5 similar to those in this litigation:

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

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 maximum potential unpaid overtime due to the alleged
21 miscalculation of the regular rate was \$34,775, the potential off-the-clock damages were \$39,367 for
22 an alleged 5 min each day for donning and doffing, the maximum damages for unreimbursed expenses
23 were estimated to be \$34,040 based upon \$40 per month for cell phone usage, the alleged underpaid
24 meal and rest period premiums were \$2,296, and the meal period and rest period claims based upon
25 alleged on-duty policies had no monetary value because of the newly enacted Proposition 11 codified
26 in Labor Code §887 permitted the on-duty breaks. In total, the damages for the Class were calculated
27 to have a maximum total value of \$110,478. In addition, Plaintiffs calculated that the maximum value
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1 of the waiting time penalties were \$147,685, and the maximum value of the wage statement penalties
2 were \$181,350, however, these wage statement and waiting time penalties claims potentially have a
3 much smaller value, even if damages were awarded, to the extent that they are only derivative of the
4 meal and rest break claims.³ Blumenthal Decl. ¶8(d).

5 Consequently, the Gross Settlement Amount represents more than the potential maximum
6 damages at issue for the Class in this case and 75% of the combination of the maximum damages and
7 maximum statutory penalties, assuming these amounts could all be proven in full at trial.⁴ The above
8 maximum calculations should then be adjusted in consideration for both the risk of certification and
9 the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as
10 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁵
11 Blumenthal Decl. ¶8(d). Clearly, the goal of this litigation has been met.

12 **V. CONCLUSION**

13 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness

14
15 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
16 226, at mediation Plaintiffs recognized that these derivative claims were subject to additional defenses
17 asserted by Defendant, including, but not limited to, a good faith dispute defense as to whether any
18 premium wages for meal or rest periods or other wages were owed given Defendant's position that
19 Plaintiffs were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
20 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
21 dispute as to whether and when the wages were due."). Additionally, 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.

22 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included
23 the PAGA claim in this discussion. The PAGA claim is addressed in the Motion for Preliminary
Approval in paragraph 33 of the Declaration of Nordrehaug.

24 ⁵ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
v. W.W. Granger, Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
26 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
27 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
28 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 established in California law and should therefore be finally approved as fair, reasonable and adequate
2 and requests entry of the Final Approval Order and Judgment, submitted herewith.

3 Dated: November 8, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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5 By:


6 Kyle Nordrehaug

7 Attorneys for Plaintiffs
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