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

ERYN WHITE, on behalf of himself and
on behalf of all persons similarly
situated,

Plaintiff,

vs.

ADVANCED HOME HEALTH, INC.,
California Corporation; ADVANCED
HOMES HEALTH HOSPICE, INC. a
California Corporation; ADVANCED
HOME HEALTH NORTHBAY, INC. a
California Corporation; ADVANCED
HOME HEALTH SAN DIEGO, INC., a
California Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE No. **34-2021-00295374**

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

Hearing Date: June 28, 2022

Hearing Time: 9:00 a.m.

[Hearing scheduled by Order dated February 24,
2022]

Judge: Hon. Jill H. Taley
Dept: 25

Action Filed: February 26, 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 February 24, 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. Plaintiff Eryn White (“Plaintiff”) respectfully submits this memorandum
9 in support of the unopposed motion for final approval and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class
11 who will receive an average Settlement Share of \$3,072, with some Class Members receiving as much
12 as \$20,000, and avoids the delays, risks, and costs of further litigation. After disseminating the notice
13 to the members of the Class, there were **no objections and only one (1) request for exclusion**, which
14 means that almost the entire Class has elected to participate in the Settlement. Blumenthal Decl. ¶ 4.
15 This is a positive response from the Class evidencing their collective approval of the settlement. As
16 a result, Plaintiff respectfully submits that the class settlement should be finally approved for the same
17 reasons that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

19 Plaintiff and Defendants Advanced Home Health, Inc., Advanced Home Health and Hospice,
20 Inc., Advanced Home Health Northbay, Inc., Advanced Home Health San Diego, Inc. (“Defendant”)
21 reached a full and final settlement of the above-captioned action, which is embodied in the Agreement
22 filed concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount
23 to be paid by Defendant is Three Million One Hundred Forty Thousand Dollars (\$3,140,000).

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 Defendants in
27 California and who were classified as non-exempt employees at any time during the Class Period.” The
28 “Class Period” is defined as “February 26, 2017 to August 18, 2021.” (Preliminary Approval Order
at 3:10-16.)

1 (Agreement at ¶¶ I(S).) Under the Settlement, the Gross Settlement Amount consists of the following
2 elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class
3 Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) Class
4 Representative Service Payment to Plaintiff; and (5) the PAGA Payment. (Agreement at ¶ I(S).)
5 Blumenthal Decl. ¶3(a).

6 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement
7 at ¶ III(A).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement
8 at ¶ III(A).) Blumenthal Decl. ¶3(b).

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

14 The Net Settlement Amount shall equal the net amount available for payment to the Class after
15 deducting the Court-approved amounts for the Class Representative Service Payment, the Class
16 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the
17 Settlement Administration Expenses. (Agreement at ¶ I(U).) The Net Settlement Amount will be
18 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
19 ("Participating Class Members"). (Agreement at ¶ III(C).) The Settlement Share will be calculated as
20 follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the total number
21 of weeks worked included in the dates of employment to determine a dollar amount per week ("Weekly
22 Rate"); and (b) the Settlement Administrator shall then take the number of weeks worked by each
23 Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement
24 Share.(Agreement at ¶ III(C)(2).) Workweeks were based on Defendants' records, however Class
25 Members had the right to challenge the number of 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

any forwarding address provided or updated address located. Declaration of Taylor Mitzner ("Mitzner Decl.") ¶ 7. Class Members were provided with the opportunity to exclude themselves or "opt out" if they did not want to participate in the settlement. (Agreement at ¶ III(E)(3).) Mitzner Decl. ¶ 5, Exh. A. One (1) Class Member submitted a request for exclusion. Mitzner Decl. ¶ 8. The remaining Class Members are deemed Participating Class Members who are bound by the Settlement and will be entitled to receive a Settlement Share. (Agreement at ¶ III(E)(3).) Aggrieved Employees who opt out the Settlement will still be paid their allocation of the PAGA Payment, respectively, and will remain subject to the release of the Released PAGA Claims, regardless of their request for exclusion. (Agreement at ¶ III(E)(3)(c).) The Class Notice also advised Class Members of their right to object to the Settlement and/or dispute their workweeks. (Agreement at ¶ III(E)(3)); Mitzner Decl. ¶ 5, Exh. A.) Blumenthal Decl. ¶ 3(e).

A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed. (Agreement at ¶ III(E)(10).) The Settlement Administrator will send a reminder to Participating Class Members who have not cashed their checks within 120 days after its last mailing to the affected individual. (Agreement at ¶ III(E)(10).) Any settlement checks not cashed within 180 days will be voided and any funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name of the Participating Class Member. (Agreement at ¶ III(E)(10).) Blumenthal Decl. ¶ 3(f).

Phoenix Settlement Administrators was appointed by the Court as the Settlement Administrator for the Settlement. (Agreement at ¶ III(D)). From the Gross Settlement Amount, the Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount not to exceed \$12,000. (Agreement at ¶ III(B)(5).) As set forth in the Mitzner Decl. at ¶ 16, the Settlement Administration Expenses, including fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement administration, are \$10,950. Blumenthal Decl. ¶ 3(g).

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement at ¶ III(B)(3).) Class Counsel will also be allowed to apply separately for an award of Class Counsel litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ III(B)(3).) Subject

1 to Court approval, the Agreement provides for a payment of no more than \$10,000 to Plaintiff as the
2 Class Representative Service Payment. (Agreement at ¶ III(B)(1)).) In support of this separate motion
3 for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is providing
4 evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

5 Subject to Court approval, Seventy-Five Thousand Dollars (\$75,000) will be paid from the
6 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
7 Labor Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code
8 § 2699(i), the PAGA Payment shall be allocated as follows: \$56,250 to the LWDA (the "LWDA
9 Payment") as the LWDA's share of the settlement of civil penalties pursuant to the PAGA, and \$18,750
10 will be distributed to the Aggrieved Employees based on their respective pay periods worked during
11 the PAGA Period. (Agreement at ¶ III(B)(4).) As set forth in the accompanying proof of service, the
12 LWDA has been served with this motion and the Agreement. Blumenthal Decl. ¶3(i).

13 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
14 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
15 is "fair, adequate and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
16 at \$3,140,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
17 that liability and class certification in this case were far from certain in light of the defenses asserted
18 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
19 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
20 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

28 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class

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

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

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

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

28 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*

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

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

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

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

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

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

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

1 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
2 before an experienced and well-respected mediator. Defendants have expressly denied and continue
3 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
4 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
5 Class Claims in accordance with this Settlement.³ Class Counsel are experienced and qualified to
6 evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and
7 Class Counsel are particularly experienced in wage and hour employment law class actions, as Class
8 Counsel has previously litigated and certified similar claims against other employers. Blumenthal Decl.
9 ¶7(a).

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

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

23 From October 2021 to January 2022, the Agreement and exhibits thereto were drafted, finalized
24

25 ³ The release applicable to the Class is tethered to allegations in the Action and the “Released Class
26 Claims” are “any and all causes of action alleged in the operative complaint, or that could have been
27 alleged based upon the facts alleged in the operative complaint, which arose during the Class Period,
28 and expressly excluding all other claims, including claims for wrongful termination, unemployment
insurance, disability, social security, and workers' compensation, and claims outside of the Class
Period” (Agreement at ¶ III(F(1)).)

1 and executed, and then presented by motion to this Court for preliminary approval. On February 24,
2 2022, the Court issued its Order granting preliminary approval of the settlement as fair and reasonable
3 to the Class. Blumenthal Decl. ¶7(c).

4 3. Class Counsel is Experienced in Similar Litigation

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

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

15 The reaction of the Class unequivocally supports approval of the Settlement. On March 24,
16 2022, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members,
17 which provided each class member with the terms of the Settlement, including notice of the claims at
18 issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award
19 that were being sought, how individual settlement awards would be calculated, and the specific,
20 estimated payment amount to that individual. See Mitzner Decl. ¶ 5, Exh. A. In disseminating the
21 notice, the Settlement Administrator followed the notice procedures authorized by the Court in its
22 Preliminary Approval Order. Significantly, there have been no objections and only one (1) request for
23 exclusion. Mitzner Decl. ¶¶ 5-9. As a result, almost the entire Class will participate in the Settlement
24 and will be sent a settlement check. See Mitzner Decl. at ¶¶ 5-11; Blumenthal Decl. ¶4.

25 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
26 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
27 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
28 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119

(3d. Cir. 1990) (29 objections out of 281 member class “strongly favors settlement”); *Laskey v. Int’l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed settlement should be considered when determining fairness of settlement). Here, where there are no objections, the approval of the class is evident.

5. The Strength of Plaintiff’s Case

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

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendants present serious threats to the claims of the Plaintiff and the other Class Members. Defendants asserted that Defendants’ practices complied with all applicable Labor laws. Defendants argued that all work time was recorded and paid for. Defendants contend that their meal and rest period policies fully complied with California law because Defendants’ timekeeping system recorded meal periods and all meal periods were provided. Defendants paid some meal premiums and could therefore argue that any missed meals were compensated. Further, Defendants argued that Defendants were not required to record rest periods. Finally, Defendants could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff’s claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendants also argue that based on their facially lawful practices, they acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. In fact, under the state of the law at the time of mediation, it was questionable whether these penalties could be awarded at all based upon the alleged meal and rest period violations. If successful, Defendants’ defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk

1 to recovery by the Class. 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. [...]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 Action was not settled, Plaintiff would be unable
20 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
21 Defendants argued that the individual experience of each putative class member varied with respect to
22 the claims. Defendants could also contest class certification by arguing injury and good faith were case
23 by case determinations that precluded class certification. Plaintiff is aware of cases where class
24 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
25 (2019) (denying certification of meal and rest break claims). Defendants also contended that individual
26 differences in work experiences not only impacted damages but would also impact certification.
27 Finally, even if class certification was successful, as demonstrated by the California Supreme Court
28

1 decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to
2 overcome for a class wide recovery even where the class has been certified. While other cases have
3 approved class certification in wage and hour claims, class certification in this action would have been
4 hotly disputed and was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

5 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
6 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
7 substantial defenses both to liability and to class certification. **Currently, the maximum and average**
8 **class member allocation are \$20,076.29 and \$3,072.25, respectively.** See Mitzner Decl. ¶ 13. Given
9 the complexities of this case, the defenses, along with the uncertainties of proof and appeal, the
10 proposed Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl.
11 at ¶8(e).

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

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

19 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendants
20 through possible appeals which could take at least another two or three years. Class Counsel has also
21 taken into account the uncertain outcome and the risk of litigation, especially in complex actions such
22 as this Action. Class Counsel is also mindful of and recognize the inherent problems of proof under,
23 and alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions and appeals
24 would have been inevitable. Costs would have mounted and recovery would have been delayed if not
25 denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class Counsel believe that
26 the Settlement confers substantial benefits upon the Class. Based upon their evaluation, Plaintiff and
27 Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of
28 the Class. Blumenthal Decl. ¶8(c).

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

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

13 *Id.* at *12.

14 7. The Amount Offered in Settlement

15 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
16 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
17 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
18 favorably to the value of the claims.

19 The calculations to compensate for the amount due to the Class Members at the time this
20 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
21 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
22 putative class members and determined the potential maximum damages for the class claims. For the
23 Class, Plaintiff determined that the unpaid wages due to the working during rest and recovery was
24 \$907,407, the potential off-the-clock damages were \$893,881 for non-productive work time, the
25 maximum potential meal period damages were estimated to be \$3,529,140, based upon an alleged 100%
26 violation rate, the maximum rest period damages were estimated to be \$3,575,526 based upon an
27 alleged 100% violation rate, and the maximum damages for unreimbursed mileage expenses were
28 estimated to be \$937,257 based upon the alleged underpayment. In total, the damages for the Class
were calculated to have a maximum total value of \$9,843,211. In addition, Plaintiff calculated that the
maximum value of the waiting time penalties were \$2,432,772 and the maximum value of the wage
statement penalties to be \$504,950, however, these wage statement and waiting time penalties claims

1 potentially have a much smaller value, even if damages were awarded, to the extent that they are only
2 derivative of the meal and rest break claims.⁴ Blumenthal Decl. ¶8(d).

3 Consequently, the Gross Settlement Amount represents more than 31% of the value of the
4 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
5 proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for
6 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
7 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
8 certainly fair and reasonable.⁶ Blumenthal Decl. ¶8(d). Clearly, the goal of this litigation has been met.

9
10 **V. CONCLUSION**

11 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
12 established in California law and should therefore be finally approved as fair, reasonable and adequate
13 and requests entry of the Final Approval Order and Judgment, submitted herewith.

14 Respectfully submitted,
15 _____

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

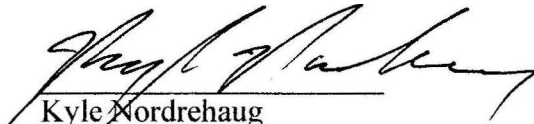
28 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the
PAGA claim in this discussion. The PAGA claim is addressed in the Declaration of Kyle Nordrehaug,
filed with the Motion for Preliminary Approval, at ¶ 33.

⁶ *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.").

1 Dated: June 2, 2022

2 **BLUMENTHAL NORDREHAUG BHOWMIK**
3 **DE BLOUW LLP**

4 By:

5 
6 Kyle Nordrehaug
7 Attorneys for Plaintiff
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