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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF TULARE**

16 MATTHEW RAMIREZ, ADAM
17 VILLASENOR, LUIS FLORES,
18 STEVEN SAEVANG, and PEDRO
19 GUTIERREZ, individuals, on behalf of
20 themselves and on behalf of all persons
21 similarly situated,

22 Plaintiff,

23 vs.

24 PREGIS INNOVATIVE PACKAGING
25 LLC, a Limited Liability Company;
26 MANPOWER, U.S. INC., a Corporation,
27 and Does 1 through 50, Inclusive,

28 Defendants.

Case No.: **VCU285886**
Consolidated for All Purposes with
Case No. VCU285887-**CU-OR-CXC**

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

Hearing Date: February 14, 2023
Hearing Time: 8:30 a.m.

*[Hearing scheduled by Order dated August 18, 2022
at paragraph 12]*

Dept: 7
Judge: Hon. Bret Hillman

Action Filed: February 3, 2021
Trial Date: None 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 August 18, 2022 (“Preliminary Approval Order”), the approved
6 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 Matthew Ramirez, Adam Villasenor, Luis Flores, Steven
9 Saevang, and Pedro Gutierrez (“Plaintiffs”) respectfully submit this memorandum in support of the
10 unopposed motion for final approval and the proposed entry of the Final Approval Order and Judgment,
11 submitted herewith. The settlement represents an excellent result for the Class and avoids the delays,
12 risks, and costs of further litigation. After disseminating notice to the members of the Class, there were
13 **no objections and no requests for exclusion**, which means that the entire Class (100 %) has elected
14 to participate in the Settlement. Blumenthal Decl. ¶4. This is a positive response from the Class
15 evidencing their collective approval of the settlement. As a result, Plaintiffs respectfully submit that
16 the class settlement should be finally approved for the same reasons that the Court preliminarily
17 approved the settlement as fair, reasonable, and adequate.

18
19 **II. THE SETTLEMENT BEFORE THE COURT**

20 Plaintiffs and Defendants Pregis Innovative Packaging LLC (“Pregis”) and Manpower, U.S. Inc.
21 (“Manpower”) (collectively “Defendants”) reached a full and final settlement of the above-captioned
22 action, which is embodied in the Agreement filed concurrently with the Court. As consideration for
23 this Settlement, the Gross Settlement Amount to be paid by Defendants is Seven Hundred Eighty-Four

24
25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is “all individuals who are or previously were employed by Defendant Pregis and all
27 individuals who were employed by Defendant Manpower and assigned to work at a Pregis facility in
28 California who were classified as hourly non-exempt employees at any time during the Class Period.”
The “Class Period” is from May 8, 2018 through February 21, 2022. (Preliminary Approval Order, ¶
5)

1 Thousand Six Hundred Twenty Dollars (\$784,620), which is the original Gross Settlement Amount of
2 \$750,000 plus the additional class size modification amount of \$34,620, with Manpower to contribute
3 \$20,000 and Pregis to pay the remainder. (Agreement at ¶I(19).) Under the Settlement, the Gross
4 Settlement Amount consists of the following elements: (1) payment of the Settlement Shares to the
5 Class; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Settlement
6 Administration Expenses; (4) Class Representative Service Payments to the Plaintiffs; and (5) the
7 PAGA Payment. (Agreement at ¶ I(19).) The Gross Settlement Amount does not include Defendants'
8 share of payroll taxes. (Agreement at ¶ III(39).) Blumenthal Decl. ¶ 3(a). The Gross Settlement
9 Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ III(39).) Blumenthal Decl.
10 ¶3(b).

11 Defendants shall fund the Gross Settlement Amount and the amount necessary to pay
12 Defendants' share of payroll taxes within fifteen (15) business days of the Effective Date. (Agreement
13 at ¶ III(43)(j).) The Settlement Shares to Participating Class Members will be mailed by the Settlement
14 Administrator within fifteen (15) business days after the funding of the Gross Settlement Amount.
15 (Agreement at ¶ III(43)(j).) Blumenthal Decl. ¶3(c).

16 The Net Settlement Amount equals the net amount available for payment to the Class after
17 deducting the Court-approved amounts for the Class Representative Service Payments, the Class
18 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the
19 Settlement Administration Expenses. (Agreement at ¶ I(21).) The Net Settlement Amount will be
20 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
21 ("Participating Class Members"). (Agreement at ¶¶ I(24) and III(41).) The Settlement Share will be
22 calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the
23 total number of weeks included in the dates of employment to determine a dollar amount per week
24 ("Weekly Rate"); and (iii) the Settlement Administrator shall then take the number of weeks worked
25 by each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement
26 Share. (Agreement at ¶ III(41)(b).) Workweeks are based on Defendants' records, however, Class
27 Members have the right to challenge the number of workweeks. Blumenthal Decl. ¶ 3(d).

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

1 Court by mailing the notice packets after updating class members' addresses using the National Change
2 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to
3 any forwarding address provided or updated address located. (Declaration of Madely Nava ("Nava
4 Decl.") ¶¶ 6-8.) Class Members were provided with the opportunity to exclude themselves or "opt out"
5 if they did not want to participate in the settlement. (Agreement at ¶ III(43)(c)(iii), Ex. A; Nava Decl.
6 ¶ 11, Exh. A.) No Class Members submitted an Opt-Out Request and, therefore, all Class Members are
7 deemed Participating Class Members who are bound by the Settlement and will be entitled to receive
8 a Settlement Share. (Agreement at ¶ III(43)(c)(iii); Nava Decl. ¶ 11.) All Aggrieved Employees will
9 still be paid their allocation of the PAGA Payment, respectively, and will remain bound by the release
10 of the Released PAGA Claims. (Agreement at ¶ III(43)(c)(iii).) The Class Notice also advised Class
11 Members of their right to object to the Settlement and/or dispute their workweeks. (Agreement at ¶
12 III(43)(c)(i)-(ii), Ex. A; Nava Decl. ¶¶ 12-13, Exh. A.) Blumenthal Decl. ¶ 3(e).

13 A Participating Class Member must cash his or her Settlement Share check within 180 days
14 after it is mailed. (Agreement at ¶ III(43)(k).) The Settlement Administrator will send a reminder to
15 Participating Class Members who have not cashed their checks within 120 days after its last mailing
16 to the affected individual. (Agreement at ¶ III(43)(k).) Any settlement checks not cashed within 180
17 days will be voided and any funds from such uncashed checks will be paid to the California State
18 Controller's Unclaimed Property Fund in the name of the Participating Class Member. Checks to
19 Aggrieved Employees shall be handled in the same manner (Agreement at ¶ III(43)(k).) Blumenthal
20 Decl. ¶ 3(f).

21 ILYM Group was appointed as the Settlement Administrator. (Agreement at ¶ III(42);
22 Preliminary Approval Order at ¶ 9.) From the Gross Settlement Amount, the Settlement Administrator
23 shall be paid for the expenses of administering the Settlement in an amount not to exceed \$12,000.
24 (Agreement at ¶ III(40)(d).) As set forth in the Nava Decl. at ¶ 15, the Settlement Administration
25 Expenses, including fees and costs incurred to-date, as well as anticipated fees and costs for completion
26 of the settlement administration, are \$10,440.00. 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(47)(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(40)(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000 each to the Plaintiffs as the Class Representative Service Payments, which was reduced to \$5,000 by this Court at preliminary approval. (Agreement at ¶ III(40)(a); Preliminary Approval Order at ¶ 4) The Class Counsel Fee Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payments shall all be paid from the Gross Settlement Amount. 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).

The Parties will seek approval from the Court for the PAGA Payment of \$20,000 out of the Gross Settlement Amount, which shall be allocated 75% (\$15,000) to the LWDA as the LWDA's share of the PAGA Payment pursuant to PAGA and 25% (\$5,000) will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶ III(40)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims, whether or not they opt out of the Class. (Agreement at ¶ III(40)(c).) As set forth in the accompany 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 Seven Hundred Eighty-Four Thousand Six Hundred Twenty Dollars (\$784,620) is an excellent result for the Class. This result is particularly favorable in light of the fact that liability was far from certain in light of the defenses asserted by Defendants. Given the complexities of this case and the defenses asserted, 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. v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*

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

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

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

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

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

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

26 Over the course of litigation, the Parties engaged in the investigation of the claims, including
27 formal discovery, production of documents, class data, and other information, allowing for the full and
28 complete analysis of liabilities and defenses to the claims in this Action. The procedural history and

1 investigation performed was detailed at length in support of the motion for preliminary approval. The
2 Settlement was the product of one arms-length mediation and contentious negotiations presided over
3 by Jeffrey Krivis, Esq., a respected and experience mediator of wage and hour class actions. The
4 details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

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

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

15 The Parties attended an arms-length mediation session with Jeffrey Krivis, Esq., a respected and
16 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
17 for the mediation sessions, Defendants provided Class Counsel with necessary information for the
18 members of the Class, including time data, payroll data and data concerning the composition of the
19 Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger Consulting Group,
20 and prepared and submitted a mediation brief and damage valuation to the Mediator. Following the
21 mediation, the Parties were able to agree to settle the Action based upon a mediator's proposal which
22 was memorialized in the form of a Memorandum of Understanding. Blumenthal Decl. ¶7(b).

23 The fact that the settlement was negotiated with the assistance of an experienced mediator
24 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
25 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
26 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
27 litigation, with the assistance of a well-respected mediator with substantial experience in employment
28 litigation[, and] this factor supports approval of the settlement”).

1 From January 2022 to May 2022, the settlement agreement and exhibits thereto were finalized
2 and executed, and presented to this Court on July 19, 2022 for preliminary approval. The Court
3 requested supplemental briefing and information, which was provided by the Supplemental Declaration
4 of Kyle Nordrehaug, submitted on August 8, 2022. Following this supplemental submission, this Court
5 granted preliminary approval and the Preliminary Approval Order was entered by this Court on August
6 18, 2022. Blumenthal Decl. ¶7(c).

7 3. Class Counsel is Experienced in Similar Litigation

8 Class Counsel in this matter has extensive class action experience and has represented thousands
9 of persons in class actions including employment litigation, wage and hour class actions, and complex
10 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
11 claims similar to this case and have been approved as experienced class counsel during contested
12 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
13 knowledgeable in this area of law. The experience of counsel and class action cases managed and
14 settled by the Class Counsel in this action is provided to the Court in the Blumenthal Decl. at Exhibit
15 #1. Class Counsel have participated in every aspect of the settlement discussions and have concluded
16 the settlement is fair, adequate and reasonable and in the best interests of the Class. Blumenthal Decl.
17 ¶ 3(j).

18 4. There Are No Objections And No Opt-Outs

19 The reaction of the Class unequivocally supports approval of the Settlement. On September 20,
20 2022, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members,
21 which provided each class member with the terms of the Settlement, including notice of the claims at
22 issue and the financial terms of the settlement, including the attorneys' fees, costs, and service awards
23 that were being sought, how individual settlement awards would be calculated, and the specific,
24 estimated payment amount to that individual. See Nava Decl. ¶ 7, Exh. A. In disseminating the notices,
25 the Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
26 Approval Order. Significantly, there have been no objections and no opt-outs. Nava Decl. ¶¶ 11-12.
27 As a result, the entire Class will participate in the Settlement and will be sent a settlement check,
28 representing 100% of the Class. See Nava Decl. at ¶ 13; Blumenthal Decl. ¶4.

1 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
2 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
3 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
4 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
5 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
6 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
7 settlement should be considered when determining fairness of settlement). Here, where there are no
8 objections, the approval of the class is evident.

9 5. The Strength of Plaintiffs' Case

10 The Action generally alleges that Plaintiffs and other Class Members were not provided all
11 minimum wages and overtime compensation and at the correct rate, were not provided and/or paid for
12 meal and rest periods, were not reimbursed for reasonable business expenses, and were not provided
13 accurate itemized wage statements. The Action seeks unpaid wages, penalties, attorney fees, litigation
14 costs, and any other equitable or legal relief allegedly due and owing to Plaintiffs and the other Class
15 Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

16 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
17 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
18 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
19 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
20 argued that all work time was recorded and paid. Defendants contend that their meal and rest period
21 policies fully complied with California law, that Defendants' timekeeping system recorded meal
22 periods, and that meal periods were provided. Defendants also argued that meal period premiums were
23 paid when a meal period was not provided, which negated the meal period claim. Further, Defendants
24 argued that Defendants were not required to record rest periods and that there was no evidence that rest
25 periods were not provided given the facially lawful policies. Finally, Defendants could argue that the
26 Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakens Plaintiffs'
27 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendants also
28 argue that based on their facially lawful practices, they acted in good faith and without willfulness,

1 which if accepted would negate the claims for waiting time penalties and/or inaccurate wage
2 statements. Under the state of the law at the time of mediation, it was questionable whether these
3 penalties could be awarded at all based upon the alleged meal and rest period violations. If successful,
4 Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While
5 Plaintiffs believe that these defenses could be overcome, Defendants maintain these defenses have merit
6 and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

9 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
10 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
11 Associates were misclassified as exempt. In addition to the uncertainties raised by
12 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
13 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. [...]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.

14 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
15 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
16 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
17 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

28 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
to obtain class certification and thereby not recover on behalf of any employees other than themselves.
Defendants argued that the individual experience of each putative class member varied with respect to
the claims. Defendants could also contest class certification by arguing injury and good faith were case

1 by case determinations that precluded class certification. Plaintiffs are aware of cases where class
2 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256
3 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendants also
4 contended that individual differences in work experiences not only impacted damages but would also
5 impact certification. Finally, even if class certification was successful, as demonstrated by the
6 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
7 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
8 While other cases have approved class certification in wage and hour claims, class certification in this
9 action would have been hotly disputed and was by no means a foregone conclusion. Blumenthal Decl.
10 ¶8(b).

11 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
12 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
13 substantial defenses. Currently, the maximum and average class member allocation are \$3,270.36 and
14 \$1,825.16, respectively. *See* Nava Decl. ¶14. Given the complexities of this case, the defenses, along
15 with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate,
16 and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

24 Plaintiffs and Class Counsel recognize the expense and length of a trial against Defendants
25 through possible appeals which could take at least another two or three years. Class Counsel also have
26 taken into account the uncertain outcome, the risk of litigation, especially in complex actions such as
27 this one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and
28 alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions and appeals would

1 have been inevitable. Costs would have mounted and recovery would have been delayed if not denied,
2 thereby reducing the benefits of an ultimate victory. Plaintiffs and Class Counsel believe that the
3 Settlement confers substantial benefits upon the Class. Based upon their evaluation, Plaintiffs and
4 Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of
5 the Class. Blumenthal Decl. ¶8(c).

6 Although Plaintiffs and Class Counsel believe that their case has merit, which Defendants
7 continue to vigorously deny, they recognized the potential risks both sides would face if litigation of
8 these Actions continued. As the federal court held in *Glass*, where the parties faced uncertainties
9 similar to those in this litigation:

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

18 *Id.* at *12.

19 7. The Amount Offered in Settlement

20 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
21 to Plaintiffs' claims. As set forth in the Declaration of Kyle Nordrehaug filed in support of preliminary
22 approval which discussed the value of the class claims in detail, the Gross Settlement Amount compares
23 favorably to the value of the claims.

24 The calculations to compensate for the amount due to the Class Members at the time this
25 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting Group, in advance
26 of mediation. As to the Class whose claims are at issue in this Action, Plaintiffs used an expert to
27 analyze the data and determine the potential unpaid wages for the employees. For the Class, Plaintiffs
28 determined that the maximum potential unpaid overtime due to the alleged miscalculation of the regular
rate and the Ferra claim was \$5,813, the maximum potential unpaid wages due to the alleged off-the-
clock temperature checks was \$99,314, the maximum potential meal period damages were estimated
to be \$689,372 based upon an alleged 38.5% violation rate evidenced in the time punch records, after

1 deducting the meal premiums paid by Defendants, the maximum rest period damages were estimated
2 to be \$2,107,484 based upon a 100% violation rate, and the maximum damages for unreimbursed
3 expenses were estimated to be \$167,672 based upon cell phone expense of \$30 per month. In total, the
4 damages for the Class were calculated to have a maximum total value of \$3,069,655. In addition,
5 Plaintiffs calculated that the maximum value of the waiting time penalties was between \$144,772 and
6 \$339,44, depending on the predicate violation, and the maximum value of the wage statement penalties
7 were \$601,600, however, these wage statement and waiting time penalties claims potentially had a
8 much smaller value, even if damages were awarded, to the extent that they are only derivative of the
9 meal and rest break claims.³ Defendants dispute Plaintiffs' estimates and believes the amount they can
10 recover for themselves and the Class, if anything at all, is actually much lower. Blumenthal Decl. ¶8(d).

11 Consequently, the Gross Settlement Amount represents more than 24% of the value of the
12 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
13 proven in full at trial.⁴ The above maximum calculations should then be adjusted in consideration for
14 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
15 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
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19 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
20 226, at mediation Plaintiffs recognized that these claims were subject to various defenses asserted by
21 Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages
22 for meal or rest periods or other wages were owed given Defendants' position that Plaintiffs were
23 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
24 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
25 and when the wages were due."). Additionally, Courts have held that violations of the meal and rest
26 period regulations, which require payment of a "premium wage" for each improper meal period, do **not**
27 give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang's China Bistro, Inc.*, 245 Cal.
28 App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336
(2018). As a result, at the time of mediation, the viability of Plaintiff's claims on these theories was
uncertain.

⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
PAGA claim was addressed in the Declaration of Kyle Nordrehaug at ¶33 filed in support of Plaintiffs'
Motion for Preliminary Approval of Class Action Settlement.

1 certainly fair and reasonable.⁵ Blumenthal Decl. ¶8(d). Clearly, the goal of this litigation has been met.

2 **V. CONCLUSION**

3 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness
4 established in California law and should therefore be finally approved as fair, reasonable and adequate
5 and requests entry of the Final Approval Order and Judgment, submitted herewith.

6 Respectfully submitted,

7 Dated: January 18, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

8 By: /s/ Kyle Nordrehaug
9 Kyle R. Nordrehaug
10 Attorney for Plaintiffs
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21 ⁵ See e.g. *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
22 settlement where the settlement amount constituted approximately 25% of the estimated overtime
23 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
24 (N.D. Cal. 2015) (granting final approval where “the proposed Total Settlement Amount represents
25 approximately 10% of what class might have been awarded had they succeeded at trial.”); *Dunleavy*
26 *v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
27 which represented “roughly one-sixth of the potential recovery”); *Stovall-Gusman v. W.W. Granger,*
28 *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).