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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

TRACEY DEAL, an individual, on behalf
of herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

GENEX SERVICES, LLC, a Limited
Liability Company; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: **37-2021-00010974-CU-OE-CTL**
[Consolidated with Case No.
37-2021-00010977-CU-OE-CTL]

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

Hearing Date: September 8, 2023
Hearing Time: 9:00 a.m.
[Hearing scheduled by Order dated April 28, 2023]

Judge: Hon. Joel R. Wohlfeil
Dept.: 73

Action Filed: March 11, 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 and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated April 28, 2023 (“Preliminary Approval Order”),
6 the approved 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 Tracey Deal (“Plaintiff”) respectfully submit this memorandum
9 in support of the unopposed motion for final approval and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class
11 and avoids the delays, risks, and costs of further litigation. After disseminating the notice to the
12 members of the Class, there were **no objections and only one (1) 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 Genex Services, LLC (“Defendant”) reached a full and final settlement
19 of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court.
20 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is One
21 Million Two Hundred Thousand Dollars (\$1,200,000) (the "Gross Settlement Amount"). (Agreement
22 at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
23 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
24 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4)

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

27 ² The “Class” is defined as “all individuals employed in an exempt telephonic or field case manager
28 position at any point starting March 11, 2020 and ending July 1, 2022.” (Preliminary Approval Order
at ¶ 5)

1 the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment (to the
2 LWDA and to Class Members). (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a).

3 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement
4 at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement
5 at ¶ 3.1.) Blumenthal Decl. ¶3(b).

6 Within thirty (30) days of the Effective Date, Defendant shall deposit the Gross Settlement
7 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
8 to Participating Class Members along with the other Court-approved distributions shall be made by the
9 Administrator within fourteen (14) days after Defendant funds the Gross Settlement Amount.
10 (Agreement at ¶ 5.1.) Blumenthal Decl. ¶3(c).

11 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
12 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
13 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
14 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
15 Members as their Individual Class Payments. (Agreement at ¶¶ 1.23, 1.28 and 3.2.) From the Net
16 Settlement Amount, the Individual Class Payment for each Participating Class Member will be
17 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by
18 all Participating Class Members during the Class Period and (b) multiplying the result by each
19 Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on
20 Defendant's records, however, Class Members will have the right to challenge the number of
21 Workweeks. 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 Nathalie Beltran of ILYM
26 ("Beltran Decl."). Class Members were provided with the opportunity to exclude themselves or "opt
27 out" if they did not want to participate in the settlement. (Agreement at ¶ 8.5, Ex. A.) Beltran Decl.,
28 Exh. A. Only one (1) Class Member submitted a valid request for exclusion. The remaining Class

1 Members are deemed Participating Class Members who are bound by the Settlement and will be
2 entitled to receive a Settlement Share. (Agreement at ¶ 8.5(c).) All Aggrieved Employees/Class
3 Members (they are the same group), including those who submit an opt-out request, will still be paid
4 their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA
5 Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class
6 Notice also advised the Class Members of their right to object to the Settlement and/or dispute their
7 Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Blumenthal Decl. ¶ 3(e).

8 A Participating Class Member must cash his or her Individual Class Payment check within 180
9 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
10 be voided and any funds from such uncashed checks to a court-approved Cy Pres beneficiary consistent
11 with California Code of Civil Procedure § 384 ("Cy Pres Recipient"). The Parties designated Children's
12 Advocacy Institute, which is a not-for-profit child advocacy organization, as the Cy Pres Recipient for
13 this Settlement. (Agreement at ¶ 5.4.) Blumenthal Decl. ¶3(f).

14 ILYM Group was appointed by the Court as the Administrator for the Settlement. (Agreement
15 at ¶9). From the Gross Settlement Amount, the Administrator will be paid for settlement administration
16 in an amount not to exceed \$10,000. (Agreement at ¶ 3.2(c).) The amount of the Administration
17 Expenses Payment, including fees and costs incurred to-date, as well as anticipated fees and costs for
18 completion of the settlement administration, will be set forth in the forthcoming Declaration of Nathalie
19 Belran. Blumenthal Decl. ¶3(g).

20 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
21 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
22 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
23 Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(b).) Subject
24 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as
25 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) In support of this separate motion
26 for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is providing
27 evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

28 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount

1 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
2 et seq. ("PAGA"). The PAGA Penalties are one-half (50%) of the following: the Gross Settlement
3 Amount less the Class Representative Service Payment, the Class Counsel Fees Payment, the Class
4 Counsel Litigation Expenses Payment, and the Administration Expenses Payment, which amount is
5 presently estimated to be \$377,500. Pursuant to the express requirements of Labor Code § 2699(i), the
6 PAGA Payment shall be allocated as follows: 75% shall be allocated to the Labor Workforce
7 Development Agency ("LWDA") as its share of the civil penalties and 25% allocated to the Individual
8 PAGA Payments to be distributed to the Aggrieved Employees based on the number of their respective
9 PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompany proof of service, the LWDA
10 has been served with this motion and the Agreement. Blumenthal Decl. ¶3(i).

11 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
12 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
13 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
14 at \$1,200,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
15 that liability and class certification in this case were far from certain in light of the defenses asserted
16 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
17 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
18 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

19 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
20 **OF CLASS ACTION SETTLEMENTS**

21 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
22 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
23 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
24 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
25 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

26 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
27 action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing
28 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The

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

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

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

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

26 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
27 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the
28 trial court should consider in evaluating the reasonableness of a class action settlement agreement

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

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

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

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

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

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

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

28 This Settlement is the result of extensive and hard-fought litigation as well as negotiations

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

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

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

21 From September 2022 to March 2023, the settlement agreement and exhibits thereto were
22 finalized and executed, and then presented by motion to this Court for preliminary approval. On April
23 28, 2023, the Court issued its Order granting preliminary approved of the settlement as fair and
24 reasonable to the Class. Blumenthal Decl. ¶7(c).

25 3. Class Counsel is Experienced in Similar Litigation

26 Class Counsel in this matter has extensive class action experience and has represented thousands
27 of persons in class actions including employment litigation, wage and hour class actions, and complex
28 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and

1 claims similar to this case and have been approved as experienced class counsel during contested
2 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
3 knowledgeable in this area of law. A list of class action cases managed and settled by the Class
4 Counsel in this action is provided to the Court as Exhibit #1 to the Blumenthal Decl. Class Counsel
5 have participated in every aspect of the settlement discussions and have concluded the settlement is fair,
6 adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

7 4. There Are No Objections and Only One (1) Request for Exclusion

8 The reaction of the Class unequivocally supports approval of the Settlement. On June 26, 2023,
9 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
10 class member with the terms of the Settlement, including notice of the claims at issue and the financial
11 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
12 how individual settlement awards would be calculated, and the specific, estimated payment amount to
13 that individual. In disseminating the notice, the Administrator followed the notice procedures
14 authorized by the Court in its Preliminary Approval Order. Significantly, there have been no objections
15 and only one (1) valid request to opt-out, as will be detailed in the forthcoming Beltran Decl. As such,
16 nearly the entire Class will participate in the Settlement and will be sent a settlement check.
17 Blumenthal Decl. ¶4.

18 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
19 Settlement. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
20 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
21 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
22 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
23 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
24 settlement should be considered when determining fairness of settlement). Here, where there are no
25 objections, the approval of the class is evident.

26 5. The Strength of Plaintiff's Case

27 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
28 overtime wages for hours worked, were not provided meal and rest periods, were not timely paid earned

1 wages, were not provided reimbursement for required expenses, were not provided accurate itemized
2 wage statements, were not paid all wages at the time of termination. The Action seeks unpaid wages,
3 penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and owing
4 to Plaintiff and the other Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

5 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
6 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). A number of defenses asserted by Defendant,
7 however, present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
8 vigorously contested liability, the amount of claimed damages, and the propriety of class certification.
9 In particular, Defendant contends that all Class Member worked on a salary basis which properly
10 compensated for all time worked, were properly classified as exempt from mandatory meal and rest
11 breaks, and there is therefore no liability for alleged overtime or meal/rest period violations. Even if
12 Plaintiffs and the other Class Members were not properly classified, Defendant contended that its meal
13 and rest period policies fully complied with California law and Defendant did not fail to provide the
14 opportunity for legally required meal and rest breaks, Defendant further contended that there was no
15 failure to pay for business expenses and any cell phone usage was merely convenient and voluntary
16 such that reimbursement was not legally required. Finally, Defendant could argue that the Supreme
17 Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on
18 liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that
19 based on its facially lawful practices, Defendant acted in good faith and without willfulness, which if
20 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If
21 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
22 Blumenthal Decl. ¶8(a).

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

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

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

The potential complexity and possible duration of trial also weigh in favor of granting final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the 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 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees, the actual recovery confers substantial benefits on the class that outweigh the potential recovery through full adjudication.

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

There was also a significant risk that, if the Action was not settled, Plaintiff would be unable to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf of any employees other than herself. Defendant maintained that arbitration agreements signed by members of the Class would preclude or limit class certification. At the time of the mediation, Defendant forcefully opposed the propriety of class certification, arguing that individual issues precluded class certification. Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class has been certified. While other cases have approved class certification in wage and hour claims, class certification in this action was hotly disputed and the maintenance of a certified class through trial was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant recovery, particularly when viewed in light of the fact that the Defendant asserted serious and substantial defenses both to liability and to class certification. The maximum and average class member allocations will be set forth in the forthcoming Beltran Decl. Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,

1 reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

27 *Id.* at *12.
28

1 7. The Amount Offered in Settlement

2 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
3 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
4 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
5 favorably to the value of the claims. Based upon 280 Class Members who collectively worked 19,366
6 Workweeks, the Gross Settlement Amount provides an average value of \$4,285 per Class Member and
7 \$61 per Workweek and after deductions the Net Settlement Amount provides an average recovery of
8 \$1,348.21 per Class Member and a recovery of \$19.49 per Workweek.

9 The calculations to compensate for the amount due for the Class at the time of the mediation
10 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
11 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
12 wages for the employees. The maximum potential damages were calculated to be \$9,963,000 for the
13 alleged unpaid wages due to off the clock work based upon 9 hours of assumed overtime per week,
14 \$917,950 for alleged meal period damages based upon a 25% assumed potential violation rate for shifts
15 worked, \$922,500 for alleged rest period damages based upon a 25% assumed potential violation rate,
16 \$34,090 for alleged unreimbursed business expenses for assumed personal cell phone usage at \$10 per
17 month. As a result, the total damage valuation was calculated that Defendant was subject to a maximum
18 damage claim in the amount of \$11,837,540. As to potential penalties, Plaintiff calculated that potential
19 waiting time penalties were a maximum of \$627,000 and potential wage statement penalties were
20 \$648,000. Defendant vigorously disputed Plaintiff's calculations and exposure theories. Blumenthal
21 Decl. ¶8(d).

22 Consequently, the Gross Settlement Amount of \$1,200,000 represents more than 10% of the
23 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated..³
24 In addition, the above maximum calculations should then be adjusted in consideration for both the risk
25

26 ³ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
27 Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The
28 PAGA claim was addressed in the Motion for Preliminary Approval in the supporting Declaration of
Nordrehaug at ¶33.

1 of class certification and the risk of establishing class-wide liability on all claims. In this case, the
2 above valuations certainly overstate the value of the claims because off-the-clock assumes 9 hours of
3 unpaid overtime in every week, and the meal and rest period valuation is based on both a meal and a
4 rest break violation in 25% of all shifts worked. Given the amount of the settlement as compared to
5 the potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair
6 and reasonable.⁴ Clearly, the goal of this litigation has been met.

7
8 **V. CONCLUSION**

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

12 Dated: August 14, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

13 By: /s/ Kyle Nordrehaug

14 Kyle R. Nordrehaug, Esq.
15 Attorneys for Plaintiff
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22 ⁴ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
25 (N.D. Cal. 2015) (granting final approval where “the proposed Total Settlement Amount represents
26 approximately 10% of what class might have been awarded had they succeeded at trial.”); *Dunleavy*
27 *v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
28 of a class settlement which represented “roughly one-sixth of the potential recovery.”) See also *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 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 maximum valuation).