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

MICHAEL FARTHING, JEREMIAH  
BURKE and JARVIS RICHMOND,  
individuals, on behalf of themselves  
and on behalf of all persons similarly  
situated,

Plaintiff,

vs.

MILESTONE TECHNOLOGIES, INC., a  
California Corporation ; and DOES 1  
through 50, inclusive,

Defendants.

CASE No. **CGC-21-591251**

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

Hearing Date: February 28, 2023  
Hearing Time: 9:30 a.m.  
[Hearing scheduled by Order dated October 12,  
2022]

Judge: Hon. Richard B. Ulmer  
Dept: 302

Action Filed: May 4, 2021  
Trial Date: Not Set

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1 to the Class; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)  
2 Settlement Administration Expenses; (4) Class Representative Service Payments to the Plaintiffs; and  
3 (5) the PAGA Payment. (Agreement at ¶ I(21).) Blumenthal Decl. ¶3(a).

4 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement  
5 at ¶ III(40).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement  
6 at ¶ III(40).) Blumenthal Decl. ¶3(b).

7 Following final approval, Defendant shall fund the Gross Settlement Amount within thirty (30)  
8 days of the Effective Date. (Agreement at ¶ III(47).) The Settlement Shares to Participating Class  
9 Members will be mailed by the Settlement Administrator fifteen (15) days after Defendant fully funds  
10 the Gross Settlement Amount. (Agreement at ¶ III(47).) 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 Payments, the Class  
13 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the  
14 Settlement Administration Expenses. (Agreement at ¶ I(23).) 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(26), III(42).) The Settlement Shares will be  
17 calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the  
18 total number of weeks worked by all Participating Class Members during the Class Period to determine  
19 a dollar amount per week ("Weekly Rate"); and (iii) the Settlement Administrator shall then take the  
20 number of weeks worked by each Participating Class Member and multiply it by the Weekly Rate to  
21 calculate their Settlement Share. (Agreement at ¶ III(42)(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 Stephen Gomez ("Gomez  
26 Decl.") ¶¶ 7-9. Class Members were provided with the opportunity to exclude themselves or "opt out"  
27 if they did not want to participate in the settlement. (Agreement at ¶ III(44)(c), Ex. A.; Gomez Decl.  
28 ¶ 5, Exh. A.) There were no requests for exclusion. Gomez Decl. ¶ 13. As a result, all Class Members

1 are deemed Participating Class Members who are bound by the Settlement and will be entitled to  
2 receive a Settlement Share. (Agreement at ¶ III(44)(c)(iii).) All Aggrieved Employees will be paid  
3 their allocation of the PAGA Payment and will remain bound by the release of the PAGA Released  
4 Claims regardless of their request for exclusion. (Agreement at ¶ III(44)(c)(iii).) The Class Notice also  
5 advised Class Members of their right to object to the Settlement and/or dispute their workweeks.  
6 (Agreement at ¶ III(44)(c), Ex. A.; Gomez Decl. ¶ 8, Exh. A.) Blumenthal Decl. ¶ 3(e).

7 A Participating Class Member must cash his or her Settlement Share check within 180 days  
8 after it is mailed. (Agreement at ¶ III(48).) The Settlement Administrator will send a reminder to  
9 Participating Class Members who have not cashed their checks 60 days before the expiration date.  
10 (Agreement at ¶ III(48).) Any settlement checks not cashed within 180 days will be voided and any  
11 funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property  
12 Fund in the name of the individual who failed to cash their check. (Agreement at ¶ III(48).)  
13 Blumenthal Decl. ¶3(f).

14 Simpluris was appointed by the Court as the Settlement Administrator for the Settlement.  
15 (Agreement at ¶ III(43). From the Gross Settlement Amount, the Settlement Administrator shall be  
16 paid for the expenses of administering the Settlement in an amount not to exceed \$15,000. (Agreement  
17 at ¶ III(41)(d).) As set forth in the Gomez Decl. at ¶ 16, the Settlement Administration Expenses,  
18 including fees and costs incurred to-date, as well as anticipated fees and costs for completion of the  
19 settlement administration, are \$15,000. 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 ¶ III(41)(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 \$20,000. (Agreement at ¶ III(41)(b).) Subject  
24 to Court approval, the Agreement provides for a payment of no more than \$10,000 to each of the  
25 Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ III(41)(a).) In support of this  
26 separate motion for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is  
27 providing evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

28 Subject to Court approval, Twenty Thousand Dollars (\$20,000) will be paid from the Gross

1 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor  
2 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),  
3 the PAGA Payment shall be allocated as follows: 75% (\$15,000) to the LWDA as the LWDA's share  
4 of the PAGA Payment pursuant to PAGA and 25% (\$5,000) will be distributed to the Aggrieved  
5 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶  
6 III(41)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject  
7 to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement  
8 at ¶ III(41)(c).) As set forth in the accompany proof of service, the LWDA has been served with this  
9 motion and the Agreement. Blumenthal Decl. ¶3(i).

10 The Settlement is fair, adequate and reasonable to the class and should be finally approved for  
11 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement  
12 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶3.) In sum, the Settlement valued  
13 at \$630,000 is an excellent result for the Class. This result is particularly favorable in light of the fact  
14 that liability and class certification in this case were far from certain in light of the defenses asserted  
15 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class  
16 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,  
17 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

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

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

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

#### 19 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

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

25 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*  
26 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the  
27 trial court should consider in evaluating the reasonableness of a class action settlement agreement  
28 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further

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

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

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

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

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

18 Over the course of nearly two (2) years of litigation, the Parties engaged in the investigation of  
19 the claims, including the production of documents, class data, and other information, allowing for the  
20 full and complete analysis of liabilities and defenses to the claims in this Action. The procedural history  
21 and investigation performed was detailed at length in support of the motion for preliminary approval.  
22 The Settlement was the product of one arms-length mediation and contentious negotiations through an  
23 all-day mediation presided over by Tripper Ortman, Esq., a respected and experience mediator of wage  
24 and hour class actions. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

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

26 This Settlement is the result of extensive and hard-fought litigation as well as negotiations  
27 before an experienced and well-respected mediator. Defendant has expressly denied and continues to  
28 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and

1 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released  
2 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to  
3 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and  
4 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has  
5 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

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

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

19 From March 23, 2022 to July 28, 2022, the settlement agreement and exhibits thereto were  
20 finalized and executed. On October 12, 2022, the Court issued its Order granting preliminary approved  
21 of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

### 22 3. Class Counsel is Experienced in Similar Litigation

23 Class Counsel in this matter has extensive class action experience and has represented thousands  
24 of persons in class actions including employment litigation, wage and hour class actions, and complex  
25 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and  
26 claims similar to this case and have been approved as experienced class counsel during contested  
27 motions in state and federal courts throughout California. As such, Class Counsel is experienced and  
28 knowledgeable in this area of law. A list of class action cases managed and settled by the Class

1 Counsel in this action is provided to the Court as Exhibit #1 to the Blumenthal Decl. Class Counsel  
2 have participated in every aspect of the settlement discussions and have concluded the settlement is fair,  
3 adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

4 4. There Are No Objections and No Requests for Exclusion

5 The reaction of the Class unequivocally supports approval of the Settlement. On November 9,  
6 2022, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members,  
7 which provided each class member with the terms of the Settlement, including notice of the claims at  
8 issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award  
9 that were being sought, how individual settlement awards would be calculated, and the specific,  
10 estimated payment amount to that individual. See Gomez Decl. ¶ 8, Exh. A. In disseminating the  
11 notice, the Settlement Administrator followed the notice procedures authorized by the Court in its  
12 Preliminary Approval Order. Significantly, there have been no objections and no requests to opt-out.  
13 Gomez Decl. ¶¶ 13, 15. As such, the entire Class will participate in the Settlement and will be sent a  
14 settlement check. See Gomez Decl. at ¶ 11; Blumenthal Decl. ¶4.

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

23 5. The Strength of Plaintiffs' Case

24 The Action generally alleges that Plaintiffs and other Class Members were not properly paid  
25 all overtime wages for hours worked, were not provided meal and rest periods, were not timely paid  
26 earned wages, were not provided reimbursement for required expenses, were not provided accurate  
27 itemized wage statements, were not paid all wages at the time of termination. The Action seeks unpaid  
28 wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and

owing to Plaintiffs and the other Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all work time was paid for and that the work time recording practices were lawful. Defendant contend that its meal and rest period policies fully complied with California law and that Defendant's timekeeping system recorded meal periods, paid for missed meal periods, and was not required to record rest periods. Plaintiffs' theory of liability for rest breaks was based upon an on premise restriction, which Defendant disputed and argued that this theory has been rejected by Courts as sufficient alone to establish liability for on-duty rest breaks. *See, e.g., Ritenour v. Carrington Mortg. Servs., LLC*, 2018 WL 5858658, at \*7 (C.D. Cal. 2018) (holding that defendant's on-premises rest period policy was facially valid and legal); *Hubbs v. Big Lots Stores, Inc.*, 2018 WL 5264141, at \*5 (C.D. Cal. 2018) (citing *Augustus* and dismissing on-premises rest period claims for failure to state a claim); *Bell v. Home Depot U.S.A., Inc.*, 2017 WL 1353779, at \*2 (E.D. Cal. 2017) (declaring defendant's argument that *Augustus* implied on-premises rest periods were legal as "more persuasive and accurate" than plaintiff's argument to the contrary). As to expenses reimbursement, Defendant contended that it paid for business expenses including personal cell phone usage. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that based on its facially lawful practices, they acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, 2009

1 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009), explained in approving an overtime class action settlement:

2 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.  
3 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service  
4 Associates were misclassified as exempt. In addition to the uncertainties raised by  
5 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,  
6 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.

7 2009 U.S. Dist. LEXIS 33900 at \*19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007

8 U.S. Dist. LEXIS 86266, at \*30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal  
9 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor  
10 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

11 The potential complexity and possible duration of trial also weigh in favor of granting  
12 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the  
13 uncertainty of outcome, and believe defendant would appeal in the event of adverse  
14 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.

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

17 There was also a significant risk that, if the Actions were not settled, Plaintiffs would be unable  
18 to obtain class certification and thereby not recover on behalf of any employees other than themselves.  
19 Defendant argued that the individual experience of each putative class member varied with respect to  
20 the claims. Defendant could also contest class certification by arguing injury and good faith were case  
21 by case determinations that precluded class certification. Plaintiffs are aware of other cases where class  
22 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885  
23 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,  
24 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59  
25 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the  
26 class has been certified. While other cases have approved class certification in wage and hour claims,  
27 class certification in this action would have been hotly disputed and was by no means a foregone  
28

1 conclusion. Blumenthal Decl. ¶8(b).

2 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant  
3 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and  
4 substantial defenses both to liability and to class certification. Currently, the maximum and average  
5 class member allocation are \$1,273.81 and \$283.66, respectively. *See* Gomez Decl. ¶11. Given the  
6 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed  
7 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

9 *Id.* at \*12.

#### 10 7. The Amount Offered in Settlement

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

15 The calculations to compensate for the amount due to the Class Members at the time this  
16 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of  
17 mediation. For the individuals whose claims are at issue in this Actions, Plaintiffs analyzed the data for  
18 putative class members and determined the potential maximum damages for the class claims. For the  
19 Class, Plaintiffs evaluated that the claim for unpaid wages due to the alleged rounding was potentially  
20 \$29,931, the maximum potential meal period damages, after deducting meal premiums paid by  
21 Defendant, wages were estimated to be \$246,220, the maximum potential rest period damages were  
22 estimated to be \$3,413,438 based upon a 100% violation predicated on a premise restriction theory, the  
23 maximum potential damages for off the clock work were estimated to be \$568,906, and the maximum  
24 potential damages for failure to provide expense reimbursement for cell-phones was calculated to be  
25 \$53,343. In total, the damages for the Class were calculated to have a maximum potential total value  
26 of \$4,311,839. In addition, Plaintiffs calculated that the maximum value of the potential waiting time  
27 penalties were between \$3,199,778 and \$4,093,314, depending on the predicate violation, and the  
28 maximum value of the potential wage statement penalties were \$1,687,650. These wage statement and  
waiting time penalties claims potentially have a much smaller value or no value, even if damages were

1 awarded, to the extent that they are only derivative of the rest break claims.<sup>3</sup> Blumenthal Decl. ¶8(d).

2       Consequently, the Gross Settlement Amount represents more than 14% of the value of the  
3 potential maximum damages at issue for the Class in this case, assuming these amounts could all be  
4 proven in full at trial.<sup>4</sup> The above maximum calculations should then be adjusted in consideration for  
5 both the risk of class certification and the risk of establishing class-wide liability on all claims. In  
6 addition, the above valuation likely overstates the maximum damages by at least 25%, as the valuations  
7 were based on 39,000 workweeks, when the actual workweeks for the Class have now been verified  
8 by Defendant's declaration to be 27,350. Given the amount of the Settlement as compared to the  
9 potential value of the claims, the Settlement is most certainly fair and reasonable.<sup>5</sup> Blumenthal Decl.  
10 ¶8(d). Clearly, the goal of this litigation has been met.

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14       <sup>3</sup> While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and  
15 226, at mediation Plaintiffs recognized that these claims were subject to various defenses asserted by  
16 Defendants, including, but not limited to, a good faith dispute defense as to whether any premium  
17 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff were  
18 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There  
19 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether  
20 and when the wages were due."). Additionally, at the time of mediation, Courts had held that violations  
21 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 Plaintiffs' 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.

22       <sup>4</sup> Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included  
23 the PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the  
Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶ 33.

24       <sup>5</sup> *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).

1 **V. CONCLUSION**

2 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness  
3 established in California law and should therefore be finally approved as fair, reasonable and adequate  
4 and requests entry of the Final Approval Order and Judgment, submitted herewith.

5 Dated: January 31, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK  
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