

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW, LLP
Norman B. Blumenthal (SBN 068687)
Kyle R. Nordrehaug (SBN 205975)
Aparajit Bhowmik (SBN 248066)
Jeffrey S. Herman (SBN 280058)
2255 Calle Clara
La Jolla, CA 92037
Tel: 858.551.1223 | Fax: 858.551.1232
*Attorneys for Plaintiffs Angel Zamora, Gabriel Loaiza,
Jorge Guillen and Mark Luna*

(Additional counsel on the following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

ERIC D. MCDOWELL, an individual; AARON
L. STUBBS, an individual; LEON C. WILLIS,
and individual, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

PENSKE TRUCK LEASING CO., L.P.; and
DOES 1 through 10 inclusive,

Defendants.

LADELL TAYLOR, as an individual, on behalf
of himself and all persons similarly situated,
Plaintiff,

v.

PENSKE LOGISTICS, LLC, a Delaware limited
liability company authorized to do business in
California; PENSKE TRUCK LEASING CO.,
L.P., a Delaware limited partnership authorized
to do business in California; and DOES 1
through 50 inclusive,

Defendants.

ANGEL ZAMORA, GABRIEL LOAIZA and
JORGE GUILLEN, individuals, on behalf of
themselves and on behalf of all persons similarly
situated,

Plaintiffs,

v.

PENSKE TRUCK LEASING CO., L.P., a

Case No.: CIVDS2012273

[Assigned for all purposes to the Hon. David Cohn,
Dept. S-26]

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

[Hearing scheduled by Order dated April 6, 2022]

Hearing Date: August 29, 2022

Hearing Time: 10:00 a.m.

Judge: Hon. David Cohn

Dept.: S-26

Limited Partnership,
Defendant.

MARK LUNA, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

PENSKE LOGISTICS LLC, a Limited Liability
Company; and DOES 1 through 50, Inclusive,
Defendants.

PHIL POSTON, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

PENSKE LOGISTICS, LLC, an unknown
business entity; PENSKE TRUCK LEASING
CO., L.P., an unknown business entity; and
DOES 1 through 100, inclusive,
Defendants.

Additional Counsel:

GRAHAMHOLLIS, APC
Graham S.P. Hollis (SBN 120577)
ghollis@grahamhollis.com
Vilmarie Cordero (SBN 268860)
vcordero@grahamhollis.com
Hali M. Anderson (SBN 261816)
handerson@grahamhollis.com
Dawn M. Berry (SBN 292335)
dberry@grahamhollis.com
3555 Fifth Avenue, Suite 200
San Diego, California 92103
Tel.: 619.692.0800 | Fax: 619.692.0822
Attorneys for Plaintiff Ladell Taylor

Edwin Aiwarzian (SBN 232943)
Charles T. Sweeny (SBN 325167)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, CA 92103
Tel.: (818) 265-1020 | Fax: (818) 265-1021
Attorneys for Phil Poston

SKAPIK LAW GROUP
Mark Skapik (SBN 164957)
Geraldyn Skapik (SBN 145055)
Blair J. Berkley (SBN 222293)
5861 Pine Ave. Suite A-1
Chino Hills, CA 91709
Tel.: (909) 398-4404 | Fax: (909) 398-1883
*Attorneys for Plaintiffs Eric D. McDowell, Aaron
L. Stubbs, and Leon C. Willis*

TABLE OF CONTENTS

I.	INTRODUCTION.....	6
II.	THE SETTLEMENT BEFORE COURT	6
III.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS.....	10
IV.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.....	11
A.	The Settlement Satisfies the California Test for Fairness.....	12
1.	The Investigation and Analysis of Documents are Sufficient to Allow Counsel and the Court to Act Intelligently.....	12
2.	The Settlement was Reached Through Arm’s Length Bargaining.....	12
3.	Class Counsel is Experienced in Similar Litigation.....	13
4.	There Are No Objections and Only a Few Opt-Outs.....	14
5.	The Strength of Plaintiffs/ Case.....	14
6.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation.....	17
7.	The Amount Offered in Settlement.....	18
VI.	CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases:

Page:

<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	10
<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652 (E.D. Cal. Jun 24, 2008).....	13
<i>Barcia v. Contain-A-Way, Inc.</i> , 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009);	16
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	15
<i>Browning v. Yahoo!, Inc.</i> , 2007 U.S. Dist. LEXIS 86266 (N.D. Cal. 2007)	16
<i>Cacho v. Eurostar, Inc.</i> , 43 Cal. App. 5th 885 (2019)	16
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	10, 11
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	17
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476; (N.D. Cal. 2007)	13
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	15
<i>Hopson v. Hanesbrands Inc.</i> , 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009)	16
<i>Huens v. Tatum</i> , 52 Cal. App. 4th 259 (1997)	10
<i>In re Austrian & German Bank Holocaust Litigation</i> , 80 F. Supp. 2d 164 (S.D.N.Y. 2000).....	14
<i>In re Mego Financial Corp. Securities Litigation</i> , 213 F.3d 454 (9th Cir. 2000)	18
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	11
<i>Laskey v. Int'l Union</i> , 638 F.2d 954 (6th Cir. 1981)	14

1	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
2	2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008)	16
3	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> ,	
4	103 Cal. App. 3d 573 (1980)	10
5	<i>Munoz v. BCI Coca-Cola Bottling Co. of L. A.</i> ,	
6	186 Cal. App. 4th 399 (2010)	11
7	<i>Officers for Justice v. Civil Service Com'n</i> ,	
8	688 F.2d 615 (9th Cir. 1982)	11
9	<i>Stoetznner v. U.S. Steel Corp.</i> ,	
10	897 F.2d 115, 118 (3d. Cir. 1990).....	14
11	<i>Wershba v. Apple Computer</i> ,	
12	91 Cal. App. 4th 224 (2001)	10
13		
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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action Settlement Agreements (the “Agreements”)¹, true and correct copies of which is attached
4 as Exhibit #2 to the Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”).² In accordance with the
5 Preliminary Approval Order dated April 6, 2022 (“Preliminary Approval Order”), the approved Class
6 Notice has been disseminated to the Class.³

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiffs Angel Zamora, Gabriel Loaiza, Jorge Guillen, Mark Luna, Phil
9 Poston, Eric D. McDowell, Aaron L. Stubbs, Leon C. Willis, and Ladell Taylor (“Plaintiffs”)
10 respectfully submit this memorandum in support of the consolidated motion for final approval and the
11 proposed entry of the Final Approval Order and Judgment, submitted herewith. The settlement
12 represents an excellent result for the Class and avoids the delays, risks, and costs of further litigation.
13 After disseminating notice to the members of the Class, there were **no objections and requests for**
14 **exclusion representing less than 0.3% of the Class**, which means that nearly the entire Class has
15 elected to participate in the Settlement. Nordrehaug Decl. ¶4. This is a positive response from the Class
16 evidencing their collective approval of the settlement. As a result, Plaintiffs respectfully submit that the
17 class settlement should be finally approved for the same reasons that the Court preliminarily approved
18 the settlement as fair, reasonable, and adequate.

19 **II. THE SETTLEMENT BEFORE THE COURT**

20 Plaintiffs and Defendants Penske Truck Leasing Co., L.P and Penske Logistics LLC
21 (“Defendants”) reached a full and final settlement of the above-captioned action, which is embodied in
22 the Settlement Agreements filed concurrently with the Court. As consideration for this Settlement, the

23 ¹ The McDowell Class Action Settlement Agreement [“McDowell Agreement”] and the
24 Zamora/Taylor/Luna/Poston Class Action Settlement Agreement [“Zamora Agreement”] shall
collectively be referred to as “the Settlement Agreements”.

25 ² **Error! Main Document Only.** Capitalized terms are defined in the Settlement Agreements.

26 ³ The “Class” is “all individuals who are or previously were employed by Defendant Penske Logistics
27 LLC and/or Defendant Penske Truck Leasing Co., L.P. in California who were classified as non-exempt
employees during the Class Period.” The “Class Period” is from January 31, 2016 through and
28 including April 6, 2022. (Preliminary Approval Order at ¶ 5.)

Gross Settlement Amount to be paid by Defendants is One Million Dollars (\$1,000,000) of which is for the McDowell Class Action Settlement Agreement, and One Million Four Hundred Fifty Five Thousand Dollars (\$1,455,000) of which is for the Zamora/Taylor/Luna/Poston Class Action Settlement Agreement. (McDowell Agreement at ¶ I(P); Zamora Agreement at ¶¶ I(S) and III(B).) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Payment. (McDowell Agreement at ¶ I(P); Zamora Agreement at ¶ I(19).) Nordrehaug Decl. ¶3(a). The key financial terms of the settlement are as follows:

	McDowell	Zamora/Taylor/ Luna/Poston	Settlement
Settlement Amount	\$ 1,000,000.00	\$1,455,000.00	\$ 2,455,000.00
Class Representative Service Award (\$10,000/each)	\$ 30,000.00	\$ 60,000.00	\$ 90,000.00
PAGA Settlement	\$ 75,000.00	\$ 30,000.00	\$ 105,000.00
Settlement Administration Costs	\$ 13,700.00	\$ 20,550.00	\$ 34,250.00
Attorneys Fee	\$ 333,333.33	\$ 485,000.00	\$ 818,333.33
Costs	\$ 12,000.00	\$ 70,000.00	\$ 82,000.00
Net Settlement Amount	\$ 534,266.67	\$ 790,400.00	\$ 1,325,416.67

The Gross Settlement Amount does not include Defendants' share of payroll taxes. (McDowell Agreement at ¶ III(A); Zamora Agreement at ¶ III(78).) The Gross Settlement Amount shall be all-in with no reversion to Defendants. (McDowell Agreement at ¶ III(A); Zamora Agreement at ¶ III(78).) Nordrehaug Decl. ¶3(b).

Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendants' share of payroll taxes within thirty (21) calendar days of the Effective Date. (McDowell Agreement at ¶ III(M)(1); Zamora Agreement at ¶ III(82(k).) The Settlement Shares to Participating Class Members will be mailed by the Settlement Administrator within fifteen (15) calendar days after the funding of the

1 Gross Settlement Amount. (McDowell Agreement at ¶ III(M)(2)(c); Zamora Agreement at ¶ III(82)(k).)
2 Nordrehaug Decl. ¶3(c).

3 The Net Settlement Amount shall equal the net amount available for payment to the Class after
4 deducting the Court-approved amounts for the Class Representative Service Payments, the Class
5 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the
6 Settlement Administration Expenses. (McDowell Agreement at ¶ I(Q); Zamora Agreement at ¶ I(22).)
7 The Net Settlement Amount will be distributed as the Settlement Shares to the Class Members who do
8 not timely request exclusion ("Participating Class Members"). (McDowell Agreement at ¶ III(M)(2)(c);
9 Zamora Agreement at ¶ III(82)(k).) The Settlement Share will be calculated as follows: (a) the
10 Settlement Administrator shall divide the Net Settlement Amount by the total number of weeks included
11 in the dates of employment to determine a dollar amount per week ("Weekly Rate"); and (b) the
12 Settlement Administrator shall then take the number of weeks worked by each Participating Class
13 Member and multiply it by the Weekly Rate to calculate their Settlement Share. (McDowell Agreement
14 at ¶ III(M)(2)(a); Zamora Agreement at ¶ III(80)(b) Nordrehaug Decl. ¶ 3(d).

15 Class Members were sent the Court approved Class Notice using the procedure approved by the
16 Court by mailing the notice packets after updating class members' addresses using the National Change
17 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to any
18 forwarding address provided or updated address located. Declaration of Mary Butler from Simpluris
19 ("Butler Decl.") ¶¶ 5-10 Class Members were provided with the opportunity to exclude themselves or
20 "opt out" if they did not want to participate in the settlement. (McDowell Agreement at ¶ III(L)(7);
21 Zamora Agreement at ¶ III(82)(e)(iii).) Butler Decl. ¶12, Exh. A.) Only nine Class Members submitted
22 valid request for exclusions and all the other Class Members are deemed Participating Class Members
23 who are bound by the Settlement and will be entitled to receive a Settlement Share. (*Id.*) All Aggrieved
24 Employees will still be paid their allocation of the PAGA Payment, respectively, and will remain bound
25 by the release of the Released PAGA Claims. (*Id.*) The Class Notice also advised Class Members of
26 their right to object to the Settlement and/or dispute their workweeks. (McDowell Agreement at ¶ III(L);
27 Zamora Agreement at ¶ III(82)(d)-(e).) Ex. A.); Butler Decl. ¶¶ 11-13, Exh. A. Nordrehaug Decl. ¶ 3(e).

1 A Participating Class Member must cash his or her Settlement Share check within 180 days after
2 it is mailed. (McDowell Agreement at ¶ III(L)(d); Zamora Agreement at ¶ III(82)(l).) The Settlement
3 Administrator will send a reminder to Participating Class Members who have not cashed their checks
4 within 120 days after its last mailing to the affected individual. (*Id.*) Any settlement checks not cashed
5 within 180 days will be voided and any funds from such uncashed checks will be paid to the California
6 State Controller's Unclaimed Property Fund in the name of the Participating Class Member. (*Id.*) Checks
7 to Aggrieved Employees shall be handled in the same manner. Nordrehaug Decl. ¶3(f).

8 Simpluris was appointed by the Court as the Settlement Administrator for the Settlement.
9 (McDowell Agreement at ¶ III(K); Zamora Agreement at ¶ III(81).) From the Gross Settlement Amount,
10 the Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount
11 not to exceed \$30,000. (McDowell Agreement at ¶ III(M)(6); Zamora Agreement at ¶ III(79)(d).) As set
12 forth in the Butler Decl. at ¶ 15, the Settlement Administration Expenses, including fees and costs
13 incurred to-date, as well as anticipated fees and costs for completion of the settlement administration,
14 are \$34,250. Nordrehaug Decl. ¶3(g).

15 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to
16 exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (McDowell
17 Agreement at ¶ III(M)(4); Zamora Agreement at ¶ III(79)(b).) Class Counsel will also be allowed to
18 apply separately for an award of Class Counsel Litigation Expenses Payment for not to exceed \$82,000
19 for the Zamora./Taylor/Luna/Poston settlement. (Preliminary Approval Order at ¶ 4; McDowell
20 Agreement at ¶ III(M)(4); Zamora Agreement at ¶ III(79)(b).) Subject to Court approval, the Agreement
21 provides for a payment of no more than \$10,000 each to the Plaintiffs as the Class Representative
22 Service Payments. (Preliminary Approval Order at ¶ 4; McDowell Agreement at ¶ III(M)(3); Zamora
23 Agreement at ¶ III(79)(a).) In support of this separate motion for attorneys' fees, reimbursement of
24 expenses and service awards, Class Counsel is providing evidentiary support, for these requests,
25 including lodestar. Nordrehaug Decl. ¶3(h).

26 The Parties will seek approval from the Court for the PAGA Payment of \$105,000 out of the
27 Gross Settlement Amount (\$75,000 from the McDowell settlement and \$30,000 from the

Zamora./Taylor/Luna/Poston settlement), which shall be allocated 75% (\$78,750) to the LWDA as the LWDA's share of the PAGA Payment pursuant to PAGA and 25% (\$26,250) will be distributed to the Aggrieved Employees based on their respective weeks worked during the PAGA Period. (McDowell Agreement at ¶ III(M)(5); Zamora Agreement at ¶ III(79)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (McDowell Agreement at ¶ III(L)(7); Zamora Agreement at ¶ III(82)(e)(iii).) As set forth in the accompany proof of service, the LWDA has been served with this motion and the Agreement. Nordrehaug Decl. ¶3(i).

The Settlement is fair, adequate and reasonable to the class and should be finally approved for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement is "fair, adequate and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued at \$2,455,000 is an excellent result for the Class. This result is particularly favorable in light of the fact that liability and class certification in this case were far from certain in light of the defenses asserted by Defendants. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and should be finally approved. Nordrehaug Decl. ¶3(j).

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

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

"[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The 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 against
4 a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at
5 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 act
12 intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced in
13 similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1801, citing
14 *Newberg & Conte, Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these
15 factors support a presumption of fairness. The essential evaluation is whether, given the risks of
16 litigation and the range of probable results, the settlement, taken as a whole, is fair, reasonable and
17 adequate to all concerned. Here, the facts and circumstances compel the conclusion that the proposed
18 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 Com'n*,
22 688 F.2d 615, 625 (9th Cir. 1982). The purpose of the requirement is "the protection of those class
23 members, including the named plaintiffs, whose rights may not have been given due regard by the
24 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 McDowell

1 Agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
2 further litigation, the risk of maintaining class action status through trial, the amount offered in
3 settlement, the extent of discovery completed and the stage of the proceedings, the experience and views
4 of counsel, the presence of a governmental participant, and the reaction of the class members to the
5 proposed settlement.'” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal
6 citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408
7 (2010).

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

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

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

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

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

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

This Settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendants have expressly denied and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Claims of the Class in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are experienced in wage and hour employment law class actions, as Class Counsel has previously litigated and certified similar claims against other employers. Nordrehaug Decl. ¶7(a).

The Parties attended two arms-length mediation sessions with Louis Marlin, a respected and experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation for the mediations, Defendants provided Class Counsel with necessary information for the members of the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiffs analyzed the data with the assistance of damages experts, Berger Consulting, and prepared and submitted mediation briefs and damage valuation to the Mediator. At the conclusion of the all-day mediations, the Parties agreed to this Settlement. Nordrehaug Decl. ¶7(b).

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

From July 2021 to April 2022, the Settlement Agreements and exhibits thereto were finalized and executed and presented to this Court for preliminary approval. On April 6, 2022, the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the Class. Nordrehaug Decl. ¶7(c).

3. Class Counsel is Experienced in Similar Litigation

1 Class Counsel in this matter has extensive class action experience and has represented thousands
2 of persons in class actions including employment litigation, wage and hour class actions, and complex
3 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
4 claims similar to this case and have been approved as experienced class counsel during contested
5 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
6 knowledgeable in this area of law. The experience of counsel and class action cases managed and
7 settled by the Class Counsel in this action is provided to the Court in the Nordrehaug Decl. at Exhibit
8 #1, the Declaration of Graham S.P. Hollis ["Hollis Decl."] at ¶¶4-6 and Exhibit #2, the Declaration of
9 Edwin Aiwazian ["Aiwazian Decl."] at ¶¶14-19, and the Declaration of Geralyn L. Skapik ["Skapik
10 Decl."] at ¶¶10-11.) Class Counsel have participated in every aspect of the settlement discussions and
11 have concluded the settlement is fair, adequate and reasonable and in the best interests of the Class.
12 Nordrehaug Decl. ¶ 3(j); Hollis Decl. ¶¶ 23-26, Aiwazian Decl. ¶¶ 3-9, Skapik Decl. ¶¶ 28-30.

13 **4. There Are No Objections and Only a Few Opt-Outs**

14 The reaction of the Class unequivocally supports approval of the Settlement. On May 11, 2022,
15 the Settlement Administrator mailed the Court-approved Class Notice to the Class Members, which
16 provided each class member with the terms of the Settlement, including notice of the claims at issue and
17 the financial terms of the settlement, including the attorneys' fees, costs, and service awards that were
18 being sought, how individual settlement awards would be calculated, and the specific, estimated
19 payment amount to that individual. See Butler Decl. ¶8, Exh. A. In disseminating the notices, the
20 Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
21 Approval Order. Significantly, there have been no objections and nine (9) valid opt-outs. Butler Decl.
22 ¶¶ 11-12. As detailed in the Butler Decl at ¶ 12, there are two late opt outs and one deficient opt out,
23 which need to be addressed. As a result, nearly the entire Class will participate in the Settlement and
24 will be sent a settlement check, representing more than 99% of the Class. See Butler Decl. at ¶ 14;
25 Nordrehaug Decl. ¶4.

26 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
27 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175

(S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed settlement should be considered when determining fairness of settlement). Here, where there are no objections, the approval of the class is evident.

5. The Strength of Plaintiffs' Case

The Action generally alleges that Plaintiffs and other Class Members were not properly paid overtime wages for hours worked and at the correct rate, were not paid minimum wages for all hours worked, were not provided meal and rest periods, were not reimbursed for reasonable business expenses, were not provided accurate itemized wage statements, were not paid all wages at the time of termination. The Action seeks unpaid 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. Nordrehaug 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 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members. Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants argued that all work time was recorded and paid, and that there was no miscalculation of the regular rate. Defendants contend that their meal and rest period policies fully complied with California law and that although Defendants' timekeeping system recorded meal periods, all meal periods were provided. Defendants paid some meal premiums and could therefore argue that any missed meals were compensated. Defendants also contend that they reimbursed employees for all business expenses for which reimbursement was required. Further, Defendants argued that Defendants were not required to record rest periods and that there was no evidence that rest periods were not provided given the facially lawful policies. Finally, Defendants could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakens Plaintiffs' claims, on liability, value, and class certifiability as

1 to the meal and rest period claims. Defendants also argue that based on their facially lawful practices,
2 they acted in good faith and without willfulness, which if accepted would negate the claims for waiting
3 time penalties and/or inaccurate wage statements. In fact, under the current state of the law, it is
4 questionable whether these penalties could be awarded at all based upon the alleged meal and rest period
5 violations. If successful, Defendants' defenses could eliminate or substantially reduce any recovery to
6 the Class. While Plaintiffs believe that these defenses could be overcome, Defendants maintain these
7 defenses have merit and therefore present a serious risk to recovery by the Class. Nordrehaug Decl.
8 ¶8(a).

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

11 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
12 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
13 Associates were misclassified as exempt. In addition to the uncertainties raised by
14 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
15 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.

16 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007 U.S.
17 Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
18 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
approval.").

19 As recognized in a federal decision approving settlement of an overtime wage class action:

20 The potential complexity and possible duration of trial also weigh in favor of granting
21 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
22 uncertainty of outcome, and believe defendant would appeal in the event of adverse
23 judgment. A post-judgment appeal would require many years to resolve and delay
24 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.

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

1 There was also a significant risk that, if the Actions were not settled, Plaintiffs would be unable
2 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
3 Defendants argued that the individual experience of each putative class member varied with respect to
4 the claims. Defendants could also contest class certification by arguing injury and good faith were case
5 by case determinations that precluded class certification. Plaintiffs are aware of cases where class
6 certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256
7 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendants also
8 contended that individual differences in work experiences not only impacted damages but would also
9 impact certification. Finally, even if class certification was successful, as demonstrated by the
10 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
11 significant hurdles to overcome for a class wide recovery even where the class has been certified. While
12 other cases have approved class certification in wage and hour claims, class certification in this action
13 would have been hotly disputed and was by no means a foregone conclusion. Nordrehaug Decl. ¶8(b).

14 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
15 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
16 substantial defenses both to liability and to class certification. Currently, the maximum and average
17 class member allocation are \$815 and \$228, respectively. See Butler Decl. ¶14. Given the complexities
18 of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is
19 fair, reasonable and adequate, and should be finally approved. Nordrehaug Decl. at ¶8(e).

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

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

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

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

15 In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and
16 likely duration of further litigation likewise favors the settlement. Regardless of how this
17 Court might have ruled on the merits of the legal issues, the losing party likely would
18 have appealed, and the parties would have faced the expense and uncertainty of litigating
19 an appeal. "The expense and possible duration of the litigation should be considered in
20 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.

21 *Id.* at *12.

22 7. The Amount Offered in Settlement

23 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses to
24 Plaintiffs' claims. As set forth in the Declaration of Graham S.P. Hollis in support of preliminary
25 approval filed on or around April 5, 2022, which discussed the value of the class claims in detail, the
26 Gross Settlement Amount compares favorably to the value of the claims.

27 The calculations to compensate for the amount due to the Class Members at the time this
28 Settlement was negotiated were calculated by Plaintiffs' experts, Berger Consulting in advance of

1 mediation. For the individuals whose claims are at issue in the Actions, Plaintiffs analyzed the data for
2 putative class members and determined the potential maximum damages for the class claims. For the
3 Class, counsel estimated a maximum possible exposure of \$53,492,267. Plaintiffs determined that the
4 maximum potential unpaid overtime due to the alleged miscalculation of the regular rate was \$398,392,
5 the potential off-the-clock damages were \$5,279,904 for an alleged 5,334 hours of unpaid work, the
6 maximum potential meal period damages were estimated to be \$6,391,163, after deducting premiums
7 actually paid by Defendants, the maximum rest period damages were estimated to be \$23,769,040, the
8 maximum potential unpaid wages from rounding was \$223,397, and in addition, Plaintiffs calculated
9 that the maximum value of the waiting time penalties was \$9,689,271, and the maximum value of the
10 wage statement penalties was \$7,741,100, however, these wage statement and waiting time penalties
11 claims potentially had a much smaller value, even if damages were awarded, to the extent that they are
12 only derivative of the meal and rest break claims.⁴ Nordrehaug Decl. ¶8(d).

13 Consequently, the Gross Settlement Amount represents a reasonable compromise of the value
14 of the potential maximum damages at issue for the Class in this case, assuming these amounts could all
15 be proven in full at trial. The above maximum calculations should then be adjusted in consideration for
16 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
17 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
18 certainly fair and reasonable.⁵ Nordrehaug Decl. ¶8(d). Clearly, the goal of this litigation has been met.

19
20 ⁴ **Error! Main Document Only.** As to the alleged claims for penalties pursuant to Labor Code §§ 203
21 and 226, Plaintiffs recognized that these claims were subject to various defenses asserted by Defendants,
22 including a good faith dispute defense as to whether any wages for meal or rest periods or given
23 Defendants' position that employees were properly compensated. See e.g. *Reber v. AIMCO/Bethesda*
24 *Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. 2008); *Nordstrom Commission Cases*, 186 Cal. App.
25 4th 576, 584 (2010). Additionally, at the time of mediation there was doubt as to whether violations of
26 the meal and rest period regulations, which require payment of a "premium wage" for each improper
27 meal period, give rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's China Bisto, Inc.*,
28 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308,
1336 (2018). As a result, at mediation the viability of Plaintiff's claims on these theories was uncertain.

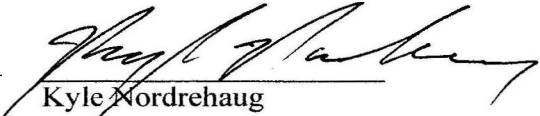
⁵ **Error! Main Document Only.** See e.g. *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213
F.3d 454, 459 (9th Cir. 2000) (approving settlement which represented "roughly one-sixth of the
potential recovery"); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
(N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents

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
6 Dated: August 4, 2022

Respectfully submitted,
**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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8 By: 

Kyle Nordrehaug

Attorney for Plaintiffs Angel Zamora, Gabriel Loaiza,
Jorge Guillen and Mark Luna

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25 approximately 10% of what class might have been awarded had they succeeded at trial.”); *Viceral v.*
26 *Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
27 settlement amounting to 8.1% of full verdict value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316,
28 (C.D. Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and
18%" of full verdict value).