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

ALMA HEYMAN, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

RENOIR HM, LLC, a Limited Liability
Company; and Does 1 through 50,
Inclusive,

Defendants.

Case No. CGC-21-595913

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

Hearing Date: October 5, 2023
Hearing Time: 9:30 a.m.

*[Hearing scheduled by Order dated June 1, 2023 at
paragraph 12]*

Judge: Hon. Richard B. Ulmer
Dept: 302

Date Filed: October 8, 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 1, 2023 (“Preliminary Approval Order”),
6 the approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiff Alma Heyman (“Plaintiff”) respectfully submits this memorandum
9 in support of the unopposed motion for final approval and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class
11 and avoids the delays, risks, and costs of further litigation. The Class Notice was disseminated to the
12 Class and, to date, there are no objections and no requests for exclusion, which means that the entire
13 Class (100%) has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a positive
14 response from the Class evidencing their collective approval of the settlement. As a result, Plaintiff
15 respectfully submits that the class settlement should be finally approved for the same reasons that the
16 Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 Plaintiff and Defendant Renoir HM, LLC ("Defendant") reached a full and final settlement of
19 the above-captioned action, which is embodied in the Agreement filed concurrently with the Court.
20 As consideration for this Settlement, the Gross Settlement Amount is Five Hundred Sixty Thousand
21 Dollars (\$560,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists
22 of the following elements: (1) payment of the Individual Class Payments to the Participating Class
23 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
24 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5)

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who were employed by Defendant in California and
27 classified as hourly, non-exempt employees at any time during the Class Period.” The “Class Period”
28 is December 1, 2018 through December 31, 2022. (Preliminary Approval Order, ¶ 5)

1 the PAGA Penalties payment. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The following is a table
2 of the key financial terms of the Settlement and the proposed deductions:

3 **\$560,000** (Gross Settlement Amount)

- 4 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 5 - \$12,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 6 - \$186,666 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 7 - \$15,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
- 8 - \$9,500 (Administration Expenses Payment - not to exceed amount)

9 **\$326,834** (Net Settlement Amount)

10 For the 463 Class Members who collectively worked 19,242 Workweeks, the Gross Settlement Amount
11 provides a value of \$1,209 per Class Member and \$29 per Workweek and after deductions, the Net
12 Settlement Amount provides an average recovery of \$705.90 per Class Member and a recovery of
13 \$16.98 per Workweek. Blumenthal Decl. ¶3(a).

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

17 Within thirty (30) days of the Effective Date, Defendant shall fund the Gross Settlement
18 Amount and the amount necessary to pay Defendant's share of payroll taxes. (Agreement at ¶ 4.3.) The
19 distribution of Individual Class Payments to Participating Class Members along with the other Court-
20 approved distributions shall be made by the Administrator within fourteen (14) days after Defendant
21 fully funds the Gross Settlement Amount. (Agreement at ¶ 5.1.) Blumenthal Decl. ¶3(c).

22 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
23 amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service
24 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
25 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
26 Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2.) From the Net Settlement
27 Amount, the Individual Class Payment for each Participating Class Member will be calculated by
28 (a)dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating
Class Members during the Class Period and (b) multiplying the result by each Participating Class
Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks were based on Defendant's records;
however, Class Members had the right to challenge their Workweeks. Blumenthal Decl. ¶ 3(d).

1 Class Members were sent the Court approved Class Notice using the procedure approved by the
2 Court by mailing the notice packets after updating class members' addresses using the National Change
3 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to
4 any forwarding address provided or updated address located. (Agreement at ¶ 8.5(c), Ex. A.) Class
5 Members were provided with the opportunity to exclude themselves or "opt out" if they did not want
6 to participate in the settlement. (Agreement at ¶ 8.5(c), Ex. A.) All Aggrieved Employees, including
7 those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will
8 remain subject to the release of the Released PAGA Claims regardless of their request for exclusion.
9 (Agreement at ¶¶ 6.3 and 8.5(d).) The Class Notice also advised Class Members of their right to object
10 to the Settlement and/or dispute their workweeks. (Agreement at ¶¶ 8.6 and 8.7(c), Ex. A.) Blumenthal
11 Decl. ¶ 3(e).

12 A Participating Class Member must cash his or her Individual Class Payment check within 180
13 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
14 be voided and any funds represented by such checks to the California Controller's Unclaimed Property
15 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
16 of California Code of Civil Procedure § 384, subd. (b). (Agreement at ¶ 5.4.) Blumenthal Decl. ¶3(f).

17 Phoenix Class Action Administration was appointed as the Settlement Administrator.
18 (Agreement at ¶ 1.2; Preliminary Approval Order at ¶ 9.) From the Gross Settlement Amount, the
19 Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount
20 not to exceed \$12,000. (Agreement at ¶ 3.2(c); Preliminary Approval Order at ¶ 9.) As set forth in the
21 Declaration of Kevin Lee ("Lee Decl.") at ¶17, the Settlement Administration Expenses, including fees
22 and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement
23 administration, are \$9,500. Blumenthal Decl. ¶3(g).

24 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
25 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
26 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
27 Litigation Expenses Payment in an amount not to exceed \$12,000. (Agreement at ¶ 3.2(b).) Subject
28 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as

1 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) In support of this separate motion
2 for attorneys' fees, reimbursement of expenses and service award, Class Counsel is providing
3 evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

4 Subject to Court approval, Fifteen Thousand Dollars (\$15,000) will be paid from the Gross
5 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
6 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
7 the PAGA Payment shall be allocated as follows: 75% (\$11,250) shall be allocated to the Labor
8 Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$3,750)
9 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
10 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
11 accompanying proof of service, the LWDA has been served with this motion and the Agreement.
12 Blumenthal Decl. ¶3(i).

13 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
14 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
15 is "fair, adequate and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
16 at Five Hundred Sixty Thousand Dollars (\$560,000) is an excellent result for the Class. This result is
17 particularly favorable in light of the fact that liability was far from certain in light of the defenses
18 asserted by Defendant. Given the complexities of this case and the defenses asserted, along with the
19 uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and
20 should be finally approved. Blumenthal Decl. ¶3(j)

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

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

28 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class

1 action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing
2 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The
3 court must decide whether the proposed settlement falls within the range of reasonable settlements,
4 taking into account that settlements are compromises between the parties reflecting subjective,
5 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See Wershba v.*
6 *Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be judged
7 against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed
8 at trial.") In *Wershba*, appellants argued that the settlement was too low given the "clear" liability,
9 however, the Court rejected this argument and held that "the merits of the underlying class claims are
10 not a basis for upsetting the settlement of a class action." *Id.*; *see also 7-Eleven, supra*, at 1150.

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

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

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

28 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*

1 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the
2 trial court should consider in evaluating the reasonableness of a class action settlement agreement
3 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
4 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
5 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
6 the presence of a governmental participant, and the reaction of the class members to the proposed
7 settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations
8 omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

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

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

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

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

21 Over the course of litigation, the Parties engaged in the investigation of the claims, including
22 formal discovery, production of documents, class data, and other information, allowing for the full and
23 complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
24 investigation performed was detailed at length in support of the motion for preliminary approval. The
25 Settlement was the product of one arms-length mediation and contentious negotiations presided over
26 by Kelly Knight, Esq., a respected and experience mediator of wage and hour class actions. The details
27 of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(h).
28

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

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

11 The Parties attended an arms-length mediation session with Kelly Knight, Esq., a respected and
12 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
13 for the mediation sessions, Defendant provided Class Counsel with necessary information for the
14 members of the Class, including time data, payroll data and data concerning the composition of the
15 Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting Group, and
16 prepared and submitted a mediation brief and damage valuation to the Mediator. Following the
17 mediation, the Parties were able to agree to settle the Action, which was memorialized in the form of
18 a Memorandum of Understanding. Blumenthal Decl. ¶7(b).

19 The fact that the settlement was negotiated with the assistance of an experienced mediator
20 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
21 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
22 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
23 litigation, with the assistance of a well-respected mediator with substantial experience in employment
24 litigation[, and] this factor supports approval of the settlement”).

25 From December 2022 to April 2023, the Agreement and exhibits thereto were drafted, finalized
26 and executed, and presented to this Court on for preliminary approval on June 1, 2023. The Court
27 granted preliminary approval, and the Preliminary Approval Order was entered by this Court on June
28 1, 2023. Blumenthal Decl. ¶7(c).

1 3. Class Counsel is Experienced in Similar Litigation

2 Class Counsel in this matter has extensive class action experience and has represented thousands
3 of persons in class actions including employment litigation, wage and hour class actions, and complex
4 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
5 claims similar to this case and have been approved as experienced class counsel during contested
6 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
7 knowledgeable in this area of law. The experience of counsel and class action cases managed and
8 settled by the Class Counsel in this action is provided to the Court in the Blumenthal Decl. at Exhibit
9 #1. Class Counsel have participated in every aspect of the settlement discussions and have concluded
10 the settlement is fair, adequate and reasonable and in the best interests of the Class. Blumenthal Decl.
11 ¶ 3(j).

12 4. There Are No Objections And No Opt-Outs

13 The reaction of the Class unequivocally supports approval of the Settlement. On June 30, 2023,
14 the Settlement Administrator mailed the Court-approved Class Notice to the Class Members, which
15 provided each class member with the terms of the Settlement, including notice of the claims at issue
16 and the financial terms of the settlement, including the attorneys' fees, costs, and service awards that
17 were being sought, how individual settlement awards would be calculated, and the specific, estimated
18 payment amount to that individual. See Lee Decl. ¶5, Exh. A. In disseminating the notices, the
19 Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
20 Approval Order. Significantly, there have been no objections and no opt-outs. Lee Decl. ¶¶ 8-9. As
21 a result, the entire Class will participate in the Settlement and will be sent a settlement check,
22 representing 100% of the Class. See Lee Decl. at ¶¶ 11, 13. Blumenthal Decl. ¶4.

23 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
24 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
25 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
26 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
27 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
28 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed

1 settlement should be considered when determining fairness of settlement). Here, where there are no
2 objections, the approval of the class is evident.

3 5. The Strength of Plaintiff's Case

4 The Action generally alleges that Plaintiff and other Class Members were not provided all
5 minimum wages and overtime compensation and at the correct rate, were not provided and/or paid for
6 meal and rest periods, were not reimbursed for reasonable business expenses, were not paid used sick
7 pay at the correct rate of pay, and were not provided accurate itemized wage statements. The Action
8 seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief
9 allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing claims.
10 Blumenthal Decl. ¶5.

11 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
12 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
13 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
14 asserted that Defendant's practices complied with all applicable Labor laws. As to rounding,
15 Defendants argued that its rounding practices were lawful because they were facially neutral. Defendant
16 argued that all work time was properly recorded and paid for and that there was no miscalculation of
17 the regular rate. Defendant contends that its meal and rest period policies fully complied with
18 California law and Defendant did not fail to provide the opportunity for legally required meal and rest
19 breaks. Defendant established that significant meal period premiums were paid, which could be argued
20 established the lawfulness of their practices. As to expenses reimbursement, Defendant contended that
21 it did not fail to provide reimbursement for necessary business expenses and that there were no such
22 expenses that had not already been reimbursed or that claimed expenses were incurred voluntarily
23 and/or for the convenience of employees and is therefore not required reimbursement. Defendant
24 argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp.*
25 *v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th
26 85 (2021), weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest
27 period claims. Defendant also argues that based on its facially lawful practices, it acted in good faith
28 and without willfulness, which if accepted would negate the claims for waiting time penalties and/or

1 inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce
2 any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant
3 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.
4 Blumenthal Decl. ¶8(a).

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

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

12 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
13 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
14 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
15 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

23 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
24 to obtain class certification and thereby not recover on behalf of any employees other than himself.
25 Defendant argued that the individual experience of each putative class member varied with respect to
26 the claims. Defendant could also contest class certification by arguing injury and good faith were case-
27 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
28 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885

(2019) (denying certification of rest break claims). Finally, even if class certification was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the class has been certified. While other cases have approved class certification in wage and hour claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant recovery, particularly when viewed in light of the fact that the Defendant asserted serious and substantial defenses. Currently, the maximum and average class member recoveries are \$3,278.19 and \$705.90, respectively. *See* Lee Decl. ¶14. Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

As demonstrated by the decision in *Duran*, the complexities and duration of further litigation cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event of an adverse judgment. A post-judgment appeal by Defendant 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 outweigh an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

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

1 Class. Blumenthal Decl. ¶8(c).

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

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

14 *Id.* at *12.

15 7. The Amount Offered in Settlement

16 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
17 to Plaintiff's claims. As set forth in the Declaration of Kyle Nordrehaug filed in support of preliminary
18 approval which discussed the value of the class claims in detail, the Gross Settlement Amount compares
19 favorably to the value of the claims. For the 463 Class Members who collectively worked 19,242
20 Workweeks, the Gross Settlement Amount provides a value of \$1,209 per Class Member and \$29 per
21 Workweek and after deductions, the Net Settlement Amount provides an average recovery of \$705.90
22 per Class Member and a recovery of \$16.98 per Workweek. Blumenthal Decl. ¶8(d).

23 The calculations to compensate for the amount due to the Class Members at the time this
24 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting Group, in advance
25 of mediation. As to the Class whose claims are at issue in this Action, Plaintiff used an expert to
26 analyze the data and determine the potential unpaid wages for the employees. For the Class, Plaintiff
27 determined that the maximum value of the claim for unpaid wages due to alleged rounding practices
28 was \$46,443, the maximum value of the claim for unpaid wages due to alleged off-the-clock work was
\$562,387, the maximum value of the claim for unpaid wages due to alleged miscalculation of the
regular rate was potentially \$1,503, the maximum potential damages for unpaid meal premiums were
estimated to be \$110,952 based upon a potential 10% violation rate observed in the records and after

1 deduction for meal premiums paid, the maximum potential rest period damages were estimated to be
2 \$1,014,022 based upon a potential 50% violation rate, and the maximum potential damages for failure
3 to provide expense reimbursement were calculated to be \$57,320 based upon expenses of \$10 per
4 month. In total, the damages for the Class were calculated to have a maximum potential total value of
5 \$1,792,627. In addition, Plaintiff calculated that the maximum value of the potential waiting time
6 penalties was between \$686,404 and \$885,832, depending on the predicate violations, and the
7 maximum value of the potential wage statement penalties was \$486,550.³ Blumenthal Decl. ¶8(d).

8 Consequently, the Gross Settlement Amount represents more than 31% of the potential
9 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
10 full at trial.⁴ The above maximum calculations should then be adjusted in consideration for both the
11 risk of class certification and the risk of establishing class-wide liability on all claims.

12 Defendant disputes Plaintiff's estimates and believes the amount Plaintiff can recover for the
13 Class, if anything at all, is actually much lower. Given the amount of the Settlement as compared to
14 the potential value of the claims, the Settlement is most certainly fair and reasonable.⁵ Blumenthal

15
16 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
17 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
18 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
19 meal or rest periods or other wages were owed given Defendant's position that Plaintiff and Class
20 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
(2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
dispute as to whether and when the wages were due.").

21 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
22 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶ 33.

23 ⁵ *See e.g. Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
27 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
28 *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 approximately 10% of what class might have been
awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.

1 Decl. ¶8(d). Clearly, the goal of this litigation has been met.

2 **V. CONCLUSION**

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

6 Respectfully submitted,

7 Dated: September 7, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
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9 Kyle R. Nordrehaug
10 Attorney for Plaintiff
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26 _____
27 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
28 *v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).