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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JOSE JAUREGUI and JAVIER DEL
15 REAL, individuals, on behalf of
16 themselves and on behalf of all
17 persons similarly situated,

18 Plaintiffs,

19 vs.

20 CYTEC ENGINEERED
21 MATERIALS INC., a Delaware
22 corporation, CYTEC INDUSTRIES
23 INC., a Delaware corporation,
24 CYTEC AEROSPACE
25 MATERIALS (CA) INC., a
26 California corporation, CYTEC
27 PROCESS MATERIALS (CA) INC.,
28 a Delaware corporation, SOLVAY
USA INC., a Delaware corporation,
SOLVAY CHEMICALS, INC., a
Delaware corporation, and DOES 1
through 50, inclusive,

Defendants.

CASE No. **8:20-cv-02440-DOC-DFM**

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

Hearing Date: April 25, 2022

Hearing Time: 8:30 a.m.

District Judge: Hon. David O. Carter
Ronald Reagan Federal Building and
United States Courthouse
Courtroom 9D

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1 **I. INTRODUCTION**

2 Plaintiffs Jose Jauregui and Javier Del Real (“Plaintiffs”) and Defendants Cytec
3 Engineered Materials Inc., Cytec Industries Inc., Cytec Aerospace Materials (CA) Inc.,
4 Cytec Process Materials (CA) Inc., Solvay USA Inc., and Solvay Chemicals, Inc.
5 (“Defendants”) reached a full and final settlement of the above-captioned class action.
6 Under the terms of the Class Action Settlement Agreement (“Agreement”), Defendants
7 agree to pay the maximum gross sum of One Million Five Hundred Thousand Dollars
8 (\$1,500,000.00) (the “Gross Settlement Amount”) with no reversion in consideration for
9 the settlement and the release of claims as described in the Agreement. This Court
10 preliminarily approved the settlement by Order dated January 7, 2022. (Doc. No. 52.) In
11 accordance with the preliminary approval order, the required notice of the proposed
12 settlement was disseminated to the Class of 643 members. Currently, the results are that
13 there are no objections and no opt-outs.¹

14 The purpose of this Final Approval Hearing is to determine whether the proposed
15 settlement of the litigation should be finally approved and for approval of the award of
16 attorneys’ fees and costs to be paid to Class Counsel and the Plaintiffs’ service awards.²
17 Plaintiffs respectfully submit this Memorandum in support of final approval and the
18 proposed entry of the Order granting final approval and judgment in this class action.

19 **II. SUMMARY OF THE LITIGATION**

20 On October 14, 2020, Plaintiff Jose Jauregui, on behalf of himself and all persons
21 similarly situated, filed a Class Action against Defendants in the Superior Court of
22 California, Orange County, asserting the following claims against Defendants: (1) unfair
23 competition in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.; (2) failure to pay

24
25 ¹ The notice periods ends on March 28, 2022, which is the day after this motion is
26 being filed. After the final figures have been accounted, the Declaration of the Settlement
27 Administrator will be filed in support of this motion to document the notice process and
the final results.

28 ² The Declaration of the Plaintiffs are being filed in support of this motion.

1 minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1; (3)
2 failure to pay overtime wages in violation of Cal. Labor Code §§ 510, et seq.; (4) failure
3 to provide meal periods in violation of Cal. Labor Code §§ 226.7 and 512 and the
4 applicable IWC Wage Order; (5) failure to provide rest periods in violation of Cal. Labor
5 Code §§ 226.7 and 512 and the applicable IWC Wage Order; (6) failure to provide
6 accurate itemized wage statements in violation of Cal. Labor Code § 226; and, (7) failure
7 to pay wages when due in violation of Cal. Labor Code §§ 201, 202, and 203. On
8 December 30, 2020, Defendants removed the Class Action to the United States District
9 Court, Central District of California. On May 5, 2021, Plaintiffs filed the First Amended
10 Complaint in the Class Action pending in the United State District Court, Central District
11 (Case No. 20-cv-02440-DOC-DFMx) to add Plaintiff Javier Del Real as a party and to
12 add an additional claim for failure to provide wages when due in violation of California
13 Labor Code §§ 201-204, 233, 246 and 248. (Decl. Blumenthal, ¶ 6(a).)

14 On February 5, 2021, Plaintiff Jose Jauregui filed a separate PAGA Action against
15 Defendants in the Superior Court of California, Orange County alleging a single cause
16 of action for recovery of civil penalties under the Private Attorney General's Action,
17 California Labor Code §§ 2698 et seq. On February 5, 2021, Defendants removed the
18 PAGA Action to the United States District Court, Central District of California (Case
19 No. 8:21-cv-00320). (Decl. Blumenthal, ¶ 6(b).)

20 As part of this Settlement, the Class Action and the PAGA Action were
21 consolidated. On October 13, 2021, the Court entered an Order consolidating the Class
22 Action with the Representative PAGA Action.[Doc. No. 49]. (Decl. Blumenthal, ¶ 6(c).)

23 Class Counsel conducted significant research and investigation in
24 furtherance of the prosecution of the Action. This investigation, research and prosecution
25 included, among other things, (a) Rule 26 disclosures and multiple conferences between
26 counsel identifying, among other things, witnesses and documents with information
27 relevant to Plaintiffs and the class claims; (b) inspection and analysis of hundreds of
28 pages of documents and other information produced by Plaintiffs and Defendants during

1 the litigation of the Action and informally in preparation for mediation (including class
2 data); (c) analysis of the numerous legal positions taken by Defendants; (d) investigation
3 into the viability of class treatment of the claims; (e) analysis of potential class-wide
4 damages, including reviewing class data, and analyzing information sufficient to
5 understand Defendants' potential defenses; (f) research of the applicable law with respect
6 to the claims asserted as well as potential defenses; and (g) assembling and analyzing
7 extensive data and information for calculating damages. (Decl. Blumenthal, ¶ 6(d).)

8 Class Counsel has extensive experience in litigating wage and hour class actions
9 and PAGA actions in California. The Parties have vigorously litigated the Action since
10 its inception. During the course of litigation, the Parties each performed analysis of the
11 merits and value of the claims. Plaintiffs engaged in extensive investigation, requiring
12 the production of hundreds of pages of documents, including classwide records as to the
13 Class. Plaintiffs and Defendants have engaged in substantial research, discovery, and
14 investigation in connection with the Action. Class Counsel has thoroughly analyzed the
15 value of the claims during the prosecution of this Action. Plaintiffs and Class Counsel
16 believe that the settlement with Defendants for the consideration and on the terms set
17 forth in the Agreement is fair, reasonable, and adequate and is in the best interests of the
18 Class in light of all known facts and circumstances, including the risk of significant
19 delay, the likelihood that Defendants would prevail on their defenses, and numerous
20 potential appellate issues. (Decl., Blumenthal, ¶6(e).)

21 Defendants deny any alleged wrongdoing and contends that the Class Members
22 are not entitled to any monetary relief, including damages and penalties. Specifically,
23 Defendants deny all charges of wrongdoing or liability against them arising out of any
24 conduct, statements, acts or omissions alleged, or that could have been alleged, in the
25 Action. Defendants contend they complied in good faith with wage and hour
26 employment laws. Defendants assert facts that could negate essential elements of
27 Plaintiffs' claims. Defendants contend, for example, that employees were provided with
28 meal and rest breaks and that all time worked was recorded. Further, there could be

1 significant problems of proof regarding the extent to which members of the Class missed
2 breaks relating to their employ with Defendants. Defendants further deny that, for any
3 purpose other than settling this Action, these claims are appropriate for class, collective,
4 or representative treatment of any kind. (Decl. Blumenthal, ¶ 6(f).)

5 Following the extensive investigation by both Parties, the Parties agreed to engage
6 in private mediation. The Parties attended an all-day mediation on May 12, 2021 before
7 Louis Marlin, a respected and experienced mediator. The mediation included discussion
8 and examination of the Parties' respective position on the legal and factual issues raised
9 on behalf of the Class. At all times, the Parties' settlement negotiations have been
10 non-collusive, adversarial, and at arm's length. The Parties agreed on the basic terms of
11 a class and PAGA settlement pursuant to a Memorandum of Understanding executed
12 following the mediation, ongoing post-mediation discussions and a mediator's proposal.
13 By July 16, 2021, the Agreement was finalized and executed.³ Class Counsel filed the
14 motion requesting preliminary approval of the settlement on December 14, 2021. [Doc.
15 No. 51.] (Decl. Blumenthal ¶ 6(g).)

16 By the Order of January 7, 2022, the Court granted preliminary approval of the
17 settlement and approved the mailing of the Notice to the Class. [Doc. No. 52.] Notice of
18 the settlement providing Class Members with notice and the explanation of monetary
19 relief, the right to opt out, or to object was then mailed by the Settlement Administrator
20 on January 26, 2022 to the Class. (Decl. Blumenthal ¶ 6(h).)

21 Currently, out of the 643 individuals in the Class, not one Class Member objected,
22 nor has any Class Member opted out of the Class, which means that currently 100% of
23 the Class has elected to participate in the Settlement. The final results will be detailed in
24 the Declaration of the Settlement Administrator to be submitted after the March 28, 2022
25 deadline for opt out and written objections. (Decl. Blumenthal ¶ 6(i).)

26
27 ³ An addendum was executed on December 7, 2021 to include the claims of two
28 employees with pending grievances against Defendants in the settlement and discharge
those grievances.

1 **III. THE SETTLEMENT BEFORE THE COURT**

2 To implement the terms of this Settlement, Defendants agree to pay the Gross
3 Settlement Amount of One Million Five Hundred Thousand Dollars (\$1,500,000) in full
4 and complete satisfaction of the Class Members' Released Class Claims. (Agreement
5 at ¶ III(B).) The Gross Settlement Amount consists of all payments to Class Members
6 from the Net Settlement Amount, and includes (a) the costs of administration of the
7 settlement, (b) all attorneys' fees and costs, (c) service awards to the Plaintiffs, and (d)
8 the PAGA Payment to the LWDA and the Aggrieved Employees. (Agreement at ¶
9 III(C)-(D).) (Decl. Blumenthal ¶ 3(a).)

10 The amount remaining in the Gross Settlement Amount after the deduction of
11 Court-approved amounts for Class Counsel Fees Payment, Class Counsel Litigation
12 Expenses Payment, the Class Representative Service Payment, the PAGA Payment, and
13 the Settlement Administration Expenses (called the "Net Settlement Amount") shall be
14 allocated to Class Members as their Settlement Shares. (Agreement at ¶¶ I(U) and
15 III(D).) (Decl. Blumenthal ¶ 3(b).)

16 From the Net Settlement Amount, the Settlement Share for each Participating
17 Class Member will be calculated by (a) dividing the Net Settlement Amount by the total
18 number of weeks included in the Class Data to determine a dollar amount per week
19 ("Weekly Rate"); and (iii) then multiplying the number of weeks worked by each
20 Participating Class Member by the Weekly Rate to calculate their Settlement Share.
21 (Agreement at ¶ III(D)(2).) (Decl. Blumenthal ¶ 3(c).)

22 ILYM was appointed as Settlement Administrator (Agreement at ¶ III(E).) All
23 administrative fees, costs and expenses incurred by the Settlement Administrator in
24 connection with administering the Settlement will be deducted from the Gross Settlement
25 Amount. The Settlement Administrator has estimated that administering this settlement
26 will not exceed \$20,000. (Agreement at ¶ III(C)(4).) The actual expenses of the
27 Settlement Administrator will be documents in the forthcoming Declaration of the
28 Settlement Administrator. (Decl. Blumenthal ¶ 3(d).)

1 Class Counsel has applied to the Court for an award of reasonable attorneys' fees
2 in an amount not to exceed one-third (1/3) of the Gross Settlement Amount, and for
3 reimbursement of reasonable expenses in the amount of \$36,783.02, both subject to
4 Court approval. (Agreement at ¶ III(C)(2). The Plaintiffs have also applied for Court
5 approval of service awards in an amount not to exceed \$10,000 each in consideration for
6 their service as the class representatives. (Agreement at ¶ III(C)(1).) The motion is
7 scheduled for the Final Approval Hearing and was filed and posted on March 14, 2022,
8 which was well before the deadline for written objections to the Settlement. (Decl.
9 Blumenthal ¶ 3(e).)

10 The scope of the release by all Class Members who do not opt out tracks the scope
11 of the allegations in the Action. Upon the Effective Date, all Participating Class
12 Members shall irrevocably release the following claims against Defendants and the
13 Released Parties:

14 all applicable California wage and hour claims, rights, demands, liabilities
15 and causes of action, whether known or unknown, arising from the claims
16 alleged in the operative complaint in the Action, or that could have been
17 alleged based upon the facts alleged in the operative complaint in the
18 Action against Defendants, which arose during the Class Period, including
19 claims for: violations of California Labor Code §§ 226.7, 510 et seq., 512,
20 558, 1194, 1197, 1197.1, 1198, or 2802; failure to pay all wages in a timely
21 manner in violation of California Labor Code §§ 200, 201, 202, 203, 204,
22 210, 233, 246, 248, and 248.5; failure to provide accurate wage statements
23 in violation of California Labor Code § 226; unfair competition; failure to
24 provide sick pay; violations of the California Labor Code Private Attorney
General Act, Labor Code § 2698 et seq.; civil penalties pursuant to Labor
Code § 2699 et seq.; claims under California Business & Professions Code
§§ 17000 and 17200, et seq.; claims under California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-(B); and any damages, penalties,
restitution, disgorgement, interest or attorneys' fees as a result thereof, and
expressly excluding all other claims, including claims for vested benefits,
wrongful termination, unemployment insurance, disability, social security,
workers' compensation, and class claims outside of the Class Period and
PAGA claims outside of the PAGA period ("Released Class Claims").

(Agreement at ¶ III(G)(1).) (Decl. Blumenthal ¶ 3(f).)

25 Class Members were permitted the opportunity to object to or comment on the
26 Settlement; or elect not to participate in the Settlement. Class Members who wished to
27 exclude themselves from the Settlement must have mailed a written Election Not to
28

1 Participate in Settlement to the Settlement Administrator not later than sixty (60) days
2 after the Settlement Administrator mailed the Class Notice. (Agreement at ¶ III(F)(4).)
3 Class Members who wished to object to the Settlement must have submitted their written
4 objections to the Settlement Administrator not later than sixty (60) days after the mailing
5 of the Class Notice or alternatively may appear at the Final Approval Hearing to make
6 an oral objection. (Agreement at ¶ III(F)(4).) To date, there have been no objections and
7 no opt outs. (Decl. Blumenthal ¶ 3(g).)

8 The Settlement is fair, adequate and reasonable to the class and should be finally
9 approved. In sum, this settlement valued at \$1,500,000 provides the Class Members with
10 the opportunity to receive a substantial monetary recovery. This result is particularly
11 remarkable in light of the fact that there was also a risk that, if the matter was not settled,
12 Plaintiffs would be unable to prevail at trial on behalf of the entire Class, and thereby not
13 recover on behalf of any individuals other than themselves. As such, liability in this case
14 was far from certain in light of the defenses asserted by Defendant. Finally, the pandemic
15 circumstances impacting many employees only further underscores the importance of
16 distributing these settlement payments to the Class Members. (Decl. Blumenthal ¶ 3(h).)

17 18 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 19 **COURT TO GRANT FINAL APPROVAL**

20 When a proposed class-wide settlement is reached, it must be submitted to the
21 court for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992)
22 at §11.41, p.11-87. Court approval of a class settlement is considered at a final settlement
23 approval hearing, at which evidence and argument concerning the fairness, adequacy,
24 and reasonableness of the settlement may be presented and class members may be heard
25 regarding the settlement. *See Manual for Complex Litigation, Second* §30.44 (1993).
26 During final approval, the court must determine whether the settlement is fair, reasonable
27 and adequate. *See Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d. 615, 625
28 (9th Cir. 1982) and Fed. Rules Civ. Proc., rule 23(e).

1 Governing the settlement of class actions, the Federal Rules of Civil Procedure,
2 §23 (e) specifically provides for the Court to consider the following factors:

3 (A) the class representatives and class counsel have adequately represented
4 the class;

5 (B) the proposal was negotiated at arm's length;

6 (C) the relief provided for the class is adequate, taking into account:

7 (i) the costs, risks, and delay of trial and appeal;

8 (ii) the effectiveness of any proposed method of distributing relief to
9 the class, including the method of processing class-member claims;

10 (iii) the terms of any proposed award of attorneys' fees, including
11 timing of payment; and

12 (iv) any agreement required to be identified under Rule 23(e)(3); and

13 (D) the proposal treats class members equitably relative to each other.

14 Fed. R. Civ. P. 23(e)(2).

15 As set forth herein, this Settlement was reached through arm's-length negotiations.
16 The Settlement was negotiated by experienced counsel for the Class and represented by
17 adequate Class Representatives, who protected the interests of the Class Members. There
18 were complex legal and factual issues that placed the ultimate outcome of this litigation
19 in doubt. Accordingly, the immediate value of the Settlement to the Class Members far
20 outweighs the possibility of relief if this protracted and expensive litigation had
21 continued through trial and appeal. Finally, the considered judgment of all Parties to the
22 Settlement is that the Settlement is fair and reasonable in light of the immediate benefit
23 provided by the Settlement to the Class Members, which is a conclusion that is
24 reinforced by the response of the Class Members participating in the Settlement.

25 Settlements of disputed claims are favored by the courts. *Waits v. Weller*, 653 F.2d
26 1288, 1291 (9th Cir 1981) ("settlement encouraged in appropriate class action
27 settlements"). In evaluating settlements, the courts have long recognized that
28 compromise is particularly appropriate since such litigation is difficult and notoriously
uncertain. Settlement is especially favored in class actions because it minimizes the
litigation expenses of all parties and reduces the strain on judicial resources. *Officers for
Justice, supra*, 688 F.2d at 625 ("voluntary conciliation and settlement are the preferred
means of dispute resolution. This is especially true in complex class action litigation");
Class Plaintiffs v. Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992) ("This is especially true

1 in light of the strong judicial policy that favors settlements, particularly where complex
2 class action litigation is concerned."); *Garcia v. L.A. County Sheriff's Dep't*, 2015 U.S.
3 Dist. LEXIS 192443, *40 (C.D. Cal. 2015) (citing policy favoring settlement in complex
4 class litigation").

5 "[T]he court's intrusion upon what is otherwise a private consensual agreement
6 negotiated between the parties to a lawsuit must be limited to the extent necessary to
7 reach a reasoned judgment that the agreement is not the product of fraud or overreaching
8 by, or collusion between, the negotiating parties, and that the settlement, taken as a
9 whole, is fair, reasonable and adequate to all concerned." *Officers for Justice, supra*, 688
10 F.2d at 625. Under this standard, the court must decide whether the proposed settlement
11 falls within the range of reasonable settlements, taking into account that settlements are
12 compromises between the parties reflecting subjective, unquantifiable judgments
13 concerning the risks and possible outcomes of litigation. *Id.*

14 In cases such as this one, courts have repeatedly emphasized that there is a strong
15 initial presumption that the compromise is fair and reasonable. *In re Heritage Bond*
16 *Litig.*, 2005 U.S. Dist. Lexis 13555, at *11 (C.D. Cal. 2005). Courts are advised not to
17 adjudicate the merits of the action, nor substitute their judgment for that of the parties
18 who negotiated the settlement, nor should they reopen and enter into negotiations with
19 the litigants in the hopes of improving the terms of the settlement. *Id.*, at *11; *Officers*
20 *for Justice, supra*, 688 F.2d at 625.

21 The essential evaluation is whether, given the risks of litigation and the range of
22 probable results, the settlement, taken as a whole, is fair, reasonable and adequate to all
23 concerned. *Officers for Justice, supra*, 688 F.2d at 625; *Hanlon v. Chrysler Corp.*, 150
24 F.3d 1011, 1026 (9th Cir. 1998). Here, the facts and circumstances compel the
25 conclusion that the proposed settlement satisfies that standard.

26 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

27 **A. The Test for Fairness**

28 To determine whether a settlement is fair, reasonable, and adequate, courts

1 consider factors such as: "(1) the strength of the plaintiffs' case; (2) the risk, expense,
2 complexity, and likely duration of further litigation; (3) the risk of maintaining class
3 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of
4 discovery completed and the stage of the proceedings; (6) the experience and views of
5 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
6 members to the proposed settlement." *Churchill v. Gen. Elec.*, 361 F.3d 566, 575 (9th
7 Cir. 2004); *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

8 The list of factors is not exhaustive and should be tailored to each case. *Officers*
9 *for Justice*, at 625. Due regard should be given to what is otherwise a private consensual
10 agreement between the parties. *Id.* The inquiry "must be limited to the extent necessary
11 to reach a reasoned judgment that the agreement is not the product of fraud or
12 overreaching by, or collusion between, the negotiating parties, and that the settlement,
13 taken as a whole, is fair, reasonable and adequate to all concerned." *Id.*, at 625.
14 "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of
15 delicate balancing, gross approximations and rough justice." *Id.*

16 The question whether a proposed settlement is fair, reasonable and adequate
17 necessarily requires a judgment and evaluation by the attorneys for the parties based
18 upon a comparison of "'the terms of the compromise with the likely rewards of
19 litigation.'" *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464
20 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
21 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts recognize
22 that the opinion of experienced counsel supporting the settlement is entitled to
23 considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Reed*
24 *v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d at
25 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher*
26 *Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985). For
27 example, in *Lyons v. Marrud, Inc.*, 1972 U.S. Dist. LEXIS 13401, *5 (S.D.N.Y. 1972),
28 the court noted that "[e]xperienced and competent counsel have assessed these problems

1 and the probability of success on the merits. They have concluded that compromise is
2 well-advised and necessary. The parties' decision regarding the respective merits of their
3 position has an important bearing on this case." *Id.* at *5.

4 **B. The Settlement Satisfies the Test for Fairness**

5 1. The Investigation and Discovery Are Sufficient to Allow Class
6 Counsel and the Court to Act Intelligently

7 As detailed during Preliminary Approval, Class Counsel has conducted a thorough
8 investigation into the facts of the class action, including a review of relevant documents
9 and data and a diligent investigation of the Class Members' claims against Defendant.
10 Class Counsel also retained an expert to prepare a damage valuation for use in the
11 mediation and negotiations. Class Counsel also has experience in settlements involving
12 similar claims brought by employees. The Parties and their counsel recognize that, in the
13 absence of an approved settlement, they would face a protracted litigation course,
14 including a contested motion for certification, motions for summary judgment, and trial
15 and appellate proceedings that would consume time and resources and present each of
16 them with ongoing litigation risks and uncertainties. (Decl. Blumenthal at ¶ 7(a).)

17 Plaintiffs and Class Counsel recognize the expense and length of continuing to
18 litigate and trying this Action against Defendants through possible appeals which could
19 take several years, especially in complex actions such as this litigation. Class Counsel
20 is also mindful of and recognize the inherent problems of proof under, and alleged
21 defenses to, the claims asserted in the Action. Based on the foregoing documents and
22 data, and their own independent investigation and evaluation, Class Counsel is of the
23 opinion that the settlement with Defendants for the consideration and on the terms set
24 forth in the Settlement is fair, reasonable, and adequate in light of all known facts and
25 circumstances, including the risk of significant delay, defenses asserted by Defendants,
26 and numerous potential appellate issues. Based upon their evaluation, Plaintiffs and
27 Class Counsel have determined that the settlement set forth in the Agreement is in the
28 best interest of the Class Members. (Decl. Blumenthal at ¶ 8(d).)

1 Class Counsel has litigated similar wage and hour cases against other employers.
2 (Decl. Blumenthal at ¶ 2.) Although Plaintiffs and Class Counsel believed that the case
3 had merit, they recognized the potential risks both sides would face if litigation of this
4 action continued. As the federal court held in *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist.
5 LEXIS 8476 (N.D.Cal. 2007), where the parties faced uncertainties similar to those in
6 this litigation:

7 In light of the above-referenced uncertainty in the law, the risk, expense,
8 complexity, and likely duration of further litigation likewise favors the
9 settlement. Regardless of how this Court might have ruled on the merits of
10 the legal issues, the losing party likely would have appealed, and the parties
11 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.

12 *Id.* at *12.

13 Negotiations were hard-fought and aggressive with capable advocacy on both
14 sides. Defendants vigorously disputed liability and the amount of damages that were
15 claimed to be owed. Liability in this action was hotly disputed and would be subject to
16 a motion for summary judgment. Even if summary judgment was denied, liability would
17 still be subject to a contested trial on the merits. (Decl. Blumenthal at ¶ 7(b).)

18 Based on the complexity of the case, the novelty of the legal issues, the substantial
19 risks and uncertainty of the outcome on both liability and certification issues, as well as
20 the need to establish damages, Plaintiffs believe that the Settlement is fair, reasonable
21 and in the best interests of the Class Members. There can be no doubt that counsel for
22 both parties possessed sufficient information to make an informed judgment regarding
23 the likelihood of success on the merits and the results that could be obtained through
24 further litigation, given the relative strengths and weaknesses of their position. (Decl.
25 Blumenthal at ¶ 7(e).)

26 2. The Settlement Was Reached Through Arm's Length Bargaining and
27 Presents Adequate Relief for the Class

28 Settlement negotiations took place between experienced counsel and were

1 contentious and arm's length. Plaintiffs and Class Counsel recognize the expense and
2 length of continuing to litigate and trying this Action against Defendants through
3 possible appeals which could take several years. Class Counsel has also taken into
4 account the uncertain outcome and risk of litigation, especially in complex actions such
5 as this litigation. Class Counsel is also mindful of and recognize the inherent problems
6 of proof under, and alleged defenses to, the claims asserted in the Action. Based upon
7 their evaluation, Plaintiffs and Class Counsel have determined that the settlement set
8 forth in the Agreement is in the best interest of the Class Members. Plaintiffs and Class
9 Counsel believe that the settlement with Defendants for the consideration and on the
10 terms set forth in the Agreement is fair, reasonable, and adequate and is in the best
11 interest of the Class in light of all known facts and circumstances, including the risk of
12 significant delay, the likelihood that Defendants would prevail on one or more of its
13 defenses, and numerous potential appellate issues. By reason of the settlement,
14 Defendants agree to pay the Gross Settlement Fund of One Million Five Hundred
15 Thousand Dollars (\$1,500,000) as provided by the Agreement. (Decl. Blumenthal at
16 ¶7(b).)

17 In advance of negotiations, Class Counsel received class data concerning
18 employment and payroll information, which permitted Class Counsel to make an
19 intelligent evaluation. The calculations to compensate for the amount due for the Class
20 at the time of the mediation were calculated by Berger Consulting, Plaintiffs' damage
21 expert. As to the Class whose claims are at issue in this Action, Plaintiff used an expert
22 (Berger Consulting) to analyze the data and determine the potential unpaid wages for the
23 employees. The maximum potential damages were calculated to be \$187,463 for the
24 miscalculation of overtime (however these damages could be closer to \$0 because of the
25 CBA and Labor Code § 514) and \$1,640,184 for alleged work time variances between
26 scheduled time and punch data, \$3,883,250 for meal periods after accounting for meal
27 period premiums paid to the Class, \$3,892,150 for rest period damages, and \$789,702
28 for unreimbursed business expenses for personal cell phones. As a result, the total

1 damage valuation was therefore calculated that Defendants were subject to a maximum
2 damage claim in the amount of \$10,392,749. As to potential penalties, Plaintiff
3 calculated that wage statement penalties were a maximum of \$1,170,050 and potential
4 waiting time penalties were \$1,925,339. (Decl. Blumenthal ¶ 7(d).)

5 Consequently, the Gross Settlement Amount of \$1,500,000 represents more than
6 14% of the value of the damages at issue in this case at the time this Settlement was
7 negotiated, assuming these amounts could be proven at trial. Given the amount of the
8 settlement as compared to the potential value of claims in this case and the defenses
9 asserted by Defendants, this settlement is fair and reasonable. (Decl. Blumenthal ¶ 7(d).)

10 The Parties attended an all-day mediation on May 12, 2021 before Louis Marlin,
11 a respected and experienced mediator. The mediation included discussion and
12 examination of the Parties' respective position on the legal and factual issues raised on
13 behalf of the Class. At all times, the Parties' settlement negotiations have been
14 non-collusive, adversarial, and at arm's length. The Parties agreed on the basic terms of
15 a class and PAGA settlement pursuant to a Memorandum of Understanding executed
16 following the mediation, ongoing post-mediation discussions and a mediator's proposal.
17 (Decl. Blumenthal ¶ 6(g).)

18 After the settlement negotiations, the specific terms of the Agreement required
19 additional negotiation before the final written agreement could be signed. Even after the
20 parties reached an agreement as to the material terms, Class Counsel had to ensure that
21 the terms of the final settlement agreement were fair to every member of the Class and
22 retained the requisite opportunities for notice, exclusion, and objection in accordance
23 with class action law. (Decl. Blumenthal at ¶7(c).)

24 Plaintiffs filed the motion for preliminary approval of the Settlement, and by the
25 Order dated January 7, 2022, the Court granted preliminary approval of the Settlement
26 and approved the mailing of the Class Notice to the Class. (Doc. No. 52.) Notice of the
27 settlement providing Class Members with notice and an opportunity to claim monetary
28 relief, to object, or to opt out, was then mailed by the Settlement Administrator on

1 January 26, 2022 to the 643 individuals who comprise the Class. (Decl. Blumenthal at
2 ¶6(I).)

3 3. Counsel Is Experienced in Similar Litigation and Believes the
4 Settlement Is Fair and Reasonable to the Class

5 Class Counsel in this matter has extensive class action experience in many fields
6 and has represented thousands of employees in actions including labor and employment
7 litigation, wage and hour class actions, representative PAGA actions and complex
8 litigation. Class Counsel has been previously approved as experienced Class Counsel by
9 state and federal courts throughout California, and Courts have found that Class Counsel
10 has substantial experience handling large employment related class actions and has been
11 found to be qualified class counsel in prior actions. A list of previous and current class
12 action cases managed and settled by the Class Counsel in this action is provided to the
13 Court by way of the Declaration of Norman Blumenthal. Class Counsel have participated
14 in every aspect of the settlement discussions and have concluded the settlement is fair,
15 adequate and reasonable and in the best interests of the Class. (Decl. Blumenthal at ¶ 2.)

16 4. The Reaction of the Class Is Positive

17 After dissemination of the class notice to the 643 members of the Class, which
18 provided each Class Member with the terms of the settlement, to date, not a single Class
19 Member has filed an objection to the settlement, nor requested exclusion. As a result,
20 100% of the Class will be participating in the Settlement and will be sent a payment.
21 (Decl. Blumenthal ¶ 4.) The absence of any objector strongly supports the fairness,
22 reasonableness and adequacy of the Settlement. *See In re Austrian & German Bank*
23 *Holocaust Litigation*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) ("If only a small number
24 of objections are received, that fact can be viewed as indicative of the adequacy of the
25 settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29
26 objections out of 281 member class 'strongly favors settlement'); *Laskey v. Int'l Union*,
27 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the
28 proposed settlement should be considered when determining fairness of settlement.)

1 Importantly, every Class Member was given the opportunity to participate in the
2 Settlement under the same terms. To date, the entire Class has elected to participate in
3 the Settlement and will be mailed a check for their settlement share. The details of the
4 notice process will be set forth in the forthcoming Declaration of the Settlement
5 Administrator. Here, given the fact that not one Class Member objected, the Court should
6 conclude that the settlement is fair, reasonable and adequate. (Decl. Blumenthal ¶ 4.)

7 5. The Strength of Plaintiffs' Case and the Risks of Further Litigation

8 In advance of settlement negotiations and mediation, Class Counsel conducted a
9 thorough investigation into the facts of the class action, including a review of relevant
10 documents and data and a diligent investigation of the Class Members' claims against
11 Defendants. Class Counsel also retained an expert to prepare a damage valuation in
12 advance of mediation. Class Counsel also has experience in settlements involving similar
13 claims against other employers. Based on the foregoing documents and data, and their
14 own independent investigation and evaluation, Class Counsel is of the opinion that the
15 settlement with Defendants for the consideration and on the terms set forth in the
16 Settlement is fair, reasonable, and adequate in light of all known facts and circumstances,
17 including the risk of significant delay, defenses asserted by Defendants, and numerous
18 potential appellate issues. The parties and their counsel recognize that, in the absence of
19 an approved settlement, they would face a protracted litigation course, including a
20 contested motion for certification, motions for summary judgment, and trial and
21 appellate proceedings that would consume time and resources and present each of them
22 with ongoing litigation risks and uncertainties. (Decl. Blumenthal at ¶ 8(c).)

23 The risks, complexities and duration of further litigation cannot be overstated.
24 Defendants asserted a number of defenses that presented serious threats to the claims of
25 the Plaintiffs and the other Class Members. Defendants contend that Defendants'
26 employment practices complied with all applicable Labor laws, including the applicable
27 Wage Order. For example, Defendants argued that employees were compensated for
28 all hours worked because Defendants' facilities automatically paid employees additional

1 donning and doffing time for every shift. Defendants further contend that federal law
2 preempts one or more of the claims of the Class Members because their right to wages
3 and meal penalties arises exclusively from and requires interpretation and analysis of a
4 collective bargaining agreement that was applicable to their employment with
5 Defendants. Defendants also argued that the company employees are not required to use
6 their personal cell phones in furtherance of their job duties, which would wipe out all
7 damages relating to unreimbursed expenses. Defendants further argued that the
8 California Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
9 (2012), weakened Plaintiffs' claims, on liability, value, class certifiability, and
10 manageability. Finally, several Courts have held that meal and rest period violations do
11 not give rise to wage statement or waiting time penalties. See e.g. *Ling v. P.F. Chang's*
12 *China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). If successful, Defendants'
13 defenses could eliminate or substantially reduce any recovery to the Class. While
14 Plaintiffs believe that these defenses could be overcome, Defendants maintain these
15 defenses have merit and therefore present a serious risk to recovery for Plaintiff, the
16 Class Members, and the Aggrieved Employees. (Decl. Blumenthal ¶ 8(a).)

17 Moreover, there was also a significant risk that, if the Action was not settled,
18 Plaintiffs would be unable to obtain class certification and maintain a certified class
19 through trial or demonstrate that his PAGA claim is manageable, and thereby not recover
20 on behalf of any employees other than themselves. At the time of the mediation,
21 Defendants forcefully opposed the propriety of class certification, arguing that individual
22 issues precluded such findings. Further, as demonstrated by the California Supreme
23 Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
24 significant hurdles to overcome for a class-wide recovery even where the class has been
25 certified. While other cases have approved class certification in wage and hour claims,
26 class certification in this action would have been hotly disputed and was by no means a
27 foregone conclusion. (Decl. Blumenthal at ¶ 8(b).)

28 Plaintiffs and Class Counsel recognize the expense and length of continuing to

1 litigate and trying this Action against Defendants through possible appeals which could
2 take several years. Class Counsel has also taken into account the uncertain outcome and
3 risk of litigation, especially in complex actions such as this litigation. Class Counsel is
4 also mindful of and recognize the inherent problems of proof under, and alleged defenses
5 to, the claims asserted in the Action. Based upon their evaluation, Plaintiffs and Class
6 Counsel have determined that the settlement set forth in the Agreement is in the best
7 interest of the Class Members. (Decl. Blumenthal at ¶8(d).)

8 It is impossible to predict with certainty whether, under the facts of this case,
9 Plaintiffs would prevail against the Defendants factual and legal defenses. While
10 Plaintiffs and Class Counsel believe in the merits of the claims, Defendants have asserted
11 real and substantial defenses to them. Settlement in this case clearly benefits the
12 settlement class when measuring the strengths of the case and the risk of establishing
13 liability and damages. (Decl. Blumenthal at ¶8(e).)

14
15 **VI. CONCLUSION**

16 For the reasons stated herein and in the accompanying declarations, Plaintiffs
17 respectfully submit that the proposed settlement is fair, reasonable and adequate to the
18 Class and to each Class Member, and should therefore be finally approved.

19
20 Dated: March 28, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

21
22 By: /s/ Kyle Nordrehaug
23 Kyle R. Nordrehaug
24 Attorneys for Plaintiffs
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