

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Email: norm@bamlawca.com
Website: www.bamlawca.com

LAWYERS for JUSTICE, P.C.

Edwin Aiwazian (State Bar #232943)
Arby Aiwazian (State Bar #269827)
Joanna Ghosh (State Bar #272479)
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SALVADOR VENEGAS and
SERGIO LAINEZ, on behalf of
themselves and on behalf of all persons
similarly situated, and on behalf of the
State of California, as private attorney
generals,

Plaintiffs,

vs.

WWF OPERATING COMPANY,
LLC, a Limited Liability Company;
DANONE NORTH AMERICA
PUBLIC BENEFIT CORPORATION,
a Corporation; DANONE US, LLC, a
Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **21STCV20991**

[Consolidated with Case No. 21PSCV00643 and
Case No. 21PSCV01017]

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

Hearing Date: October 30, 2023

Hearing Time: 9:30 a.m.

[Hearing scheduled by Order dated June 29, 2023]

Judge: Hon. Maren E. Nelson

Dept: SSC-17

Action Filed: June 4, 2021

Trial Date: Not set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated June 29, 2023 (“Preliminary Approval Order”),
6 the approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiffs Salvador Venegas and Sergio Lainez (“Plaintiffs”) respectfully
9 submit this memorandum in support of the unopposed motion for final approval and the proposed entry
10 of the Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent
11 result for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the
12 notice to the members of the Class, there were **no objections and only one (1) requests for exclusion**,
13 which means that almost the entire Class has elected to participate in the Settlement. Blumenthal Decl.
14 ¶4. This is a positive response from the Class evidencing their collective approval of the settlement.
15 As a result, Plaintiffs respectfully submit that the class settlement should be finally approved for the
16 same reasons that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 Plaintiffs and Defendants WWF Operating Company, LLC, Danone North America Public
19 Benefit Corporation and Danone US, LLC (“Defendants”) reached a full and final settlement of the
20 above-captioned action, which is embodied in the Agreement filed concurrently with the Court. As
21 consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants is One Million
22 Two-Hundred Fifty Thousand Dollars (\$1,250,000). (Agreement at ¶¶ 1.22 and 3.1.) Under the
23 Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the

24
25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who are or previously were employed by Defendants
27 WWF Operating Company, LLC, Danone North America Public Benefit Corporation and Danone US,
28 LLC in California who were classified as hourly, non-exempt employees at any time during the Class
Period.” The “Class Period” is defined as “June 4, 2017 through August 5, 2022.” (Preliminary
Approval Order at 3:22-4:2.)

1 Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and
2 Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class
3 Representative Service Payments to Plaintiffs; and (5) the PAGA Penalties. (Agreement at ¶ 1.22.)
4 Blumenthal Decl. ¶3(a).

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

8 Within thirty (30) days of the Effective Date, Defendants shall deposit the Gross Settlement
9 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
10 to Participating Class Members along with the other Court-approved distributions shall be made by the
11 Administrator within fifteen (15) days after Defendants fund the Gross Settlement Amount.
12 (Agreement at ¶ 5.1.) Blumenthal Decl. ¶3(c).

13 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
14 amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service
15 Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
16 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
17 Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2.) From the Net Settlement
18 Amount, the Individual Class Payment for each Participating Class Member will be calculated by (a)
19 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating
20 Class Members during the Class Period and (b) multiplying the result by each Participating Class
21 Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks werebased on Defendants' records,
22 however Class Members had the right to challenge their Workweeks. Blumenthal Decl. ¶ 3(d).

23 Class Members were permitted to opt-out of the Settlement by following the directions in the
24 Class Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who did not "opt out" are deemed
25 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
26 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
27 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
28 subject to the release of the PAGA Released Claims regardless of their request for exclusion.

1 (Agreement at ¶ 6.3.) Finally, the Notice advised the Class Members of their right to object to the
2 Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Blumenthal Decl.
3 ¶ 3(e).

4 A Participating Class Member must cash his or her Individual Class Payment check within 180
5 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
6 be voided and any funds from such uncashed checks will be paid to a Court-approved nonprofit
7 organization or foundation consistent with Code of Civil Procedure Section 384(b) ("Cy Pres
8 Recipient"). (Agreement at ¶ 5.4.) Pursuant to the Stipulation and Order dated June 9, 2023, the Court
9 approved Children's Advocacy Institute as the Cy Pres Recipient. Blumenthal Decl. ¶3(f).

10 ILYM Group was appointed by the Court as the Administrator for the Settlement. (Agreement
11 at ¶ 1.2). From the Gross Settlement Amount, the Administrator will be paid for settlement
12 administration in an amount not to exceed \$15,000. (Agreement at ¶ 3.2(c).) As set forth in the Bench
13 Decl. at ¶ 15, the Administration Expenses Payment, including fees and costs incurred to-date, as well
14 as anticipated fees and costs for completion of the settlement administration, are \$12,950. Blumenthal
15 Decl. ¶3(g).

16 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
17 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
18 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
19 Litigation Expenses Payment in an amount not to exceed \$53,000. (Agreement at ¶ 3.2(b).) Subject
20 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to the two
21 Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) In support of this
22 separate motion for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is
23 providing evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

24 Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the
25 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
26 Labor Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code §
27 2699(i), the PAGA Payment shall be allocated as follows: 75% (\$18,750) shall be allocated to the
28 Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and and 25%

1 (\$6,250) allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees
2 based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
3 accompany proof of service, the LWDA has been served with this motion and the Agreement.
4 Blumenthal Decl. ¶3(i).

5 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
6 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
7 is “fair, adequate, and reasonable”. (Preliminary Approval Order at 24:8-9.) In sum, the Settlement
8 valued at \$1,250,000 is an excellent result for the Class. This result is particularly favorable in light
9 of the fact that liability and class certification in this case were far from certain in light of the defenses
10 asserted by Defendants. Given the complexities of this case, the defenses asserted, the uncertainty of
11 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
12 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

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

1 however, the Court rejected this argument and held that “the merits of the underlying class claims are
2 not a basis for upsetting the settlement of a class action.” *Id.*; *see also 7-Eleven, supra*, at 1150.

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

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

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

20 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
21 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the
22 trial court should consider in evaluating the reasonableness of a class action settlement agreement
23 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
24 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
25 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
26 the presence of a governmental participant, and the reaction of the class members to the proposed
27 settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations
28 omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

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

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

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

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

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

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

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

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

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

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

15 From October 2022 to January 2023, the settlement agreement and exhibits thereto were drafted,
16 finalized and executed, and then presented by motion to this Court for preliminary approval. On June
17 29, 2023, the Court issued its Order granting preliminary approved of the settlement as fair and
18 reasonable to the Class. Blumenthal Decl. ¶7(c).

19 3. Class Counsel is Experienced in Similar Litigation

20 Class Counsel in this matter has extensive class action experience and has represented thousands
21 of persons in class actions including employment litigation, wage and hour class actions, and complex
22 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
23 claims similar to this case and have been approved as experienced class counsel during contested
24 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
25 knowledgeable in this area of law. A list of class action cases managed and settled by the Class
26 Counsel in this action is provided to the Court as Exhibit #1 to the Blumenthal Decl and in the
27 Declaration of Edwin Aiwazian at ¶¶ 14-18. Class Counsel have participated in every aspect of the
28 settlement discussions and have concluded the settlement is fair, adequate and reasonable and in the

1 best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

3 The reaction of the Class unequivocally supports approval of the Settlement. On July 28, 2023,
4 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
5 class member with the terms of the Settlement, including notice of the claims at issue and the financial
6 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
7 how individual settlement awards would be calculated, and the specific, estimated payment amount to
8 that individual. See Bench Decl. ¶ 7, Exh. A. In disseminating the notice, the Administrator followed
9 the notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there
10 have been no objections and only one (1) valid requests for exclusion. Bench Decl. ¶¶ 11, 12. As such,
11 nearly the entire Class will participate in the Settlement and will be sent a settlement check. See Bench
12 Decl. at ¶ 14; Blumenthal Decl. ¶ 4.

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

21 5. The Strength of Plaintiffs' Case

22 The Action generally alleges that Plaintiffs and other Class Members were not properly paid
23 all overtime wages for hours worked, were not provided meal and rest periods, were not timely paid
24 earned wages, were not provided reimbursement for required expenses, were not provided accurate
25 itemized wage statements, were not paid all wages at the time of termination. The Action seeks unpaid
26 wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and
27 owing to Plaintiffs and the other Class Members by virtue of the foregoing claims. Blumenthal Decl.
28 ¶ 5.

1 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
3 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
4 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
5 argued that all work time was paid for and that the regular rate was properly calculated when paying
6 wages. Defendants contend that their meal and rest period policies fully complied with California law
7 and that Defendants' timekeeping system recorded meal periods, and was not required to record rest
8 periods. As to expenses reimbursement, Defendants contended that there was no failure to pay for
9 business expenses and any cell phone usage was merely convenient and voluntary such that
10 reimbursement was not legally required. Finally, Defendants could argue that the Supreme Court
11 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on
12 liability, value, and class certifiability as to the meal and rest period claims. Defendants also argues
13 that based on their facially lawful practices, they acted in good faith and without willfulness, which if
14 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If
15 successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class.
16 While Plaintiffs believe that these defenses could be overcome, Defendants maintain these defenses
17 have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

20 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
21 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
22 Associates were misclassified as exempt. In addition to the uncertainties raised by
23 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
24 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.

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

1 The potential complexity and possible duration of trial also weigh in favor of granting
2 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
3 uncertainty of outcome, and believe defendant would appeal in the event of adverse
4 judgment. A post-judgment appeal would require many years to resolve and delay
5 payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
6 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees,
7 the actual recovery confers substantial benefits on the class that outweigh the potential
8 recovery through full adjudication.

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

11 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
12 to maintain a certified class through trial, and thereby not recover on behalf of any employees other
13 than themselves. At the time of the mediation, Defendants continued to forcefully oppose the propriety
14 of class certification, arguing that individual issues precluded class certification. Further, as
15 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
16 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class
17 has been certified. While other cases have approved class certification in wage and hour claims, class
18 certification in this action was hotly disputed and the maintenance of a certified class through trial was
19 by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

20 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
21 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
22 substantial defenses both to liability and to class certification. Currently, the maximum and average
23 class member allocation are \$3,069.19 and \$2,012.21, respectively. *See* Bench Decl. ¶16. Given the
24 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
25 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

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

24 *Id.* at *12.

25 7. The Amount Offered in Settlement

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

The calculations to compensate for the amount due for the Class at the time of the mediation
were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at

1 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
2 wages for the employees. The maximum potential damages were calculated to be \$3,037 for the
3 alleged unpaid wages due to the regular rate calculation, \$3,879,793, for alleged meal period damages
4 based upon a 4.8% potential violation rate observed in the 176,032 shifts analyzed and after the
5 deduction for meal premiums paid, \$3,974,722 for alleged rest period damages based upon the same
6 4.8% violation rate, \$870,052 for alleged unpaid off-the-clock work, \$132,562 for alleged unreimbursed
7 business expenses for personal cell phone at \$10 per month. As a result, the total damage valuation was
8 therefore calculated that Defendants were subject to a maximum damage claim in the amount of
9 \$8,860,166. As to potential penalties, Plaintiffs calculated that wage statement penalties were a
10 maximum of \$680,000 and potential waiting time penalties were between \$181,456 to \$742,320
11 depending on the predicate violation giving rise to the non-payment of wages. Defendants vigorously
12 disputed Plaintiffs' calculations and exposure theories. Blumenthal Decl. ¶8(d).

13 Consequently, the Gross Settlement Amount of \$1,250,000 represents more than 14% of the
14 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.³
15 Given the amount of the settlement as compared to the potential value of claims in this case and the
16 defenses asserted by Defendant, this settlement is fair and reasonable.⁴ Clearly, the goal of this
17 litigation has been met.

19 ³ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
20 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
21 PAGA claim was addressed in the Motion for Preliminary Approval in the Declaration of Nordrehaug
at ¶33.

22 ⁴ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
(N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
25 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
26 *v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral*
27 *v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
28 Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

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 Respectfully submitted,

6 Dated: October 5, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

7 By: /s/ Kyle Nordrehaug
8 Kyle R. Nordrehaug, Esq.
Attorneys for Plaintiffs