

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

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Email: norm@bamlawca.com

11 Website: www.bamlawca.com

12 Attorneys for Plaintiff

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SACRAMENTO**
16
17

18 ADRIAN AGUIRRE, an individual, on
19 behalf of himself and on behalf of all
20 persons similarly situated,

21 Plaintiff,

22 vs.

23 HEADLANDS VENTURES, LLC., a
24 California Limited Liability Company;
25 and DOES 1 through 50, Inclusive,

26 Defendants.

CASE No. **34-2021-00297290-CU-OE-GDS**

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

Hearing Date: June 9, 2023

Hearing Time: 9:00 a.m.

*[Hearing scheduled by Paragraph 12 of the Order
dated January 27, 2023]*

Judge: Hon. Jill H. Talley
Dept: 27

Action Filed: March 24, 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 January 27, 2023 (“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 Adrian Aguirre ("Plaintiff") respectfully submit this
9 memorandum in support of the unopposed motion for final approval and the proposed entry of the Final
10 Approval Order and Judgment, submitted herewith. The settlement represents an excellent result for
11 the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice to
12 the members of the Class, there were **no objections and only one request for exclusion**, which means
13 that almost the entire Class has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is
14 a positive response from the Class evidencing their collective approval of the settlement. As a result,
15 Plaintiff respectfully submits that the class settlement should be finally approved for the same reasons
16 that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

17 **II. THE SETTLEMENT BEFORE THE COURT**

18 Plaintiff and Defendant Headlands Ventures, LLC (“Defendant”) reached a full and final
19 settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with
20 the Court. As consideration for this Settlement, the Gross Settlement Amount is One Million Six
21 Hundred Thousand Dollars (\$1,600,000) to be paid by Defendant, as set forth in the Agreement.
22 (Agreement at ¶¶ I(19) and III(34).) Under the Settlement, the Gross Settlement Amount consists of
23 the following elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees
24 Payment and Class Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses;

25 _____
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals employed by Defendant in California as hourly-paid,
28 non-exempt employees at any time during the Class Period.” The “Class Period” is defined as “March
24, 2017 through July 31, 2022.” (Preliminary Approval Order at 3:6-9.)

1 (4) the Class Representative Service Payment to Plaintiff; and (5) the PAGA Payment. (Agreement at
2 ¶¶ III(34-36).)

3 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement
4 at ¶ III(34).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement
5 at ¶ III(34).) Blumenthal Decl. ¶3(a).

6 Following final approval, Defendant shall fund the Gross Settlement Amount within fifteen
7 (15) days of the Effective Date. (Agreement at ¶ III(41).) The Settlement Shares to Participating Class
8 Members will be mailed by the Settlement Administrator fifteen (15) days after Defendant fully funds
9 the Gross Settlement Amount or fifteen (15) days after the Effective Date if Defendant fully prefunded
10 the Gross Settlement Amount. (Agreement at ¶ III(41).) Blumenthal Decl. ¶3(c).

11 The Net Settlement Amount shall equal the net amount available for payment to the Class after
12 deducting the Court-approved amounts for the Class Representative Service Payment, the Class
13 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the
14 Settlement Administration Expenses. (Agreement at ¶ I(21).) The Net Settlement Amount will be
15 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
16 ("Participating Class Members"). (Agreement at ¶¶ I(24), III(36).) The Settlement Share will be
17 calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the
18 total number of weeks for the Class included in the Class Data to determine a dollar amount per week
19 ("Weekly Rate"); and (b) the Settlement Administrator shall then take the number of weeks worked by
20 each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement
21 Share. (Agreement at ¶ III(36)(b).) Blumenthal Decl. ¶ 3(d).

22 Class Members were sent the Court approved Class Notice using the procedure approved by the
23 Court by mailing the notice packets after updating class members' addresses using the National Change
24 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to
25 any forwarding address provided or updated address located. Declaration of Madely Nava ("Nava
26 Decl.") ¶ 7. Class Members may choose to opt-out of the Settlement by following the directions in the
27 Class Notice. (Agreement at ¶ III(38)(c), Ex. A.) All Class Members who do not "opt out" will be
28 deemed Participating Class Members who will be bound by the Settlement and will be entitled to

1 receive a Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their
2 allocation of the PAGA Payment, and will remain subject to the release of the Released PAGA Claims,
3 regardless of their request for exclusion. (Agreement at ¶ III(38)(c)(iii).) Finally, the Class Notice will
4 also advise the Class Members of their right to object to the Settlement and/or dispute their workweeks.
5 (Agreement at ¶ III(38)(c), Ex. A.) Blumenthal Decl. ¶ 3(e).

6 A Participating Class Member must cash his or her Settlement Share check within 180 days
7 after it is mailed. (Agreement at ¶ III(48).) The Settlement Administrator will send a reminder to
8 Participating Class Members who have not cashed their checks 120 days after the mailing. (Agreement
9 at ¶ III(42).) Any settlement checks not cashed within 180 days will be voided and any funds from such
10 uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name
11 of the individual who failed to cash their check. (Agreement at ¶ III(42).) Blumenthal Decl. ¶3(f).

12 ILYM Group was appointed by the Court as the Settlement Administrator for the Settlement.
13 (Agreement at ¶ III(37).) From the Gross Settlement Amount, the Settlement Administrator shall be
14 paid for the expenses of administering the Settlement in an amount not to exceed \$15,000. (Agreement
15 at ¶ III(35)(d).) As set forth in the Nava Decl. at ¶ 16, the Settlement Administration Expenses,
16 including fees and costs incurred to-date, as well as anticipated fees and costs for completion of the
17 settlement administration, are \$13,450. Blumenthal Decl. ¶3(g).

18 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
19 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
20 at ¶ III(35)(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
21 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ III(35)(b).) Subject
22 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as
23 the Class Representative Service Payment. (Agreement at ¶ III(35)(a).) In support of this separate
24 motion for attorneys' fees, reimbursement of expenses and service award, Class Counsel is providing
25 evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

26 Subject to Court approval, Thirty-Five Thousand Dollars (\$35,000) will be paid from the Gross
27 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
28 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),

1 the PAGA Payment shall be allocated as follows: 75% (\$26,250) to the LWDA as the LWDA's share
2 of the PAGA Payment pursuant to PAGA and 25% (\$8,750) will be distributed to the Aggrieved
3 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
4 III(35)(c).) As set forth in the accompanying proof of service, the LWDA has been served with this
5 motion and the Agreement. Blumenthal Decl. ¶3(i).

6 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
7 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
8 is “fair, adequate, and reasonable”. (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
9 at \$1,600,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
10 that liability and class certification in this case were far from certain in light of the defenses asserted
11 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
12 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
13 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

16 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
17 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
18 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
19 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“[V]oluntary conciliation and settlement are
20 the preferred means of dispute resolution. This is especially true in complex class action litigation.”)

21 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
22 action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing
23 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The
24 court must decide whether the proposed settlement falls within the range of reasonable settlements,
25 taking into account that settlements are compromises between the parties reflecting subjective,
26 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See Wershba v.*
27 *Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to be judged
28 against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed

1 at trial.”) In *Wershba*, appellants argued that the settlement was too low given the “clear” liability,
2 however, the Court rejected this argument and held that “the merits of the underlying class claims are
3 not a basis for upsetting the settlement of a class action.” *Id.*; *see also 7-Eleven, supra*, at 1150.

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

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

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

21 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
22 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the
23 trial court should consider in evaluating the reasonableness of a class action settlement agreement
24 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
25 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
26 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
27 the presence of a governmental participant, and the reaction of the class members to the proposed
28 settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations

omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

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

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

A. The Settlement Satisfies the California Test for Fairness

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

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

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

This Settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has

1 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

2 The Parties attended an arms-length mediation session with Jeff Ross, a respected and
3 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
4 for the mediation, Defendant provided Class Counsel with necessary information for the members of
5 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiff
6 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
7 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
8 agreed to this Settlement. Blumenthal Decl. ¶7(b).

9 The fact that the settlement was negotiated with the assistance of an experienced mediator
10 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
11 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
12 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
13 litigation, with the assistance of a well-respected mediator with substantial experience in employment
14 litigation[, and] this factor supports approval of the settlement”).

15 From May 2022 to October 2022, the settlement agreement and exhibits thereto were finalized
16 and executed. On January 27, 2023, the Court issued its Order granting preliminary approved of the
17 settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

18 3. Class Counsel is Experienced in Similar Litigation

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

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

1 The reaction of the Class unequivocally supports approval of the Settlement. On March 13,
2 2023, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members,
3 which provided each class member with the terms of the Settlement, including notice of the claims at
4 issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award
5 that were being sought, how individual settlement awards would be calculated, and the specific,
6 estimated payment amount to that individual. See Nava Decl. ¶ 7, Exh. A. In disseminating the notice,
7 the Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
8 Approval Order. Significantly, there have been no objections and only one (1) valid requests to opt-
9 out. Nava Decl. at ¶¶ 11, 13. As such, nearly the entire Class will participate in the Settlement and will
10 be sent a settlement check. See Nava Decl. at ¶¶ 12, 14; Blumenthal Decl. ¶ 4.

11 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
12 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
13 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
14 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
15 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
16 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
17 settlement should be considered when determining fairness of settlement). Here, where there are no
18 objections, the approval of the class is evident.

19 5. The Strength of Plaintiff's Case

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

26 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
27 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
28 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant

1 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all
2 work time was paid for at the proper regular rate. Defendant contend that its meal and rest period
3 policies fully complied with California law and that Defendant's timekeeping system recorded meal
4 periods, paid for missed meal periods, and was not required to record rest periods. Plaintiff's theory
5 of liability for rest breaks was based upon an alleged deficient policy resulting in 100% violation rate
6 for rest breaks, which Defendant disputed. As to expense reimbursement, Defendant contended that
7 it paid for business expenses including personal cell phone usage. Finally, Defendant could argue that
8 the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's
9 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also
10 argues that based on its facially lawful practices, it acted in good faith and without willfulness, which
11 if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If
12 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
13 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
14 have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

17 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
18 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
19 Associates were misclassified as exempt. In addition to the uncertainties raised by
20 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
21 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.

22 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
23 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
24 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
25 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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

1 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees,
2 the actual recovery confers substantial benefits on the class that outweigh the potential
recovery through full adjudication.

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

5 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
6 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
7 Defendant argued that the individual experience of each putative class member varied with respect to
8 the claims. Defendant could also contest class certification by arguing injury and good faith were case
9 by case determinations that precluded class certification. Plaintiff is aware of other cases where class
10 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
11 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,
12 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
13 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the
14 class has been certified. While other cases have approved class certification in wage and hour claims,
15 class certification in this action would have been hotly disputed and was by no means a foregone
16 conclusion. Blumenthal Decl. ¶8(b).

17 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
18 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
19 substantial defenses both to liability and to class certification. Currently, the maximum and average
20 class member allocation are \$6,792.22 and \$1,629.03, respectively. *See Nava Decl.* ¶15. Given the
21 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
22 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

24 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
25 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event
26 of an adverse judgment. A post-judgment appeal by Defendant would have required many more years
27 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
28 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today

1 outweigh an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

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

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

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

24 *Id.* at *12.

25 7. The Amount Offered in Settlement

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

The calculations to compensate for the amount due to the Class Members at the time this
Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of

1 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
2 putative class members and determined the potential maximum damages for the class claims. For the
3 Class, Plaintiff evaluated that the claim for unpaid overtime wages due to the alleged miscalculation
4 of the regular rate was potentially \$49,020, the maximum potential meal period damages, based upon
5 a maximum 58% violation rate and after deducting meal premiums paid by Defendant, were estimated
6 to be \$1,765,433, the maximum potential rest period damages were estimated to be \$2,949,109 based
7 upon a 100% violation rate, and the maximum potential damages for failure to provide expense
8 reimbursement for cell-phones was calculated to be \$299,700 using \$30 per month in unreimbursed cell
9 phone expense. In total, the damages for the Class were calculated to have a maximum potential total
10 value of \$5,063,261. In addition, Plaintiff calculated that the maximum value of the potential waiting
11 time penalties were \$1,465,049, and the maximum value of the potential wage statement penalties were
12 \$943,550. These wage statement and waiting time penalties claims potentially had a much smaller
13 value or no value, even if damages were awarded, to the extent that they are only derivative of the meal
14 and rest break claims.³ Blumenthal Decl. ¶8(d).

15 Consequently, the Gross Settlement Amount represents more than 31% of the value of the
16 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
17 proven in full at trial.⁴ The above maximum calculations should then be adjusted in consideration for

19 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
20 226, at mediation Plaintiff recognized that these claims were subject to various defenses asserted by
21 Defendants, including, but not limited to, a good faith dispute defense as to whether any premium
22 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff were
23 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
24 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
25 and when the wages were due."). Additionally, at the time of mediation, Courts had held that violations
26 of the meal and rest period regulations, which require payment of a "premium wage" for each improper
meal period, do **not** give rise to claims under sections 203 and 226. *See e.g. Ling v. P.F. Chang's
China Bisto, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.
App. 5th 1308, 1336 (2018). As a result, the viability of Plaintiff's claims on these theories was
uncertain at the time the settlement was negotiated, even though the Supreme Court subsequently ruled
in May 2022 that meal and rest period violations could give rise to a claim under Section 203.

27 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the
28 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

1 both the risk of class certification and the risk of establishing class-wide liability on all claims. Given
2 the amount of the Settlement as compared to the potential value of the claims, the Settlement is most
3 certainly fair and reasonable.⁵ Blumenthal Decl. ¶8(d). Clearly, the goal of this litigation has been met.

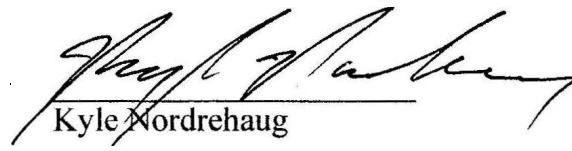
4 **V. CONCLUSION**

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

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9 Dated: May 15, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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11 By:


Kyle Nordrehaug

Attorneys for Plaintiff

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24 ⁵ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented “roughly one-sixth of the potential recovery”); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where “the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial.”); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth “somewhere between 9% and 18%” of full verdict value).