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12 **and the Class**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF HUMBOLDT**

15 **JESSICA COLLARD,**

16 **Plaintiff,**

17 **v.**

18 **MURPHY'S MARKETS, INC., a**
19 **corporation; and DOES 1-100, inclusive,**

20 **Defendants.**

21 **Case No.: CV2101368**

22 **MEMORANDUM OF POINTS AND**
23 **AUTHORITIES IN SUPPORT OF**
24 **MOTION FOR FINAL APPROVAL OF**
25 **CLASS AND REPRESENTATIVE**
26 **ACTION SETTLEMENT**

27 **Date: December 11, 2023**

28 **Time: 10:30 a.m.**

Dept.: 4

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I. INTRODUCTION

Plaintiff Jessica Collard (“Collard” or “Plaintiff”) hereby requests final approval of the Class and Representative Action Settlement Agreement and Release (“Settlement”) entered into with Defendant Murphy’s Markets, Inc. (“Defendant” or “MMI”) which resolves employment-related claims on behalf of the Class defined as follows:

All current and former non-exempt employees who worked directly for Murphy’s Markets, Inc. in California at any time from September 23, 2017 through January 31, 2023.¹

This Settlement has been received with a resounding stamp of approval from the Class – ***only four of the 601 Class Members have opted out of the Settlement, and none have objected to any of its terms.*** This Settlement, if approved, will provide that Defendant will pay a Maximum Settlement Amount of \$400,000. The average payment to a Participating Class Member will be \$261.21, with the highest payment being \$994.25. Also, the 372 Participating Former Employee Subclass Members will receive an *additional* payment of \$100.92. This is a very favorable resolution of the disputed wage-and-hour claims in this case, especially in light of the significant litigation risks that Collard faced, including non-certification and not prevailing on the merits.

Given the risks of this litigation and the amount of the settlement, the result here is laudable. As detailed below, the work performed by Collard and Class Counsel was substantial. Among other things, Class Counsel: (1) conducted an initial investigation of this case and developed the theories and facts to support the Class’s claims; (2) retained an experienced economics expert, who conducted an intensive review and analysis of voluminous payroll data and documents provided by Defendant; (3) engaged in arm’s-length settlement negotiations with Defendant, and before a qualified mediator; (4) worked extensively with Defendant to further perfect the terms of the Settlement, to prepare the Settlement Agreement itself and related forms and approval motions; and (5) incurred \$16,687.45 in costs in prosecuting this case.

¹ The Class includes a Former Employee Subclass, defined as “All former nonexempt employees who worked directly for Murphy’s Markets, Inc. in California at any time from September 23, 2018 through January 31, 2023. These persons, being *former* employees of MMI, also waive claims for “waiting time penalties” under Labor Code section 203 and receive consideration therefor.

Moreover, in pursuing this case against Defendant, Collard and Class Counsel faced serious risks, including but not limited to: (1) the risk of being unable to establish classwide liability on the wage statement claim in light of the burden of proving that Labor Code violations were “knowing and intentional”; (2) the risk of being unable to demonstrate that Defendant failed to include the value of earned nondiscretionary bonuses into overtime, paid sick leave, and rest and meal period premiums, on a classwide basis; (3) the risk of a potentially prolonged and expensive trial; (4) the risk of lengthy appeals; (5) the risk of Collard being held liable for Defendants’ costs if this case had been unsuccessful; and (6) the risk that Collard’s future employment prospects would be adversely affected by filing this lawsuit.

When the benefits of the Settlement are balanced against the risks of continued, protracted litigation—including potential defeat at certification, on the merits, and/or on appeal—the fairness, adequacy, and reasonableness of the Settlement is clear. The Class continues to meet the requirements for class certification, and the Settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case. This is further confirmed by the *overwhelmingly* positive reaction of the Class. Accordingly, Plaintiff respectfully requests that this Court grant final certification of the Class, grant final approval of the Settlement, and enter the proposed order of final approval and judgment submitted herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual and Procedural History.

On August 31, 2021, Class Counsel sent written notice to Defendant and the California Labor and Workforce Development Agency (“LWDA”), alleging that, during Plaintiff’s prior employment with Defendant, she was not paid overtime at the correct rate of pay, was not paid sick leave at the correct rate, was not timely paid all wages, was not paid all wages due upon termination, and was not furnished with accurate wage statements. (Briscoe Decl., ¶ 2, Exhibit 2.) The LWDA did not provide written notice that it intended to investigate the alleged violations. (*Id.*, ¶ 2.)

On September 23, 2021, Class Counsel filed this action in Humboldt County Superior Court as against Defendant, on behalf of herself and all other California employees similarly situated. Plaintiff also brought individual discrimination claims (which have already been resolved by way of a separate,

1 confidential settlement agreement). On November 8, 2021, Collard filed a First Amended Complaint
2 to add a cause of action under the Private Attorneys General Act (“PAGA”, Lab. Code, § 2698 et seq.)
3 On or around January 18, 2022, Defendant filed an Answer to the First Amended Complaint, in which
4 it denied the claims, causes of action and substantive allegations of the First Amended Complaint, and
5 asserted various affirmative defenses.

6 **B. Investigation, Discovery, and Negotiations.**

7 Prior to filing this action, counsel for Collard conducted an extensive and exhaustive analysis
8 of the claims to be asserted in this action, including closely scrutinizing Collard’s wage-and-hour
9 records. Plaintiff served an initial round of written discovery, but the Parties soon agreed to attend
10 private mediation. Defendant produced voluminous and critical wage-and-hour data and also
11 documents so that Plaintiff and Class Counsel could conduct a thorough analysis of the size and
12 composition of the Class, as well as the maximum potential liability exposure in this case. Due to the
13 size and complexity of the data and documents provided, Class Counsel retained an economic
14 expert—Melissa Daniels of EconOne—to analyze the data and documents and, extrapolating
15 therefrom, prepare a report as to the potential, classwide exposure for penalties and unpaid wages.
16 Based on this analysis, and chiefly due to anticipated exposure for rest and meal period violations, it
17 was estimated that Defendant faced exposure for unpaid wages and statutory penalties in excess of
18 \$1.3 million. (Briscoe Decl., ¶ 8.) On September 15, 2022, the Parties attended mediation before
19 Daniel Ben-Zvi, Esq., an experienced and renowned mediator of employment class actions. (Briscoe
20 Decl., ¶ 9.) Pursuant to said mediation, it was agreed that the Parties would resolve all claims alleged
21 in the First Amended Complaint, *as well as claims for failure to provide rest/meal periods or pay*
22 *premiums*, for the Maximum Settlement Amount of \$400,000. Following intensive meeting and
23 conferring over the particular terms of the Settlement, *over an approximate eleven-month period*, the
24 Settlement was executed by all parties on May 5, 2023.

25 **C. The Court Granted Preliminary Approval of the Settlement.**

26 This Court granted preliminary approval of the Settlement Agreement on July 31, 2023.
27 Having reviewed the settlement negotiations, the substantive terms of the Settlement Agreement,
28 and the papers submitted in conjunction with Plaintiffs’ Motion for Preliminary Approval, the Court

1 found: (1) that the Settlement Agreement appeared to be within the range of reasonableness of
2 settlement which could ultimately be given final approval by this Court; (2) that it appeared to the
3 Court that the settlement amount is fair and reasonable to Settlement Class Members when balanced
4 against the probable outcome of further litigation, liability and damages issues; (3) that it further
5 appeared that significant investigation and research has been conducted and that counsel for the
6 parties at this time are able to reasonably evaluate substantial costs, delay and risks that would be
7 presented by the further prosecution of the litigation; and (4) that it further appeared that the
8 proposed Settlement has been reached as the result of intensive, serious and non-collusive, arms-
9 length negotiations.

10 Thus, the Court (1) preliminarily and conditionally certified the Class as requested; (2)
11 appointed Phoenix Settlement Administrators as the Claims Administrator, (3) appointed Mayall
12 Hurley P.C. as Class Counsel; (4) approved, and directed the mailing of, the submitted Notice of
13 Pendency (“Class Notice”) in accordance with the terms of the Class Action Settlement and Release
14 (“Settlement Agreement”); and (5) preliminarily approved the requested awards of attorney’s fees
15 and costs to Class Counsel, as well as the requested Class Representative Incentive Payment to
16 Collard. (Order Granting Preliminary Approval of Class Action Settlement [“Order Granting
17 Preliminary Approval”].) Finally, the Court scheduled the Final Approval Hearing to determine
18 fairness, reasonableness and adequacy of the Settlement as well as the Fee Motion.

19 **D. The Distribution of the Notice Has Resulted in a Positive Reaction By the Class.**

20 On August 21, 2023, Class Notices were mailed to all 601 Class Members via First Class
21 mail, in English and Spanish. (Declaration of Kevin Lee Regarding Settlement Notice
22 Administration [“Admin. Decl.”], ¶ 5, Exhibit A.) In accordance with the Court’s instructions, the
23 Class Notice informed Class Members about the terms of the Settlement, including the fact that
24 Plaintiff would request: (1) an award of attorney’s fees of \$133,333 to be paid from the Maximum
25 Settlement Amount, (2) reimbursement of up to \$20,000 in litigation costs, (3) fees and costs of the
26 Settlement Administrator in the amount of \$9,000, and (4) a Class Representative Incentive
27 Payment to Plaintiff in the amount of \$7,500. (*Id.*, Exhibit A.) Following the notice period, ***only***
28 ***four of 601 Class Members (or 99.33 percent) have opted out of the Settlement, and not one has***

1 *objected to its terms (or disputed the stated number of their weeks worked)*. (*Id.*, ¶¶ 8-10.) The
2 positive reaction by the Class is a clear indication of its approval of the Settlement and the terms
3 thereof. Now that the notice period has closed and resulted in an extremely positive response from
4 the Class Members, Collard respectfully requests final approval of the Settlement and that the Class
5 be certified finally.

6 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

7 **A. Class Definition.**

8 As stated above, the Class is defined as follows:

9 All current and former non-exempt employees who worked directly for
10 Murphy’s Markets, Inc. in California at any time from September 23, 2017
11 through January 31, 2023.

12 The Class includes a Former Employee Subclass, defined as:

13 All former nonexempt employees who worked directly for Murphy’s Markets, Inc.
14 in California at any time from September 23, 2018 through January 31, 2023.

15 **B. Monetary Terms.**

16 Under the Settlement Agreement, Rowtown, Inc. is to pay a total of \$400,000 – the
17 Maximum Settlement Amount – to resolve all claims. (Briscoe Decl., Exhibit 1, § 48.) The
18 Maximum Settlement Amount includes payments to the 597 Participating Class Members,
19 *additional payments* to the 372 Participating Former Employee Subclass Members (\$37,539), the
20 fees and costs of the Claims Administrator (not to exceed \$9,000), the legally-required payment to
21 the LWDA (\$30,000), the payment to the PAGA Group Members (\$10,000), a service payment to
22 Plaintiff (\$7,500), and Class Counsel’s attorneys’ fees and costs (not to exceed \$133,333 and
23 \$20,000,² respectively). (*Id.*, §§ 49, 52-55.)

24 Payments to Participating Class Members are determined according to the number of
25 workweeks worked during the Class Period. (Briscoe Decl., Exhibit 1, § 64(i).) Participating
26 Former Employee Subclass Members receive equal shares of the \$37,539 “set-aside.” (*Id.*, § 64(ii).)

27 _____
28 ² Actual costs incurred, as set forth in the Fee Motion, are \$16,687.45.

1 The entirety of the Net Settlement Amount is to be distributed to Participating Class Members, with
2 no reversion to Defendant. Each Participating Class Member's share of the Net Class Settlement
3 Amount is allocated as twenty-five percent wages and seventy-five percent statutory penalties and
4 interest. (*Id.*, § 56.) The average Settlement Payment is \$261.21, while the highest is \$994.25.
5 (Admin. Decl., ¶ 15.)

6 **C. Summary of Notice Process and Response From Class.**

7 Phoenix Settlement Administrators was selected (and approved by the Court) as the
8 Settlement Administrator. The court-approved Class Notice consisted of a four-page notice, which
9 was sent in both English and Spanish. (Admin. Decl., Exhibit A.) Class Members were also
10 provided with a Notice of Settlement Award form, which disclosed the duration of a Class
11 Member's employment (for purposes of calculating settlement payments) and afforded Class
12 Members the opportunity to dispute those figures. (*Id.*) On August 10, 2023, the Settlement
13 Administrator received data files from defense counsel containing the necessary contact information
14 for each of the 601 Class Members. (*Id.*, ¶ 3.) The mailing addresses contained in that Class List
15 were processed and updated utilizing the National Change of Address Database ("NCOA")
16 maintained by the U.S. Postal Service. (*Id.*, ¶ 4.) On August 21, 2023, Notice Packets were mailed
17 via first class mail to each of the 601 Class Members contained in the Class List. (*Id.*, ¶ 5.) If a
18 Notice Packet was returned without a forwarding address, the Settlement Administrator TransUnion
19 TLOxp, one of the most comprehensive address databases available for skip tracing. (*Id.*, ¶ 6.)
20 Ultimately, seventeen of 601 Notice Packets were undeliverable. (*Id.*, ¶ 7.) ***Critically, and***
21 ***demonstrating the overwhelming approval of the Settlement, only four of the Class Members of***
22 ***opted out of the Settlement; none objected to the terms thereof or disputed the number of wage***
23 ***statements upon which their proportional share of the Net Settlement Amount would be***
24 ***calculated.*** (*Id.*, ¶¶ 8, 9, 10.)

25 **D. Timing of Payments**

26 As no Class Member has objected, the Effective Date, per the terms of the Settlement
27 Agreement, will be the date of the Order of Final Approval. (Briscoe Decl., Exhibit 1, § 19.)
28 Within ten calendar days after the Effective Date, Defendant is to fund the Qualified Settlement

1 Fund with the Maximum Settlement Amount. (*Id.*, ¶ 48.) Fourteen calendar days after that, the
2 Settlement Administrator will distribute the Maximum Settlement Amount in accordance with the
3 Settlement Agreement and this Court’s Order of Final Approval. (*Id.*, ¶ 64.)

4 In the event that any checks mailed to Participating Class Members are not cashed after 180
5 days, or an envelope mailed to a Participating Class Member is returned and no forwarding address
6 can be located for that person after reasonable efforts have been made, then the Settlement
7 Administrator shall transmit the funds to Court Appointed Special Advocates for Children of
8 Humboldt County, in accordance with Code of Civil Procedure section 384. (Settlement
9 Agreement, § 58.)

10 Class Counsel proposes a Final Compliance Hearing for *July 29, 2024*.

11 **IV. THIS COURT SHOULD CONFIRM ITS CONDITIONAL CERTIFICATION OF THE**
12 **CLASS FOR SETTLEMENT PURPOSES BECAUSE IT MEETS ALL OF THE**
13 **REQUIREMENTS FOR CLASS CERTIFICATION UNDER CODE OF CIVIL**
14 **PROCEDURE SECTION 382**

15 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is
16 ascertainable and its members are too numerous for joinder to be practical; (2) the representative(s)
17 and absent class members share a community of interest and questions of law and fact common to
18 the class predominate over individual questions; (3) the representative’s claims are typical of the
19 class’s claims; and (4) the representatives will fairly and adequately represent the class’s interests.
20 (See *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court found that the
21 Class meets all of the requirements for class certification for settlement purposes when it granted
22 preliminary approval of the Settlement Agreement on July 31, 2023. No new circumstances have
23 cast any doubt on the propriety of the preliminary approval determination. To the contrary, the
24 reaction of the Class Members to the terms of the notice of the Settlement has been overwhelmingly
25 supportive. (Admin. Decl., ¶¶ 8-10.) Accordingly, this Court should confirm its conditional
26 certification of the Class.

1 **V. THIS COURT SHOULD FINALLY APPROVE THE SETTLEMENT BECAUSE IT IS A**
2 **FAIR, ADEQUATE, AND REASONABLE COMPROMISE OF DISPUTED LABOR**
3 **CODE CLAIMS.**

4 **A. Legal Standards for Approving Class Action Settlements.**

5 A class action may not be dismissed, compromised or settled without approval of the Court.
6 (Civil Code, § 1781(f); Cal. Rules of Court, Rule 3.769; Fed. R. Civ. P. 23(e).) The decision to
7 approve or reject a proposed settlement is committed to the sound discretion of the Court. (*Kullar*
8 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; *Wershba v. Apple Computer, Inc.*
9 (2001) 91 Cal.App.4th 224, 234-35; *Hanlon v. Chrysler Corporation* (9th Cir. 1998) 150 F.3d 1011,
10 1026-27.) In passing on class action settlements, the Court has broad powers to determine whether
11 a settlement is fair under the circumstances of the case, and a decision approving a class action may
12 only be reversed upon a strong showing of clear abuse of discretion. (See *Mallick v. Superior*
13 *Court* (1979) 89 Cal.App.3d 434, 438; *Wershba* at pp. 234-35.) Appellate courts will rarely
14 overturn approval of a class action settlement unless “the terms of the agreement contain
15 convincing indications that the incentives favoring pursuit of self-interest rather than the class’s
16 interests in fact influenced the outcome of the negotiations and that the district court was wrong in
17 concluding otherwise.” (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 960.)

18 California courts have a strong policy in favor of settlement. (See, e.g., *Stambaugh v.*
19 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action
20 settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness
21 to class members. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d
22 573, 578-579.) This approval process consists of preliminary settlement approval, notice being
23 given to class members, and a final fairness and approval hearing at which class members have the
24 opportunity to be heard with respect to the settlement. (*Id.*)

25 The law and public policy strongly favor settlement prior to trial, particularly in class
26 actions where substantial resources can be conserved by avoiding the time, expense and rigors of
27 litigation. (*Churchill Village*, 361 F.3d 566, 576 (9th Cir. 2004); *In re Pacific Enterprises*
28 *Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 378; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992)

1 955 F.2d 1268, 1276; *Franklin v. Kaypro Corp.* (9th Cir. 1989) 884 F.2d 1222, 1229.)
2 Accordingly, courts have “wide discretion in assessing the weight and applicability of each factor.”
3 (*Nat'l Rural Telecomms. Coop. v. DirectTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 526.) The Ninth
4 Circuit has repeatedly ruled that the courts “put a good deal of stock in [class settlements that are]
5 the product of arms-length, non-collusive, negotiated resolution.” (*Rodriguez v. West Publishing*
6 *Corp.* (9th Cir. 2009) 563 F.3d 948, 965; *Hanlon, supra*, 150 F.3d at 1027.) Importantly, there is a
7 presumption of fairness “if the settlement is recommended by class counsel after arm’s-length
8 bargaining.” (*Wren v. RGIS Inventory Specialties* (N.D. Cal., April 1, 2011) 2011 U.S. Dist. Lexis
9 38667, *19.)

10 **B. The Settlement is Fair, Reasonable, and Adequate.**

11 In passing on a class action settlement, a Court must determine whether a proposed
12 settlement is “fair, adequate and reasonable.” (Fed. R. Civ. P. 23(e).) In doing so, a Court must
13 consider a number of factors including: (1) the strength of the plaintiff’s case; (2) the risk, expense,
14 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
15 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
16 the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
17 governmental participant, and (8) the reaction of the class members to the proposed settlement.
18 (*Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Dunk v. Ford Motor*
19 *Company* (1996) 48 Cal.App.4th 1794, 1802; see also *Hanlon v. Chrysler Corporation* (9th Cir.
20 1998) 150 F.3d 1011, 1026.) Adequate notice is also critical to court approval of a class settlement.
21 (*Hanlon* at p. 1025.)

22 While it is generally accepted that “[t]he most important factor is the strength of the case for
23 plaintiffs on the merits, balanced against the amount offered in settlement,” a court must be mindful
24 that its function in such valuation is limited solely to determining whether the settlement falls
25 within the range of acceptable settlements under the circumstances. (*Munoz v. BCI Coca-Cola*
26 *Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 407-409.) Indeed, “[t]he proposed
27 settlement is not to be judged against a hypothetical or speculative measure of what might have
28 been achieved had plaintiffs prevailed at trial,” (*Wershba v. Apple Computer, Inc.* (2001) 91

1 Cal.App.4th 224, 246), and it is well established that “[t]he merits of the underlying class claims are
2 not a basis for upsetting the settlement of a class action.” (*See 7-Eleven Owners for Fair*
3 *Franchising v. Southland Corp.* (2001) 85 Cal. App. 4th 1135, 1150; *Wershba*, at p. 246.)
4 Moreover, the fact that “the settlement could have been better . . . does not mean the settlement
5 presented was not fair, reasonable or adequate.” (*Hanlon, supra*, 150 F.3d at 1027.) The district
6 courts have “wide discretion in assessing the weight and applicability of each factor.” (*Nat’l Rural*
7 *Telecomms. Coop., supra*, 221 F.R.D. at p. 526.) The factors are non-exclusive, not all need be
8 shown, and the court is free to engage in a balancing and weighing of factors depending on the
9 circumstances of each case. (*Churchill Village, LLC v. General Electric Co.* (9th Cir. 2004) 361
10 F.3d 566, 576, fn. 7); *Wershba* at p. 245.) Indeed, “one factor alone may prove determinative in
11 finding sufficient grounds for court approval.” (*Nat’l Rural Telecomms. Coop.* at p. 525; *Torrison v.*
12 *Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 [upholding settlement where one factor
13 predominated].)

14 Thus, the court’s inquiry “into what is otherwise a private consensual agreement negotiated
15 between parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
16 that the agreement is not the product of fraud or overreaching by, or collusion between, the
17 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
18 concerned”. (*Officers for Justice* (9th Cir. 1982) 688 F.2d 615, 626.) Ultimately, a court’s
19 “determination is nothing more than an ‘amalgam of delicate balancing, gross approximations, and
20 rough justice.’” (*Nat’l Rural Telecomm. Coop., supra*, 221 F.R.D. at p. 526, citations omitted.)
21 Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a
22 strong showing of clear abuse of discretion. (*Hanlon*, 150 F.3d at 1027; *Class Plaintiffs v. City of*
23 *Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276 [in context of class action settlement, appellate court
24 cannot “substitute [its] notions of fairness for those of the [trial] judge and the parties to the
25 agreement,” and will reverse only upon strong showing of abuse of discretion], citation omitted.)

26 In light of the foregoing, and as set forth below, the Settlement embodies all of the key
27 features of a settlement that is fair, reasonable, adequate, and in the best interests of the members of
28 the Class, and as such, meets all the criteria necessary for final approval.

1 **1. The Class Received Adequate Notice of the Settlement.**

2 The Court-approved Notice of Pendency and notice process described above have
3 adequately protected the due process rights of the Class Members. Class action rules require the
4 class notice to contain an “explanation of the proposed settlement and procedures for Class
5 Members to follow in filing written objections to it and in arranging to appear at the settlement
6 hearing and state any objections to the proposed settlement.” (Cal. Rules of Court, Rule 3.769(f).)
7 Notice is adequate where it is given in a “form and manner that does not systematically leave an
8 identifiable group without notice.” (*Mandujano v. Basic Vegetable Prods, Inc.* (9th Cir. 1976) 541
9 F2d 832, 835.) The notice should be the best “practicable under the circumstances including
10 individual notice to all members who can be identified through reasonable effort.” (*Torrissi v.*
11 *Tuscon Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1374.) “The standard is whether the notice
12 has a reasonable chance of reaching a substantial percentage of the class members.” (*Wershba,*
13 *supra*, 91 Cal.App.4th at p. 251.)

14 The Court-approved Class Notice comported with the requirements for notice, and provided
15 significant information about the settlement, including the settlement terms, and procedures to object
16 or request exclusion. (Order Granting Preliminary Approval, § 6.) Further, the Settlement
17 Administrator fulfilled its duties in distributing the Court-approved Class Notice to Class Members
18 via first class mail, and performed address traces to re-mail any notices that were returned as
19 undeliverable. (Admin. Decl., ¶¶ 3-7.) As a result of these efforts, only seventeen (of 601) Class
20 Notices remained undeliverable (either because an updated address could not be obtained, or the
21 Notice was returned after a second mailing to an updated address). (*Id.* at ¶ 7.) The cumulative
22 effect of these efforts confirms that the Parties have sufficiently provided the best practicable
23 notice to the Class.

24 **2. The Strengths and Weaknesses of the Class Claims and the Risks of Proceeding**
25 **with Litigation Strongly Support Final Approval of the Settlement.**

26 The Court should reaffirm that this Settlement is fair, reasonable, and adequate in light
27 of the strength of Plaintiff’s claims and the risks faced with continued litigation. Approval of a
28 class settlement is proper when “there are significant barriers plaintiffs must overcome in

1 making their case.” (*Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d
2 848, 851 [also finding acknowledgement by parties of the possibility of decertification to
3 support approval]; *see also Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 966
4 [finding difficulties and risks of litigating a case weighs in favor of approval of class
5 settlements].)

6 Class Counsel believes there is substantial evidence from which the trier of fact could
7 conclude that Defendant engaged in a pattern and practice of violating the Labor Code as is
8 alleged. On the other hand, as set forth in Plaintiff’s Motion for Preliminary Approval, Class
9 Counsel also acknowledges recovery is far from guaranteed and could only occur after years of
10 costly litigation that is rife with risk. Defendant asserted and would have continued to assert, with
11 considerable resources, through certification, trial and the appellate process, legal and factual
12 grounds to defend itself. (Briscoe Decl., ¶ 17.) These factors all weigh strongly in favor of final
13 approval of the Settlement.

14 **3. The Settlement Was Reached Via Arm’s-Length Bargaining Through Experienced**
15 **Counsel, Before a Highly Competent Mediator, and Was Based on Sufficient**
16 **Information to Intelligently Negotiate a Fair Settlement in Light of the Claims**
17 **Asserted and Risks of Continued Litigation.**

18 A settlement is presumptively fair where it is reached through arm’s-length bargaining and
19 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
20 counsel is experienced in similar litigation, and the percentage of objectors to the terms of the
21 settlement is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) In deciding
22 whether to approve a proposed settlement, a trial court has broad powers to determine if the
23 proposed settlement is fair under the circumstances of the case. (*Mallick v. Superior Court* (1979)
24 89 Cal.App.3d 434, 438.) In exercising these powers, the overriding concern is to ensure that a
25 proposed settlement is “fair, adequate, and reasonable.” (*Dunk* at p. 1801.) Relevant factors for the
26 trial court to consider include, but are not limited to:

27 “The strength of Plaintiff’s case, the risk, expense, complexity and likely duration
28 of further litigation, the risk of maintaining class action status through trial, the
amount offered in settlement, the extent of discovery completed and the stage of

1 the proceedings, the experience and views of counsel, the presence of a
2 governmental participant, and the reaction of the class members to the proposed
settlement.”

3 (*Id.*) These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the
4 factors to each case and give due regard to “what is otherwise a private consensual agreement
5 between the parties.” (*Id.*)

6 “In the context of a settlement agreement, the test is not the maximum amount Plaintiff
7 might have obtained at trial on the complaint, but whether the settlement is reasonable under all of
8 the circumstances.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.) Because
9 settlements inherently involve compromise, even settlements providing for substantially narrower
10 relief than likely would be obtained if the suit were successfully litigated can be reasonable because
11 “the public interest may indeed be served by a voluntary settlement in which each side gives ground
12 in the interest of avoiding litigation.” (*Id.* [quoting *Air Line Stewards, etc., Local 550 v. American*
13 *Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].) In addition, courts review the discovery process
14 and information received through it to aid them in assessing whether the parties sufficiently
15 developed the claims and their supporting factual bases before receiving settlement. (See *Kullar v.*
16 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-31.) Information is sufficient where it
17 allows the parties and the court to form “an understanding of the amount that is in controversy and
18 the realistic range of outcomes of the litigation.” (See *Clark v. American Residential Services LLC*
19 (2009) 175 Cal.App.4th 785, 801.) This requirement exists so that the parties can provide the court
20 with “a meaningful and substantiated explanation of the manner in which the factual and legal
21 issues have been evaluated.” (*Kullar* at p. 132.)

22 Here, the Settlement resulted from extensive arm’s-length settlement negotiations between
23 and among qualified and experienced counsel (with the assistance of an equally qualified and
24 experienced mediator), and is fair, adequate, and reasonable for all Class Members. (Briscoe Decl.,
25 ¶¶ 15-18.)

26 While Class Counsel has no doubt that the asserted claims are meritorious, he nonetheless
27 appreciates that there are tremendous risks that continued litigation would entail, as briefed in the
28 Motion for Preliminary Approval. Defendant asserted and would have continued to assert, through

1 certification, trial, and the appellate process, legal and factual grounds to defend itself. Defendant
2 claimed that there was no willful intent to violate any wage and hour laws, that there was no injury
3 associated with any wage statements furnished, that class treatment would be improper as to the
4 various claims, and that it would be difficult, if not impossible, for Plaintiff to establish any
5 classwide claim for unpaid wages or statutory penalties. (Briscoe Decl., ¶¶ 15-18.) Further,
6 certification and success at trial would require establishing that the alleged violations were uniform
7 and occurred as to every Class Member. Absent settlement, the undersigned anticipated a vigorous
8 and lengthy challenge to both class certification and the merits of this class action. While Class
9 Counsel is confident that certification and prevailing on the merits would be attained, continued
10 litigation is nonetheless guaranteed to be costly, time-consuming, and uncertain. Appellate
11 proceedings would further delay and jeopardize recovery by Class Members. By contrast, the
12 proposed Settlement Agreement ensures timely, meaningful, and substantial relief to all of the 597
13 Participating Class Members. (*Id.*)

14 **4. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members**
15 **Because Each Participating Class Member Will Be Paid Based on the Extent of His**
16 **or Her Injury as Compared to Other Class Members.**

17 The Net Settlement Amount will be paid to all Participating Class Members based on the
18 number of workweeks worked during the Class Period. (Briscoe Decl., Exhibit 1, § 64(i).) Such an
19 allocation is fair, adequate, and reasonable because it correlates to the extent of harm allegedly
20 suffered, based on the asserted claims. Class Members will have 180 days to cash their individual
21 checks, and any checks that remain uncashed after 180 days (after diligent efforts to locate
22 recipients) will be distributed in strict accordance with Code of Civil Procedure section 384, and in
23 a manner preliminarily approved by this Court. (*Id.*, § 46.)

24 The Class includes the Former Employee Subclass, which means those Class Members
25 whose employment with Defendant ended at any time during the Class Period (thus giving rise to
26 claims for “waiting time” penalties under Labor Code section 203). Each Participating Former
27 Employee Subclass Member will receive an equal share of the \$37,539 set aside for said Subclass,
28

1 in addition to their proportional share of the Net Settlement Amount. (Briscoe Decl., Exhibit 1, §
2 64(ii).)

3 **5. The Likely Expense and Duration of Further Litigation Favor Final Approval.**

4 “Settlement avoids the complexity, delay, risk and expense of continuing with the litigation
5 and will produce a prompt, certain, and substantial recovery for the Plaintiff class.” (*Eddings v.*
6 *Health Net, Inc.* (C.D. Cal. June 13, 2013) No. CV 10-1744-JST RZX, 2013 WL 3013867, *3
7 [internal citation and quotation omitted].) Absent settlement, Class Counsel anticipated significant
8 additional discovery (including a deposition of Defendant’s “person[s] most knowledgeable”), a
9 hotly contested motion for certification, an equally if not more difficult motion for summary
10 judgment, a possible appeal to any ruling in favor of the class, as well as a vigorous and lengthy
11 trial of the Class’s claims. Continued litigation would require Plaintiff to establish
12 appropriateness for certification, class-wide liability, and then to present evidence regarding
13 damages and penalties. Such efforts would likely be protracted and extremely costly.
14 Additional unforeseen costs, risks, and delays might also materialize, including, as set forth
15 above, appellate proceedings. Even if Plaintiff overcomes all these obstacles and obtains a
16 judgment for the Class, the recovery might be of no greater value to Class Members. There is a
17 significant advantage to receiving a substantial benefit now as opposed to later. This factor
18 strongly favors approval.

19 **6. The Risk of Maintaining Class Action Status throughout Trial Favors Approval.**

20 As set forth above, Plaintiff faces several risks regarding the maintenance of class status
21 throughout trial – including establishing that the alleged violations were knowing and intentional
22 and that Class Members suffered injury – which favor approval.

23 **7. Class Counsel Has Had the Benefit of Extensive Information Exchange (and Expert**
24 **Analysis) as Well as Formal and Informal Settlement Negotiations that Permitted**
25 **Them to Calculate Class Damages and Make Informed Decisions Regarding**
26 **Settlement.**

27 Courts look to the amount of exchanged information prior to the settlement to determine
28 whether the parties made an informed decision to settle. (*Linney v. Cellular Alaska P'ship* (9th

1 Cir. 1998) 151 F.3d 1234, 1239.) Before filing this matter, and continuing post-mediation, Class
2 Counsel conducted a thorough investigation into the facts and claims alleged in this case. The
3 Parties also engaged in extensive informal discovery as part of the litigation and exhaustive
4 settlement negotiations. Class Counsel obtained information as to, *inter alia*: the size and
5 composition of the class, the nature and number of the alleged violations, as well as the uniformity
6 of Defendant’ policies, practices, and procedures toward their employees. Class Counsel, with their
7 retained economic expert, also analyzed thousands of pages of wage statements and time records.
8 (See Briscoe Decl., ¶ 5.) This analysis enabled the Parties to have a productive mediation before
9 Daniel Ben-Zvi, resulting in the instant Settlement. The Parties met and conferred extensively, over
10 a period of about eleven months, so as to perfect the terms of the Memorandum of Understanding,
11 and then the Settlement Agreement. (*Id.*, ¶ 6.) These exhaustive efforts proved worthwhile, not least
12 because the Class has now approved the Settlement with *near-uniformity*. The comprehensive
13 information exchange in this matter, along with the information exchanged, all support
14 approval of the Settlement.

15 **8. The Settlement is Supported by Skilled and Experienced Class Counsel.**

16 “‘Great weight’ is accorded to the recommendation of counsel, who are most closely
17 acquainted with the facts of the underlying litigation. This is because ‘[p]arties represented by
18 competent counsel are better positioned than courts to produce a settlement that fairly reflects each
19 party’s expected outcome in the litigation.’ Thus, ‘the trial judge, absent fraud, collusion, or the
20 like, should be hesitant to substitute its own judgment for that of counsel.’” (*Nat’l Rural*
21 *Telecomms. Coop.*, *supra*, 221 F.R.D. at p. 528.)

22 Class Counsel, having demonstrated a high degree of competence in the litigation of this
23 case and numerous other wage and hour claims, PAGA representative actions and class action
24 cases, strongly believe that the proposed Settlement properly balances the realistic monetary relief
25 available to the Class against the magnitude of the risks of continued litigation and thus is a fair,
26 adequate, and reasonable resolution of the Class Action, which is preferable to continued litigation.
27 (See *In re Wachovia Corp. “Pick-A-Payment” Mortgage Mktg. & Sales Practices Litig.* (N.D. Cal.
28 May 17, 2011) 5:09-MD-02015-JF 2011 WL 1877630, *3 [approving settlement based upon,

1 among other factors, the belief of “Plaintiffs’ counsel, who are experienced attorneys . . . that the
2 settlement is extremely favorable to the class”].) In the view of Class Counsel, the benefit
3 conferred by the proposed Settlement is fair, reasonable, and adequate to the class under the
4 circumstances, as it reflects a reasoned compromise which not only takes into consideration the
5 inherent risks in wage and hour class litigation, but the various issues in this case which had the
6 potential to substantially reduce or completely eliminate recovery by class members. This factor
7 strongly favors approval.

8 **9. With Only Four Opt-Outs and No Objections, the Settlement is a Fair, Adequate,**
9 **and Reasonable Compromise of the Disputed Claims at Issue.**

10 The response of class members to a preliminarily approved settlement is relevant in
11 evaluating whether it merits final approval. (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) Notably, the
12 absence of objections and exclusions supports a fairness presumption. In *7-Eleven Owners for Fair*
13 *Franchising v. Southland Corp.* (2000) it was found that nine objections and 80 opt-outs, from a
14 class of 5,454 persons, showed a “particularly impressive” favorable response from class members,
15 supporting final approval. (85 Cal.App.4th 1135, 1152-53.) Here, there were no objections and
16 only four opt-outs (out of 601 Class Members). (Admin. Decl., ¶¶ 8-11.) Thus, the uniformly
17 favorable response of the Settlement Class confirms that the Settlement is fair, adequate, and
18 reasonable and merits final approval.

19 **VI. THE REQUESTED ATTORNEYS’ FEES AND COSTS AWARD IS REASONABLE**
20 **AND WELL-JUSTIFIED.**

21 Plaintiff also requests a reasonable attorneys’ fees award of \$133,333 (or one-third of the
22 Maximum Settlement Amount of \$400,000), and reimbursement for costs incurred in the amount of
23 \$16,687.45. Class Counsel has submitted, separately, their Fee Motion detailing the facts and
24 law supporting Class Counsel’s requested award of attorneys’ fees and costs, which is
25 incorporated by reference herein. The Court should approve the requested fee award
26 because it achieves the dual purposes of a common fund award by spreading the litigation
27 costs among those who benefited from the settlement while rewarding and encouraging
28 competent counsel to handle complex contingency cases. The requested fee award is also

1 a fair charge to the Class for the substantial benefits conferred and consistent with the
2 expected legal marketplace. (*Nw. Energetic Servs., LLC v. Cal. Franchise Tax Bd.* (2008)
3 159 Cal. App. 4th 841, 878; see also generally Fee Motion.)

4 First, Plaintiff has obtained significant monetary relief for the Class in the form of
5 **\$193,479.55** (after subtracting Administration Costs, the Class Representative Incentive
6 Payment, the PAGA Amount (25 percent of which goes to the PAGA Group, per law), and
7 the fees and costs of Class Counsel). Second, Class Counsel have demonstrated a high degree
8 of skill and quality of work. Notably, Class Counsel efficiently and effectively identified the
9 alleged violations, framed the issues and filed a complaint, and initiated discovery and information
10 exchange with opposing counsel to identify the scope of the alleged violations, all of which led to
11 the Parties participating in mediation and the exceptional Settlement in this case. This type of result
12 warrants the requested fee award. (See generally Fee Motion.)

13 Third, Class Counsel have undertaken the financial burden of litigating this case on a purely
14 contingency basis by advancing over \$16,687.45 in actual costs and expending **approximately 190**
15 **hours to date** without compensation and with the risk of no recovery, all while facing a sizeable
16 corporation with considerable resources at its disposal. In addition, Class Counsel had to turn away
17 otherwise lucrative cases in order to successfully litigate and resolve this matter. Indeed, the Ninth
18 Circuit has long recognized that the assumption of contingent risk is a factor favoring an upward
19 departure from the 25 percent benchmark. (*In re Wash. Pub. Power Supply Sys. Sec. Litig.* (9th
20 Cir. 1994) 19 F.3d 1291, 1299 [“It is an established practice in the private legal market to
21 reward attorneys for taking the risk of non-payment by paying them a premium over their normal
22 hourly rates for winning contingency cases”].)

23 Fourth, and perhaps most importantly, the Class’ support of this Settlement demonstrates the
24 reasonableness of the requested award since none of the 601 Settlement Class Members objected to
25 the Settlement and only four opted out of it. (See *In re Omnivision Techs., Inc.*, *supra*, 559 F.
26 Supp. 2d at 1048 [“The reaction of the class may also be a determining factor in the
27 determining the fee award”]; *In re Heritage Bond Litig.*, Nos. 02-ML-1475-DT(RCX),
28 2005 WL 1594403, *15 (C.D. Cal. June 10, 2005) [finding the lack of significant

1 objections to the requested fee justified an award of one-third of the common fund].) As
2 also set forth in greater detail in his Fee Motion, the requested fee award is consistent with
3 the amount of attorneys' fees awarded in similar wage and hour class actions.³

4 **VII. CONCLUSION**

5 Based on the foregoing, Plaintiff respectfully requests that this Court grant final
6 approval of the Settlement Agreement reached in this matter, approve the requested
7 enhancement payment, attorneys' fees, and costs awards (for the reasons described in the
8 separate Fee Motion), and enter the proposed order and judgment accordingly.

9 ///

10 **DATED:** November 9, 2023

MAYALL HURLEY P.C.



11
12 By _____

ROBERT J. WASSERMANN
JOHN P. BRISCOE
Attorneys for Plaintiff
JESSICA COLLARD and the Class

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³ See, e.g., *Contreras v. Bank of Am., N.A.* (S.F. Cnty. Super. Ct. Sept. 3, 2010), No. CGC-07-4677749 (fee award of one-third of \$16,650,000 fund in wage and hour settlement); *Wren v. RGIS Inventory Specialists*, No. C-06-05778, JCS, 2011 WL 1230826, *29 (N.D. Cal. Apr. 1, 2011) (approving fee award that constituted 42% of the common fund in wage and hour class and collective action); *Cicero v. DirecTV, Inc.* (C.D. Cal. 2010), 2010 WL 2991486, at *6 (noting that fees of one-third are common in wage and hour settlements below \$10 million, citing cases).

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

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

On November 9, 2023, I served the following document:

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

addressed to:

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

☐ **BY EXPRESS SERVICE CARRIER:** On the date specified below, I directed to be deposited in a box or other facility regularly maintained by Federal Express or delivered to a courier or driver authorized by said express service carrier to receive documents, a copy of the document mentioned above, in an envelope designed by the said express service carrier, with delivery fees paid or provided for, addressed to the individuals and/or entities mentioned above.

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

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 9, 2023, at Lodi, California.


LINDSAY RILEY