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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

SAMANTHA OWENS,

Plaintiff,

vs.

FIDELITY NATIONAL HOME WARRANTY
COMPANY; and DOES 1-100, inclusive,

Defendants.

Case No.: MSC21-00731

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT

Date: April 25, 2024

Time: 9:00 a.m.

Dept.: 12

Judge: Hon. Charles S. Treat

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1 **I. INTRODUCTION.**

2 Plaintiff Samantha Owens (“Owens” or “Plaintiff”) negotiated a resolution of pending wage
3 and hour claims asserted on behalf of herself and other non-exempt California employees of
4 Fidelity National Home Warranty Company (“Defendant” or “Fidelity”) who worked between
5 April 12, 2017 and September 21, 2023 (the “Settlement Class”) that provides a Gross Settlement
6 Amount of \$285,000 (\$275,000 allocated to resolve Class Claims and \$10,000 to resolve PAGA
7 Claims). In recognition of distinct claims and time periods implicated by segments of the
8 Settlement Class, it is divided into the following:

9 (1) the “Meal Period Subclass,” which includes those who worked at least one shift of more
10 than five (5) hours from March 1, 2020, through and including September 21, 2023; (2) the
11 “Overtime Subclass,” which includes those who earned a non-discretionary bonus or other
12 remuneration pertaining to a workweek when he or she also worked overtime on at least one
13 occasion from April 12, 2017, through and including September 21, 2023, and who were not
14 part of the “Overtime Class” in the matter of *Dillard/Menchaca v. Fidelity National Financial,*
15 *Inc., et al.*, Contra Costa County Superior Court Case No. C18-00394; and (3) the “Wage
16 Statement Subclass,” which includes those who received one or more wage statements at any
17 time from April 12, 2020, through and including September 21, 2023. Joint Stipulation for
18 Class Action Settlement and Release (“Settlement” or “SA”) at ¶ 15.¹

19 The Settlement, which was preliminarily approved by this Court on January 12, 2024, (1) is
20 the product of arms-length negotiations, (2) was negotiated by experienced class action attorneys with
21 the help of a respected wage and hour mediator, (3) was reached subsequent to undertaking sufficient
22 investigation, including substantial formal and informal discovery, analysis and expert review, in
23 order to evaluate the Class’ claims, and (4) reflects a logical balancing of the strength and value of the
24 Class’ claims and the inherent risks of continued litigation, including potential defeat at certification,
25 on the merits, and/or on appeal. **The Settlement will provide an actual average recovery of \$659.60**
26 **per Meal Period Subclass Member, \$223.86 per Overtime Subclass Member, \$263.84 per Wage**

27
28 ¹ Capitalized terms herein shall have the same meaning as in the Joint Stipulation of Class and PAGA Action Settlement and Release (“Settlement Agreement”, “Settlement”, or “SA”), a copy of which is attached as **Exhibit 1** to the Declaration of Jenny D. Baysinger (“JDB Dec.”) filed concurrently herewith.

1 **Statement Subclass Member—an additional \$291.61 will be provided to members of the Meal**
2 **Period Subclass and Overtime Subclass whose employment has ended.** JDB Dec. ¶¶ 28-29, 65.

3 Notice was provided to 121 total Settlement Class Members, **not one of whom has objected or**
4 **elected to opt out.** Plaintiff now seeks final approval of the Settlement. When the benefits of the
5 Settlement are assessed against the risks of continued, protracted litigation, the fairness, adequacy,
6 and reasonableness of the Settlement is clear and this Court should grant final approval of the
7 Settlement such that Class Members can receive their cognizable resultant distributions.

8 **II. SUMMARY OF THE CASE.**

9 **A. Plaintiff's Claims.**

10 Plaintiff contends Defendant failed to properly pay her and other non-exempt California
11 employees for all hours worked because (among other things) they unlawfully rounded time, failed to
12 properly calculate and pay overtime by miscalculating the “regular rate of pay”, failed to provide meal
13 periods, failed to issue accurate itemized wage statements, failed to timely pay wages owed on
14 separation, and engaged in unfair business practices (the “Class Claims”). Plaintiff also asserts a cause
15 of action to assess and collect civil penalties for violations during the PAGA Period.

16 **1. The Class and Subclasses.**

17 Plaintiff seeks to represent a single Settlement Class defined as: All non-exempt individuals
18 who worked for Defendant in California at any time between April 12, 2017 and September 21, 2023.
19 SA ¶ 15. The Settlement Class is divided into a Meal Period Subclass (March 1, 2020 through
20 September 21, 2023 claims period), an Overtime Subclass (entire Class Period), and a Wage Statement
21 Subclass (April 12, 2020 through September 21, 2023 claims period). *Ibid.* Dividing the Settlement
22 Class was done in an effort to provide proportionally appropriate compensation to each segment of
23 Class Members based on the strength and value of the claims presented. JDB Dec. ¶¶ 27, 64.

24 There are 121 total Participating Class Members (a 100% participation rate), 112 in the Meal
25 Period Subclass, 99 in the Overtime Subclass, 112 in the Wage Statement Subclass, and 76 Meal
26 Period and Overtime Subclass members whose employment has ended. Declaration of Taylor
27 Mitzner With Respect to Notice and Settlement Administration (“Admin. Dec.”) ¶¶ 12-16.

28 ///

1 **A. Procedural History.**

2 On February 2, 2021, Plaintiff’s counsel sent a notification letter to the LWDA and FNHW
3 pursuant to Labor Code section 2699.3. JDB Dec. ¶ 5. After the requisite notice period outlined in
4 the PAGA expired, my office filed the operative Class and Representative Action Complaint in the
5 instant matter (the “Complaint”) on April 12, 2021. *Id.* ¶ 6. The Complaint asserts seven (7) causes
6 of action; (1) failure to pay minimum wage, (2) failure to pay overtime, (3) failure to provide meal
7 breaks, (4) failure to furnish accurate wage statements, (5) failure to pay all wages on separation, (6)
8 unfair business practices, and (7) a PAGA claim. *Ibid.*

9 **B. Identifying the Claims, Marshalling the Evidence, Creating a Damages Model and**
10 **Developing a Strategy for Mediation.**

11 Through independent inquiry, research, and informal discovery, Class Counsel thoroughly and
12 diligently investigated and pursued the claims. This process has included, but not been limited to, (1)
13 obtaining and reviewing Plaintiff’s personnel file, payroll records, and time records through both
14 formal and informal discovery; (2) identifying, researching, and pleading the appropriate claims,
15 including amending the Lawsuit to assert additional claims as they ripened and/or were discovered; (3)
16 exhausting administrative remedies; (4) identifying, requesting, and securing the payroll and time
17 records for 139 individual putative class members (nearly the entirety of each Class); (5) propounding
18 formal and informal discovery to secure relevant policy documents and numerical information
19 regarding the size of the class and the scope of the claims, (6) retaining an expert to analyze the payroll
20 and time data provided by Defendant and personally conducting spot checks to ensure the accuracy of
21 the damages calculations; (7) researching and evaluating the scope of additional and/or previous actions
22 and their potential impact on the Class Claims; (8) creating a reliable damages model; and (9)
23 developing and implementing a strategy for mediation and settlement. JDB Dec. ¶ 7.

24 **C. Settlement Negotiations.**

25 At all times, the Parties’ negotiations were adversarial, non-collusive, and at arms’ length,
26 ultimately culminating in mutual acceptance of a mediator’s proposal. JDB Dec. ¶¶ 19-20. Between
27 August 2021 and execution of the SA in September 2023, Defendant provided more than 1,000 pages
28 of documents and more than 60,000 line items of data relating to the relevant time and payroll records

1 of nearly the entirety of the Class. *Id.* ¶ 13. In conjunction with the negotiations, the Parties spoke at
2 length about the strengths and weaknesses of each sides’ claims and defenses, discussed the scope of
3 claims, their merits, and the potential impact of a prior class action settlement in *Dillard v. Fidelity*
4 *National Home Warranty*, Contra Costa Superior Court Case NO. MSC18-00394 (the “*Dillard*
5 *Matter*”). *Id.* ¶¶ 16, 66-78. On May 5, 2023, the Parties participated in an all-day mediation with
6 David Phillips, but were unable to reach an agreement. After an additional two (2) months of
7 negotiation and discussion, the mediator issued a proposal that was mutually accepted on July 20, 2023.
8 *Id.* ¶ 19. Following additional negotiation, a long-form settlement agreement was executed in
9 September 2023. *Id.* ¶ 20, Exh. 1.

10 **D. This Court Granted Preliminary Approval of the Settlement.**

11 On January 12, 2024, this Court granted preliminary approval of the Settlement. Having
12 reviewed the substantive terms of the Settlement, the Court (1) found the proposed Class and
13 subclasses appropriate for conditional certification, (2) found the Class and subclasses meets the
14 requirements of California Code of Civil Procedure section 382, (3) found the terms of the Settlement
15 appeared fair, adequate, and reasonable; (4) preliminarily approved the amount allocated to resolve
16 PAGA Claims as fair, adequate, and reasonable; (5) preliminarily found the investigation and
17 research conducted prior to the Settlement sufficient to allow the Parties to reasonably evaluate the
18 claims; (6) found the notice and manner of notice proposed satisfied due process, and (7) scheduled a
19 final approval hearing. Order After Hearing Granting Motion for Preliminary Approval (“PAO”) at
20 pp. 6-7, ¶¶ 4-5, 6.a-b, 7-8, 12.

21 **III. SUMMARY OF THE PROPOSED SETTLEMENT.**

22 **A. Monetary Relief Under the Settlement.**

23 Pursuant to the Settlement, Fidelity will remit a total Gross Settlement Amount (“GSA”) of
24 \$285,000, on an all-in, non-reversionary basis, to resolve the Released Claims—\$10,000 of the GSA is
25 allocated to resolve PAGA Claims and \$275,000 is allocated to resolve Class Claims. SA ¶¶ 28.B,
26 28.H. In order to provide appropriate proportional relief to the Class based on the nature of different
27 claims and different time periods over which specific claims were asserted, the Class was divided into
28 three (3) distinct subclasses; the Meal Period Subclass, which resolves only alleged meal period claims

1 and derivative claims beginning March 1, 2020, the Overtime Subclass, which resolves only minimum
2 wage/overtime claims beginning in 2017 that were not resolved in the *Dillard* matter, and the Wage
3 Statement Subclass, which resolves wage statement claims beginning April 12, 2020. SA ¶¶ 15, 43.A-
4 C. The settlement proceeds will be distributed 50% to the Meal Period Subclass, 15% to the Overtime
5 Subclass, and 20% to the Wage Statement Subclass, with an additional 15% to be divided between
6 members of the Meal Period and Overtime subclasses whose employment ended between April 12,
7 2018 and September 21, 2023. SA ¶ 28.D.iii-vi.

8 After deducting the expected administration costs (\$7,250), Plaintiff's Enhancement Payment
9 (\$10,000 total), the fees (\$95,000) and costs (\$15,000) of Class Counsel, and the PAGA Allocation
10 (\$10,000), a \$147,750 net amount will ultimately be distributed to Qualified Class Members. SA ¶
11 28.C; JDB Dec. ¶ 87. The actual average net distributions across the subclasses are as follows: \$659.60
12 for Meal Period Subclass members, \$223.86 for Overtime subclass members, and \$263.84 for Wage
13 Statement subclass members. *Id.* ¶¶ 28-29, 65. The average distribution to Qualified Class Members
14 eligible for a portion of the Waiting Time Penalty Share is \$291.61. *Ibid.*

15 **B. Scope Of Release And Final Judgment.**

16 Upon the Effective Date, Qualified Class Members will forever and completely release and
17 discharge the Released Parties as follows:

18 Meal Period Subclass Members shall release the Released Parties from the Meal Period
19 Subclass Released Claims, which consist of claims predicated on alleged meal period violations
20 (including derivative claims) between March 1, 2020 and September 21, 2023. SA ¶ 43.A.

21 Overtime Subclass Members shall release the Released Parties from the Overtime Subclass
22 Released Claims, which consist of claims predicated on alleged regular rate and overtime
23 violations (including derivative claims and minimum wage claims) between April 12, 2017 and
24 September 21, 2023. SA ¶ 43.B. Wage Statement Subclass Members shall release the Released
25 Parties from the Wage Statement Subclass Released Claims, which consist of claims predicated on
26 alleged wage statement violations between April 12, 2020 and September 21, 2023. SA ¶ 43.C.

27 Additionally, Plaintiff will release the Released Parties from any and all claims and will
28 execute a Civil Code section 1542 waiver. SA ¶¶ 45-46. The Released Claims of each subclass

1 were narrowly to track the factual allegations underlying the claims advanced on behalf of that
2 respective subclasses and do not include a Civil Code section 1542 waiver. Each subclass is only
3 waiving claims implicated by the theories asserted by *that* particular subclass, as opposed to broad
4 waivers of all claims asserted in the pleadings. JDB Dec. ¶ 79.

5 **C. Settlement of the PAGA Claims.**

6 Fidelity's payment of \$10,000 will resolve all claims for civil penalties arising out of the
7 Class Claims. SA ¶¶ 29-30, 58.b. The LWDA was advised of the Settlement and its PAGA
8 allocation and has not raised any concern or objection to date. JDB Dec. ¶ 100, Exh. 3.

9 **D. Class Representative Enhancement Payment.**

10 Plaintiff requests a \$10,000 Enhancement Payment for her service to the Class, or 3.5% of the
11 GSA. SA ¶¶ 28.G. The requested amount is fair, reasonable and appropriate under the
12 circumstances. Critically, no Class Member objected to the requested payment. Admin. Dec. ¶ 9;
13 JDB Dec. ¶ 89.

14 **E. Class Counsel's Attorneys' Fees And Costs.**

15 Class Counsel requests attorneys' fees in the amount of 1/3 of the GSA, or \$95,000, and
16 declared litigation costs of \$15,000. The propriety of the sought fees and costs are discussed in detail
17 in Plaintiff's concurrently filed Motion for Attorneys' Fees, Costs, and Enhancement Payment ("Fee
18 Motion"). Class Members were apprised of the requests and not one objection has been raised.
19 Admin. Dec. ¶ 9, Exh. A.

20 **IV. FINAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

21 As a prerequisite to granting final approval, this Court must evaluate and determine whether
22 the Class is suitable for certification. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019.
23 As outlined in Plaintiff's Motion for Preliminary Approval of Class Settlement, and reiterated below,
24 the Class meets the requirements of California Code of Civil Procedure section 382. Courts have
25 broad discretion to certify a class for purposes of settlement. *Luckey v. Sup. Ct.* (2014) 228
26 Cal.App.4th 81, 93-94; *Zinser v. Accuflix Research Inst., Inc.* (9th Cir. 2001) 253 F.3d 1180, 1186;
27 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 n. 19. To be certified, a settlement class
28 must satisfy all of the following: (1) the individuals are so numerous that joinder would be

1 impractical; (2) there is common interest between plaintiff and class members; (3) plaintiff's claims
2 are typical of the claims of the class; and (4) plaintiff and counsel will fully and adequately represent
3 class members' interests. Code. Civ. Proc. § 382; Fed. R. Civ. P. 23 (a)²; *Sav-on Drug Stores, Inc. v.*
4 *Sup. Court* (2004) 34 Cal.4th 319, 326-27. Since this Court already found these criteria satisfied and
5 nothing material has changed, certification in the context of final approval is proper.

6 **A. The Numerosity Requirement Continues To Be Met.**

7 Numerosity is easily satisfied as there are 121 total Settlement Class Members. Admin. Dec.
8 ¶ 12. Courts generally find numerosity when a class exceeds 40 individuals, or where joinder would
9 impose financial burdens and clog the court's docket—numerosity exists here. *Millan v. Cascade*
10 *Water Svcs., Inc.* (E.D. Cal. 2015) 310 F.R.D. 593, 603 (class of 40 or more sufficiently numerous).

11 **B. The Commonality Requirement Continues To Be Met.**

12 Commonality is met if questions of law and fact that are common to the class predominate
13 and the theory of recovery is “amenable to class treatment.” *Sav-On Drug Stores*, 34 Cal.4th p.
14 327; *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033. The claims of Plaintiff
15 and the members of each respective Subclass flow from the same facts and legal claims.
16 Specifically, members of the Meal Period Subclass experienced uniform application of an alleged
17 unwritten policy/practice that infringed on employee's ability to take **full** and uninterrupted meal
18 periods, Overtime Subclass Members were exposed to Defendant's uniform failure to include non-
19 discretionary bonuses when calculating “regular rate of pay” for overtime and, and uniform
20 rounding policies/practices, and Wage Statement Subclass Members were all provided wage
21 statements in the same format that Plaintiff contends violated Labor Code section 226(a)(2) and
22 were thereby inaccurate and caused presumed injury. JDB Dec. ¶¶ 35, 40, 42, 46. The alleged
23 unlawful practices as to the Meal Period Subclass and Overtime Subclass Members whose
24 employment ended between April 12, 2018 and September 21, 2023 resulted in denial of timely
25 provision of all wages upon separation. *Id.* ¶ 50. Factually, the policies and practices alleged to
26 underscore the claims of each respective Subclass and/or segment of the Settlement Class apply
27

28 ² California courts use FRCP 23 and cases applying it for guidance on class issues. See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, federal case law will be cited.

1 uniformly and liability can be determined by facts, and applicable California law, common to all
2 members—common issues undeniably predominate. *Id.* ¶¶ 66-78.

3 There is similarly no question that resolving the claims of Class Members through this
4 single action is superior to individual litigation or any alternative resolution method that may exist.
5 The value of each individual claim is relatively insignificant and is likely not nearly enough to
6 incentivize individual action. *Shroyer v. New Singular Wireless Svcs., Inc.* (9th Cir. 2007) 498 F.3d
7 976, 986; *Wolin v. Jaguar Land Rover N.A., LLC* (9th Cir. 2010) 617 F.3d 1168, 1175-1176; JDB
8 Dec. ¶¶ 55-56. Factually, the policies and practices alleged to underscore the Class Claims apply
9 class-wide and Defendant’s liability can be determined by facts, and applicable California law,
10 common to all Class Members—common issues predominate. Class treatment provides the best,
11 most cognizable avenue to secure fair, adequate, and reasonable recovery—the commonality prong
12 continues to be met.

13 **C. Plaintiffs’ Claims Continue To Be Typical Of The Class.**

14 Each and every Class Member, including Plaintiff, has typical, overtime, break, stand-alone
15 wage statement, and derivative claims because they arise from the same factual bases and uniform
16 application of policies and procedures, and are based upon the same legal theories applicable to all
17 Class Members. *Wehner v. Syntex Corp.* (N.D. Cal. 1987) 117 F.R.D. 641, 644. Typicality continues
18 to be satisfied.

19 **D. Plaintiff and Class Counsel Continue To Be Adequate Representatives.**

20 When considering adequacy, courts focus on 1) whether the representative and his/her counsel
21 have any conflicts of interest (adverse interests) with the Class and 2) whether the representative will
22 vigorously prosecute the action on behalf of the Class. E.g. *Staton v. Boeing, Inc.* (9th Cir. 2003) 327
23 F.3d 938, 957; *Lao v. H&M Hennes & Mauritz, L.P.* (N.D. Cal. 2018) 2018 WL 3753708 * 9; *McGhee*
24 *v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450-51. Plaintiff’s interest in prosecuting this case and
25 obtaining the most beneficial recovery possible fully comports with the interests of the Class. There
26 are no conflicts between Plaintiff and Class Members, and she is a member of *each* subclass. *Hanlon*,
27 150. F 3d 1021. In addition, throughout this case Plaintiff and Class Counsel have demonstrated their
28 commitment to prosecuting this lawsuit on behalf of the Class. Such is reflected by Class Counsel’s

1 experience in wage and hour cases and the cognizable benefits they have and will continue to confer
2 upon Class Members, including securing the GSA. JDB Dec. ¶¶ 27, 64-65, 77, 122-125.

3 **V. THE CLASS NOTICE WAS SUCCESSFULLY DISTRIBUTED.**

4 The Court-approved Class Notice meets all of the requirements of procedural due process and
5 California Rules of Court 3.769 (f) by: (1) identifying the Parties and describing the Class Claims in a
6 straightforward manner; (2) succinctly describing the essential terms of the Settlement, including the
7 GSA, the amount Class Counsel will request for attorneys' fees and costs, and Plaintiff's requested
8 Enhancement Payment; (3) clearly identifying Released Class Claims and Released Parties; (4)
9 providing Class Members with information on how to participate in, opt out of, and/or object to the
10 Settlement, and how to contest the workweek calculation; (5) providing all applicable deadlines; and
11 (6) informing Class Members of the consequences if they decide to opt out, object, or participate in
12 the Settlement. Further, the Class Notice clearly explains resources to obtain further information
13 (e.g., from Class Counsel or the Administrator, or through the court's website) and that the Final
14 Approval Hearing may be moved without notice. Ex. A to Admin Dec. The Class Notice provided
15 sufficient information for Class Members to make an informed decision on how to proceed. E.g
16 *Hoffman-La Roche, Inc. v. Sperling* (1989) 493 U.S. 165, 171.

17 On February 9, 2024, notices were mailed to 120 Class Members. None of the notices was
18 returned as undeliverable—there was a 100% successful notice rate. Admin Dec. ¶ 7. *Dorsette v. TA*
19 *Operating, LLC* (C.D. Cal. 2010) 2010 WL 11583002 * 5 (92% successful mail rate acceptable). In
20 fact, an additional Class Member was identified through the notice process. Admin. Dec. ¶ 11.

21 **VI. THE CLASS HAS EXPRESSED ITS APPROVAL OF THE SETTLEMENT.**

22 The Class has shown its support of the Settlement. **Not one of the 121 Class Members has**
23 **filed an objection OR elected to opt-out.** Admin. Dec. ¶¶ 6-9.

24 **VII. FINAL APPROVAL OF THE SETTLEMENT SHOULD BE GRANTED.**

25 **A. Legal Standards for Approval of Class Action Settlements.**

26 A class action may not be dismissed, compromised or settled without Court approval. Cal. R.
27 Ct. 3.769(a); Fed. R. Civ. P. 23(e). The decision to approve a proposed settlement is committed to
28 this Court's sound and broad discretion. *Dunk*, 48 Cal.App.4th 1801. Whenever a proposed class

1 action settlement is 1) reached through arm's-length bargaining, 2) negotiated after sufficient
2 investigation and discovery, 3) negotiated by experienced counsel, and 4) subjected to minimal
3 objection by class members, a presumption of fairness arises. *Id.* 1802. All factors are present here.

4 **B. The Settlement Terms are Fair, Reasonable, and Adequate.**

5 Law and public policy strongly favor settlement prior to trial, particularly in class actions
6 where substantial resources can be conserved by avoiding the time, expense and rigors of litigation.
7 *Churchill Village, LLC v. General Electric Co.* (9th Cir. 2004) 361 F.3d 566, 576; *Class Plaintiffs v.*
8 *City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Accordingly, Courts have "wide discretion in
9 assessing the weight and applicability of each factor." California courts recognize that "the trial
10 court's determination [of fairness] is nothing more than an amalgam of delicate balancing, gross
11 approximations, and rough justice." *Dunk*, 48 Cal.App.4th 1801, quoting *Officers for Justice v. Civ.*
12 *Svc. Commn.* (9th Cir. 1982) 688 F.2d 615, 625. To that end, the court's inquiry "into what is
13 otherwise a private consensual agreement negotiated between parties to a lawsuit must be limited to
14 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
15 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
16 whole is fair, reasonable and adequate to all concerned". *Officers for Justice*, 688 F.2d 626.

17 In passing on a class action settlement, a Court must determine whether it is "fair, adequate
18 and reasonable." In doing so, courts consider a number of factors, including: (1) the strength of the
19 plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk
20 of maintaining class action status through trial; (4) the amount offered; (5) the extent of discovery
21 completed and the procedural stage; (6) the experience and views of counsel; and (7) the reaction of
22 class members to the settlement. *Hanlon*, 150 F.3d 1026; *Dunk*, 48 Cal.App.4th 1802. Adequate
23 notice is also critical. *Ibid.* The factors are non-exclusive, not all need be shown, and the court is free
24 to engage in a balancing and weighing of factors depending on the circumstances of each case.
25 *Churchill Village*, 361 F.3d 576 n. 7; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
26 245. One factor alone may prove determinative. See *Torrise v. Tucson Elec. Power Co.* (9th Cir.
27 1993) 8 F.3d 1370, 1376 (upholding settlement where one factor predominated). All factors support
28 the Settlement here.

1 **1. The Strengths and Weaknesses of the Class’ Claims and the Risks of**
2 **Proceeding With Litigation Strongly Support Final Approval.**

3 This Court should reaffirm its observation on preliminary approval that the Settlement is fair,
4 adequate, and reasonable. PAO pp. 6:12-15. Approval of a class settlement is proper when “there
5 are significant barriers plaintiffs must overcome in making their case.” *Chun-Hoon v. McKee*
6 *Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 851 (parties’ acknowledgment of potential
7 decertification supports approval); see also *Rodriguez v. West Publishing Corp.* (2009) 563 F.3d
8 948, 966 (risks of litigating weigh in favor of class settlement approval).

9 While Class Counsel believes evidence exists from which the trier of fact could
10 conclude Fidelity engaged in a pattern and practice of failing to properly provide the
11 opportunity for meal periods, calculate and pay overtime and minimum wage, and furnish
12 accurate wage statements (and that such derelictions resulted in derivative wage statement
13 deficiencies and failures to pay wages on separation), continued litigation is guaranteed to be costly,
14 time consuming and uncertain. Fidelity asserted numerous legal and factual grounds to defend
15 against the substance of the Class Claims and/or certification including, but not limited to, 1)
16 employees were always authorized and permitted to take meal breaks as expressed in the facially
17 valid written policies and because they had substantial control over their own schedules, 2) any
18 missed breaks were the result of individual choice/election, 3) bonuses provided were discretionary
19 and properly excluded from the regular rate, 4) there was no injury based on the failure to separately
20 identify “total hours worked” because the number could be readily ascertained, and 5) derivative
21 wage statement and waiting time penalty claims cannot be predicated on meal and rest period
22 violations (or the law was at least unsettled until 2022). JDB Dec. ¶¶ 66-78. Although Class
23 Counsel is confident certification and success on the merits were feasible, continued litigation was
24 guaranteed to be costly, time consuming, and uncertain—potential appellate proceedings would only
25 further delay and jeopardize Class recovery.

26 Balancing the strengths and weaknesses of the Class Claims, combined with the risks of
27 continued litigation, weighs strongly in favor of final approval of the Settlement.

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1 **2. The Risk of Maintaining Class Action Status Favors Approval.**

2 Plaintiff faced myriad risks maintaining class action status. Claims based on alleged meal
3 break violations are notoriously difficult to secure and maintain class certification of. E.g. *Ortiz v.*
4 *CVS Caremark Corp.* (N.D. Cal. 2013) 2013 WL 6236743 *12; *Lusk v. Five Guys Enterprises, LLC*
5 (E.D. Cal. 2019) 2019 WL 7048791 *6. The existence of these risks with respect to class
6 certification further underscore the propriety of the Settlement.

7 **3. The Amount Offered to Settle the Class' Claims is Substantial and Weighs in**
8 **Favor of Final Approval.**

9 While it is generally accepted that “[t]he most important factor is the strength of the case
10 for plaintiffs on the merits, balanced against the amount offered in settlement,” a court must be
11 mindful that its function is limited solely to determining whether the settlement falls within the range
12 of acceptable under the circumstances. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
13 186 Cal.App.4th 399, 407-409. Indeed, “[t]he proposed settlement is not to be judged against a
14 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at
15 trial,” *Wershba*, 91 Cal.App.4th 246. Moreover, the fact “the settlement could have been better . . .
16 does not mean the settlement presented was not fair, reasonable or adequate.” *Hanlon*, 150 F.3d
17 1027. Here, the Settlement will result in substantial benefits to all Class Members.

18 The portion of the GSA allocated to each respective subclass represents a substantial percentage
19 recovery of *both* the maximum and realistic anticipated damages awards that would be attainable after
20 trial. JDB Dec. ¶¶ 38-39 (between 18 and 33% for Meal Period Subclass Members), 44-45 (between 90
21 and 48% for Overtime Subclass Members), 48-49 (between 7 and 13% for Wage Statement Subclass
22 Members), 52-53. This is a positive result and within the range of reasonableness, especially
23 considering the uncertainties involved with litigation, including Defendant’s defenses. See e.g., *In re*
24 *Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (settlement of 16.67% of potential
25 recovery fair). While the GSA represents only a fraction of Fidelity’s maximum exposure, it represents
26 a fair compromise given the substantive risks outlined in the preceding section and the very real
27 possibility Class Members would secure nothing if left to pursue the claims individually. JDB Dec. ¶¶
28 47, 43; *Lee v. JPMorgan Chase & Co.* (C.D. Cal. 2015) 2015 WL 12711659 *4. Considering all of the

1 circumstances, the Settlement represents a fair, reasonable, and adequate outcome that affords Class
2 Members cognizable recovery they are unlikely to realize absent the negotiated resolution and should
3 be approved. JDB Dec. ¶¶ 25, 55-56; see also, *In re Wachovia Corp. "Pick-A-Payment" Mortgage*
4 *Mktg. & Sales Practices Litig.* (N.D. Cal. 2011) 2011 WL 1877630 *3 (belief of "counsel, who are
5 experienced attorneys . . . that the settlement is extremely favorable to the class" supports approval).

6 **4. Class Counsel Had Extensive Information that Permitted Them to Calculate**
7 **Damages and Make Informed Settlement Decisions.**

8 Courts look to the amount of exchanged information to determine whether the parties
9 made an informed decision to settle. *Linney v. Cellular Alaska P'ship*, (9th Cir. 1998) 151 F.3d
10 1234. Here, Class Counsel received formal discovery responses as well as the informal production of
11 the time and wage data for 139 individuals (there are only 121 in the Settlement Class). JDB Dec. ¶¶
12 7-9. Such extensive data allowed Class Counsel's retained expert to identify violation rates and other
13 important data points and confidently calculate potential exposure. Class Counsel also had policy
14 documents and the benefit of discussion with Plaintiff, as well as a number of individual Class
15 Members, to better understand the nature of the claims and be in a position to evaluate their strengths
16 and weaknesses. *Id.* ¶ 71. Ultimately, the Settlement was only reached after more than two (2) years
17 of active litigation, substantive analysis of data by a retained expert, a full day mediation, and
18 additional months of negotiations to finalize a long-form settlement agreement. *Id.* ¶¶ 6-16, 20.

19 The comprehensive information exchange and protracted arms-length negotiations
20 underscore the conclusion the Settlement is based on reasoned and informed analysis.

21 **5. The Settlement is Supported by Skilled and Experienced Class Counsel.**

22 "'Great weight' is accorded to the recommendation of counsel, who are most closely
23 acquainted with the facts of the underlying litigation. This is because '[p]arties represented by
24 competent counsel are better positioned than courts to produce a settlement that fairly reflects each
25 party's expected outcome in the litigation.' Thus, 'the trial judge, absent fraud, collusion, or the like,
26 should be hesitant to substitute its own judgment for that of counsel.'" *Nat'l Rural Telecomms. Coop.*
27 *v. DIRECTV, Inc.* (2004) 221 F.R.D. 523, 528.

1 Class Counsel, having demonstrated a high degree of competence in the litigation of this case
2 and numerous other employment class actions and PAGA representative actions, strongly believes the
3 proposed Settlement properly balances the realistic monetary relief available to the Class against the
4 magnitude of the risks of continued litigation. JDB Dec. ¶¶ 25, 63-66, 122-125; *In re Wachovia*
5 *Corp. “Pick-A-Payment” Mortgage Mktg. & Sales Practices Litig.*, 2011 WL 1877630, *. This
6 factor further supports approval.

7 **6. The Absence of Any Objections Or Opt-Out Supports Approval.**

8 Multiple courts make clear that the number or percentage of class members who object
9 to, or opt out of, a settlement is a factor of great significance and that “the absence of a large
10 number of objections to a proposed class action settlement raises a strong presumption that the terms
11 of a proposed class action settlement are favorable to the class members.” *Dunk*, 48 Cal. App.4th
12 1802; *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. 528-29. **Not one of the 121 Class Members has**
13 **objected OR opted out** which “. . . strongly supports the fairness, reasonableness, and adequacy
14 of the settlement.” *Williams v. Costco Wholesale Corp.* (S.D. Cal. 2010) 2010 WL 2721452 * 5.
15 Admin Dec. ¶¶ 8-9. This overwhelming support substantiates the propriety of final approval.

16 **D. The Settlement Administrator’s Fees are Reasonable.**

17 The Parties selected Phoenix Class Action Settlement Administrators to serve as Administrator.
18 Phoenix has substantial experience in administering class action settlements and has already handled
19 distribution of the Class Notice. Following final approval, the Administrator will handle distribution
20 and mailing of all individual Settlement Shares and PAGA Payments, calculating of all applicable
21 taxes, and distribution to the LWDA, Class Counsel, and Plaintiff’s Enhancement Payment. Plaintiff
22 seeks final approval of the Administrator’s fees and costs of \$7,250, less than the \$7,500 initially
23 contemplated, to be paid out of the GSA.

24 **E. Class Counsel’s Fees and Costs and the Enhancement Payment to Plaintiff Are**
25 **Reasonable.**

26 Plaintiff seeks attorneys’ fees of 1/3 of the GSA, or \$95,000, declared costs of \$15,000, and a
27 \$10,000 Enhancement Payment to Plaintiff. As set forth in Plaintiff’s concurrently filed Motion for
28 Attorneys’ Fees, Costs, and Enhancement Payment, the sought fees, costs, and Enhancement Payment

1 should be approved because they are reasonable, within the range commonly awarded by state and
2 federal courts in wage and hour class actions, and because Class Counsel and Plaintiff conferred
3 significant monetary benefits upon Class. Again, not a single Class Member objected to the
4 requested fees, costs, or Enhancement Payment. Admin. Dec. ¶¶ 8-9.

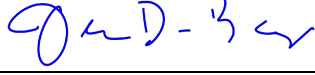
5 **VII. CONCLUSION.**

6 For all the reasons stated above, Plaintiff's unopposed motion should be granted.

7 **DATED:** April 2, 2024

MAYALL HURLEY P.C.

8 By



9 ROBERT J. WASSERMANN

JENNY D. BAYSINGER

10 Attorneys for Plaintiff and the Putative Class
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PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 112 S. Church Street, Lodi, CA 95240, that is located in the county where the mailing and/or delivery below took place.

On April 2, 2024, I served the following document:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

addressed to:

Curtis A. Graham
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☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 2, 2024, at Lodi, California.


LINDSAY RILEY