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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ANGEL CHAPPARO, individually and on
behalf of all persons similarly situated

Plaintiffs,

vs.

IMMANUEL BAPTIST CHURCH OF SAN
BERNADINO AND HIGHLAND,
CALIFORNIA, a California non-profit
corporation, and IMMANUEL BAPTIST
CHURCH, and Does 1 through 50, Inclusive,

Defendants.

Case No. CIV-SB2101240

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

Date: December 13, 2022
Time: 10:00 a.m.

Judge: Hon. David Cohn
Dept.: S-26

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1 **I. INTRODUCTION**

2 Plaintiff ANGEL CHAPPARO (“Plaintiff”) and Defendants IMMANUEL BAPTIST
3 CHURCH OF SAN BERNADINO AND HIGHLAND, CALIFORNIA, and IMMANUEL
4 BAPTIST CHURCH (“Defendants”) have reached a full and final settlement of the above-
5 captioned action, which is set forth in Class and Representative Action Settlement Agreement and
6 Release of Claims (hereinafter the “Agreement”) filed herewith¹. The Court preliminarily
7 approved the Agreement via its Preliminary Approval Order dated August 15, 2022 (“Preliminary
8 Approval Order”). On September 7, 2022, the Court-approved Class Notice was mailed to each
9 Class Member via U.S. First Class Mail². **The Class greeted news of the Settlement with**
10 **96.13% approval.** There are six opt-outs and zero objections to the Settlement. The high
11 participation rate by the Class evidences the clear fairness and reasonableness of the Settlement.
12 JCL Dec., ¶ 10; Declaration of Karen Hernandez (“ILYM Dec.”) at ¶¶ 7-13.

13 This \$210,000.00 settlement is an excellent result for the Class Members in light of the
14 serious doubts as to the result of the adjudication of their claims, along with further uncertainty
15 as to whether class certification can be maintained through trial. This Settlement provides
16 substantial recovery to Settlement Class Members. Plaintiff estimates that the Settlement, if
17 approved, would result in a Net Settlement Amount of approximately **\$101,500.00**. This will
18 result in an average Individual Settlement Payment of **\$681.21** and a high payment of
19 **\$1,394.68**. Aggrieved Employees will receive an estimated average gross payment of **\$22.32**
20 and a high payment of **\$40.46**. JCL Dec., ¶ 11; ILYM Dec., at ¶ 14.

21 Considered as a whole, the \$210,000.00 represents between approximately 18.44% and
22 12.94% of Defendants’ class-wide liability exposure identified by Plaintiff’s expert at the time
23 of mediation. Under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), this
24 Settlement is a fair and reasonable recovery on these claims (which were subject to considerable
25 uncertainty, both as to the merits and certification). The response of the Class has been positive.
26

27 ¹ A copy of the Agreement is attached as Exhibit A to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”), served
28 and filed herewith. Capitalized terms in this Memorandum have the same meaning as contained in the Agreement.

² Three (3) Notice Packets were deemed undeliverable.

1 Accordingly, Plaintiff respectfully submits that the Settlement should be finally approved as fair,
2 reasonable, and adequate. JCL Dec., ¶ 12.

3 **II. THE SETTLEMENT BEFORE THE COURT**

4 Plaintiff and Defendants reached a full and final Settlement of the above-captioned action,
5 which is embodied in the Agreement filed concurrently with the Court. As consideration for this
6 Settlement, Defendants have agreed to pay the all-in, non-reversionary amount Two Hundred Ten
7 Thousand Dollars and Zero Cents (\$210,000.00) (“Gross Settlement Amount”). The Gross
8 Settlement Amount includes all Individual Settlement Payments to Settlement Class Members, the
9 Class Representative Service Award to Plaintiff, Administrative Costs, the PAGA Payment, and
10 Class Counsel Payment. Defendants will separately pay the employer’s share of payroll taxes to
11 the qualified settlement fund, per the Agreement. Agreement at ¶ 1.18; JCL Dec. ¶ 13.

12 The Gross Settlement Amount is allocated as follows: \$5,000 to Plaintiff as the Class
13 Representative Service Award, a maximum amount of \$85,000.00 consisting of one-third of the
14 Gross Settlement Amount (\$70,000.00) and up to \$15,000 for actually incurred litigation costs
15 as the Class Counsel Payment, \$10,000 as the PAGA Payment, and an amount not to exceed
16 \$8,500 payable to the Settlement Administrator. The Net Settlement Amount is estimated to be
17 \$101,500.00. JCL Dec., ¶ 14; ILYM Dec., ¶ 14.

18 The Net Settlement Amount shall equal the net amount available for Settlement shares to
19 Settlement Class Members from the Gross Settlement Amount after deducting the Court-approved
20 amounts for the Class Representative Service Award, the Class Counsel Payment, the PAGA
21 Payment, and Administration Costs. Agreement at ¶ 1.18. The Settlement Administrator will pay
22 an Individual Settlement Payment from the Net Settlement Amount to each Settlement Class
23 Member. The submission of a claim form is not required to be paid. The Individual Settlement
24 Payment for each Settlement Class Member will be calculated based on the ratio of the Total
25 number of Workweeks worked by the entire Settlement Class to the number of Workweeks
26 attributed to each Settlement Class Member calculated by dividing the individual Eligible
27 Workweeks by the total Settlement Class Eligible Workweeks and multiplying this result by the
28 Net Settlement Amount. Agreement at 5.5.1.

1 Class Members were sent the Court-approved Notice of Class Action Settlement, using the
2 procedure approved by the Court, by mailing the notice packets after updating class members'
3 addresses using the National Change of Address database and, for any notice packets returned as
4 undeliverable, re-mailing such notices to any forwarding address provided or updated address
5 located through skip tracing. Agreement at ¶ 3.4. Class Members were provided with the
6 opportunity to exclude themselves ("opt out") if they did not want to participate in the Settlement.
7 Agreement at ¶ 4.2. Class Members who did not "opt out" are deemed Settlement Class Members
8 who are bound by the Settlement and will be mailed a settlement payment. Agreement at ¶ 4.5.
9 The Class Notice also advised Class Members of their right to object to the Settlement.
10 Agreement at ¶ 4.3. This notice process is documented in the accompanying Declaration of
11 ILYM Group, Inc. (the Settlement Administrator).

12 If a Settlement Class Member's Individual Settlement Payment check is not cashed within
13 180 days after its last mailing to the Settlement Class Member, the funds from such uncashed
14 checks will be paid to The Interdisciplinary Center for Healthy Workplaces in the name of the
15 Class Member from whom the funds are designated. Agreement at ¶ 5.5.2.

16 The Agreement provides for Class Counsel to be awarded a sum not to exceed one-third of
17 the Gross Settlement Amount as their Class Counsel Payment. Agreement at ¶ 5.2. Class Counsel
18 will also be allowed to apply separately for an award of litigation expenses in an amount not to
19 exceed \$15,000. *Id.* **In support of this request, Class Counsel is providing evidentiary**
20 **support, including lodestar, in the declarations submitted concurrently herewith.** The
21 Agreement provides for payment of Class Representative Service Award of no more than \$5,000
22 for Plaintiff, or such lesser amount as may be approved by the Court in compensation for his
23 services. Agreement at ¶ 5.3. Defendants do not oppose a motion for approval of attorneys' fees,
24 costs and a service award consistent with the Agreement.

25 The Parties allocated the total amount of \$10,000 from the Gross Settlement Amount for
26 settlement of civil penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the
27 requirements of Labor Code §2699(i) the PAGA Payment shall be allocated \$7,500 to the
28

1 LWDA”) as the LWDA’s share of the settlement of civil penalties and \$2,500 to the Net
2 Settlement Amount for distribution to the Settlement Class Members. Agreement at ¶ 5.4.

3 The Settlement was reached through arm’s length negotiations. On October 21, 2021, the
4 Parties participated in an all-day mediation presided over Tripper Ortman, Esq., a respected
5 mediator of wage and hour class and representative actions. Prior to the mediation, the Parties
6 prepared for the mediation by exchanging significant records and data, calculating damages, and
7 submitting mediation briefs to the Mediator. Defendants provided Class Counsel with necessary
8 records and information for the members of the Class. Defendants produced a sample consisting
9 of pay records and time records for the Class Members for the entire Settlement Period.
10 Defendants also produced Defendants’ relevant employment policies, including compensation
11 policies and timekeeping policies. Plaintiff analyzed the data and prepared and submitted a
12 mediation brief to Mr. Ortman. At the conclusion of the mediation, the Parties were able to reach
13 an agreement to settle the Action and signed a Memorandum of Understanding. The Parties then
14 prepared the full Agreement which was signed by the Parties and received preliminary approval
15 from the Court by Order dated August 15, 2022. JCL Dec., ¶ 15.

16 The Settlement is fair, adequate and reasonable to the Class and should be finally
17 approved for the same reasons the Court granted preliminary approval to the Settlement, finding
18 that it is fair, adequate, and reasonable as to all potential Class Members. In sum, this Settlement
19 valued at \$210,000 is an excellent result for the Class. This result is particularly favorable in light
20 of the fact that liability in this case was far from certain in light of the defenses asserted by
21 Defendants. There have been no objections and only six opt outs. Given the complexities of this
22 case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
23 proof at trial and appeal, the proposed Settlement is fair, reasonable and adequate, and should be
24 finally approved. JCL Dec., ¶ 16.

25 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND** 26 **APPROVAL OF CLASS ACTION SETTLEMENTS**

27 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App.
28 4th 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise

1 is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven*
2 *Owners for Fair Fran. v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“[V]oluntary
3 conciliation and settlement are the preferred means of dispute resolution. This is especially true in
4 complex class action litigation.”)

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

17 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption
18 that the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not
19 substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The
20 presumption of fairness exists where: (1) investigation and discovery are sufficient to allow
21 counsel and the court to act intelligently; (2) the settlement is reached through arm’s-length
22 bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
23 small. *Dunk*, 48 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d
24 ed. 1992) §11.41, pp. 11-91. Here, each factor supports a presumption of fairness.

25 IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

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

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

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

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

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

22 **1. The Investigation and Discovery are Sufficient to Allow Counsel and the Court to Act**
23 **Intelligently**

24 Months before filing the Action, Class Counsel began its pre-filing investigation into
25 Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
26 Plaintiff. As part of the interview process, Plaintiff produced documents related to her
27 employment, including her wage statements, separation documents, and portions of Defendants’
28 handbooks. At the conclusion of the interviews, Class Counsel determined that each Plaintiff’s

1 complaints justified further inquiry. JCL Dec., ¶ 17.

2 Class Counsel subsequently requested Plaintiff's employee file from Defendants. In
3 response, Defendants produced hundreds of pages of documents, including but not limited to,
4 copies of Plaintiff's employment agreements, performance evaluations, timekeeping policies,
5 payroll and time records, and separation documents. Class Counsel reviewed and analyzed the
6 documents and determined the documents appeared to substantiate Plaintiff's claim that
7 Defendants failed to, among other things, pay for all time worked, issue accurate itemized wage
8 statements, provide compliant meal and rest periods, and reimburse for required business
9 expenses. JCL Dec., ¶ 18.

10 Considering the many anticipated factual disputes, the Parties agreed, relatively early in
11 the litigation, that it would be in the best interest of both Parties to mediate the matter. To
12 prepare for mediation, Class Counsel requested documents and data points to further evaluate
13 Plaintiff's claims and Defendants' liability exposure to the Class Members. In response to Class
14 Counsel's request, Defendants produced the time records for the Class Members, aggregate
15 workweek and pay period data for the Class Members, aggregate meal premiums paid to the
16 Class Members, average hourly rate for the Class Members, and copies of applicable
17 handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping, and
18 meal and rest period policies. In total, Defendants produced approximately 1,365 pages of time
19 and payroll data for Class Counsel to analyze. JCL Dec., ¶ 19.

20 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
21 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
22 services, specializing in wage and hour class actions. BCG's team of financial and data analysts
23 are credentialed and experienced experts in their fields and have provided their expertise on
24 thousands of cases. Stated differently, the BCG is well-qualified to analyze Defendants' time
25 and payroll data. JCL Dec., ¶ 20.

26 BCG analyzed Defendants' time and payroll data to assist in the development of various
27 damage models. Among other things, BCG determined the approximate number of work shifts,
28 workweeks, pay periods, average length of shift and average number of hours worked per week

1 and pay periods during the Settlement Period. BCG also estimated the number of missed, late
2 or truncated meal and rest periods, the amount of missed meal period premiums paid during the
3 Settlement Period, the amount of unpaid wages due to rounding, the amount of unreimbursed
4 business expenses and the amount of off-the-clock work performed by the Class Members
5 during the Settlement Period. JCL Dec., ¶ 21.

6 In advance of mediation, Class Counsel created several damage models predicated on the
7 BCG analysis. Class Counsel's models calculated Defendants' potential liability exposure
8 while accounting for the uncertainties of continued litigation. These damage models informed
9 and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 22.

10 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
11 determining Plaintiff's suitability as a putative class representative through interviews,
12 background investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's
13 potential claims; (3) researching similar wage and hour class actions as to the claims brought,
14 the nature of the positions, and the type of employer; (4) analyzing the Class Members' time and
15 payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching
16 settlements in similar cases as well as outstanding issues which could affect settlement approval;
17 (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement
18 (8) drafting the mediation brief; and (9) participating in the mediation. This investigation
19 allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as
20 well as the impediments to recovery, such as to make an independent assessment of the
21 reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 23.

22 Class Counsel only agreed to enter the Settlement following this thorough investigation
23 and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and
24 marketplace for similar settlements, and considering the risk of significant delay, uncertainty
25 associated with litigation, and the various defenses asserted by Defendants, Class Counsel
26 firmly believes this Agreement to be in the best interests of the Class Members. Because the
27 Settlement's terms are fair, reasonable, and adequate, the Court should approve the Settlement.
28 JCL Dec., ¶ 24.

2. The Settlement Was Reached Through Arm's Length Bargaining

This Settlement was the result of arm's-length negotiations as well as formal and informal settlement conferences between the Parties through their respective attorneys. After comprehensive legal and factual analysis, Class Counsel possessed sufficient information for intelligent evaluation of the case for purposes of settlement. Prior to the initiation of settlement discussions, Class Counsel reviewed and outlined the case based upon the information for the Class, and determined the conditions of settlement which would be fair and reasonable to the Class with the assistance of an expert. Class Counsel was experienced in the types of settlement appropriate to resolve these wage and hour claims on behalf of employees. JCL Dec. ¶ 25.

On October 21, 2021, the Parties participated in an all-day mediation presided over by Tripper Ortman, a respected mediator of wage and hour class and representative actions. Prior to the mediation, the Parties prepared by exchanging data, calculating damages, and submitting mediation briefs to the Mediator. Plaintiff analyzed the data and prepared and submitted a mediation brief to Mr. Ortman. At the conclusion of the mediation, the Parties were able to reach an agreement to settle the Action. As a result, the Parties entered into an agreement in the form of a Memorandum of Understanding. The Parties then prepared the full Agreement, which was signed by all counsel. Plaintiff and Class Counsel believe that this Settlement is fair, reasonable, and adequate. JCL Dec. ¶ 26.

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

3. Class Counsel is Experienced in Similar Litigation

California Courts have previously approved Class Counsel as experienced Class Counsel. As set forth in the declarations submitted in support of preliminary approval and this motion, all Class Counsel have extensive experience litigating wage and hour class actions involving

employees and claims similar to this case. Both Class Counsel support approval of the Settlement based upon their experience in wage and hour litigation. JCL Dec., ¶ 27-33; Declaration of Shani Zakay (“Zakay Dec.”) ¶ 3.

4. There Are No Objections by the Class Members

The reaction of the Class unequivocally supports approval of the Settlement. On September 7, 2022, the Settlement Administrator mailed the Court-approved Notice of Class Action Settlement to the Class Members, which provided each Class Member with the terms of the Settlement, including notice of the claims at issue and the financial terms of the settlement, including the attorneys’ fees, costs, and service awards that were being sought, how individual settlement payments would be calculated, and the specific, estimated payment amount to that individual. In disseminating the Notice of Class Action Settlement, the Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. To date, only six of the 155 Class Members opted-out of the Settlement. Moreover, there are **zero** objections. Stated differently, **96.13%** of the Class chose to participate in the Settlement. (ILYM Dec. at ¶¶ 7-14. The final administration results are documented in the accompanying Declaration of Karen Hernandez.

The absence of any objector strongly supports the fairness, reasonableness and adequacy of the Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) (“If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.”); *Stoetznner 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 Risk, Expense, Complexity and Likely Duration of Further Litigation

“It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to the extent courts assess this factor, it is to ‘determine whether the decision to

1 settle is a good value for a relatively weak case or a sell-out of an extraordinary strong case.”
2 (*Misra v. Decision One Mortg. Co.* (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant
4 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
5 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and
6 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
7 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
8 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
9 hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59
10 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien*
11 *v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that
12 employees might not take their breaks were predominantly individualized questions of fact not
13 susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
14 (affirming denial of certification because employees’ declarations attesting to having taken meal
15 and rest breaks demonstrated that individualized inquiries were required to show harm);
16 *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (denying
17 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
18 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
19 certification of driver meal and rest period claims based on the predominance of individual
20 issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation.
21 Consequently, the uncertainty of obtaining certification through a contested motion is a
22 significant risk factor favoring settlement. JCL Dec., ¶ 34.

23 “The Settlement eliminates these and other risks of continued litigation, including the
24 very real risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D.
25 Cal. 2008) 2008 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case
26 through trial is inherently perilous regardless of the strengths of merits of the claims:

27 [N]othing is assured when litigating against commercial giants with
28 vast litigative resources, particular in such complex litigation as this,

1 which would strain the cognitive capacities of any jury. Defense
2 judgments were hardly beyond the realm of possibility.
3 Accordingly, this factor weighs in favor of preliminary approval.

4 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18,
5 1990).)

6 Finally, continuing to litigate this action would require continued and extensive resources
7 coupled with significant Court time to proceed through trial and post-trial motions; which can
8 often take years. Furthermore, wage and hour litigation is complex and expensive, as it often
9 necessitates extensive expert testimony, particularly with regards to damages. But even if
10 Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the
11 litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment. As
12 demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is
13 real. JCL Dec., ¶ 35. “Avoiding such a trial and the subsequent appeals in this complex case
14 strongly militates in favor of settlement rather than further protracted and uncertain litigation.”
15 (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless
16 the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and
17 expensive litigation with uncertain results.” (*Id.* at 526.)

18 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$210,000 that is
19 roughly between 12.94% (“Conservative Model”) and 18.44% (“Aggressive Model”) of
20 Defendants’ maximum class wide liability exposure. Given the amount of the settlement here, as
21 compared to potential value of the claims, offset by the various inherent risks to continued
22 litigation, the settlement is fair and reasonable. JCL Dec., ¶ 36.

23 **6. The Amount Offered in Settlement**

24 The Settlement in this case is fair, reasonable and adequate considering Defendants’
25 defenses to Plaintiff’s claims. As detailed during preliminary approval, the Gross Settlement
26 Amount compares favorably to the value of the claims. Class Members will receive immediate
27 and certain payments of considerable amounts under the Settlement. The overall maximum
28 Individual Settlement Payment is **\$1,394.68** and the average payment is **\$681.21**. The Aggrieved

1 Employees will receive an average payment of **\$22.32** and an estimated high payment of **\$40.46**.
2 JCL Dec., ¶ 37; ILYM Dec. at ¶ 14.

3 Faced with the serious doubts as to recovery, the Settlement of \$210,000 plus the
4 employer's share of payroll taxes compares favorably to the damage estimates alleged to have
5 been suffered by the Class. Considered as a whole, the \$210,000 represents 12.94% of the total
6 potential *damages* identified by Plaintiff's expert. Additionally, the Gross Settlement Amount
7 represents 18.44% of the total *damages and statutory penalties* identified by Plaintiff's expert at
8 the time of mediation. Given the amount of the settlement as compared to the potential value of
9 claims in this case, the settlement is fair and reasonable. JCL Dec. ¶ 38.

10 **7. The Penalties Under PAGA are Reasonable**

11 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of
12 \$10,000 which is 4.76% of the Gross Settlement Amount. This amount falls well within the range
13 of PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment (\$7,500) will be paid
14 to the LWDA with the remaining twenty-five percent (25%) to be distributed to the Aggrieved
15 Employees, which is within the range of PAGA Payments approved by courts and should be
16 approved. JCL Dec., ¶ 39.

17 Further, on May 19, 2022, Class Counsel gave the LWDA notice of this Settlement and
18 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval
19 with the LWDA. On November 17, 2022, Plaintiff gave the LWDA notice of this motion seeking
20 final approval of this Settlement. JCL Dec., ¶ 40.

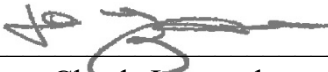
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1 **V. CONCLUSION**

2 Plaintiff respectfully submits that the proposed Settlement satisfies the standard of fairness
3 established in California law and should therefore be finally approved as fair, reasonable and
4 adequate and request entry of the Final Approval Order and Judgment.

5
6 DATED: November 17, 2022

JCL LAW FIRM APC

7
8 By: 
9 Jean-Claude Lapuyade
10 Attorney for Plaintiff