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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

RACHEL V. CORREIA, an individual;
and on behalf of all others similarly
situated and aggrieved; REBEKAH
MEDINA, an individual; and on behalf of
all others similarly situated and aggrieved;
CARLOS COUSINEAU, an individual;
and on behalf of all others similarly
situated and aggrieved; DANIEL
GARCIA, an individual; and on behalf of
all others similarly situated and aggrieved,

Plaintiff,

vs.

GALLO GLASS COMPANY, a Nevada
corporation; NIGEL DART, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CV-21-006459

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

Hearing Date: September 1, 2023
Hearing Time: 8:30 a.m.
[Hearing scheduled by Order dated April 14, 2023 at
paragraph 12]

Judge: Hon. Sonny S. Sandhu
Dept.: 24

Action Filed: December 1, 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 Action Settlement Agreement (the “Agreement”), a true and correct copy of
4 which is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated April 14, 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 Rachel Correia, Rebekah Medina, Carlos Cousineau, and Daniel
9 Garcia (“Plaintiffs”) respectfully submits this memorandum in support of the unopposed motion for
10 final approval and the proposed entry of the Final Approval Order and Judgment, submitted herewith.
11 The settlement represents an excellent result for the Class and avoids the delays, risks, and costs of
12 further litigation. The Class Notice was disseminated to the Class and, to date, there are no objections
13 and only three (3) requests for exclusion, which means that nearly entire Class (99.69%) has elected to
14 participate in the Settlement. Blumenthal Decl. ¶4. This is a positive response from the Class
15 evidencing their collective approval of the settlement. As a result, Plaintiffs respectfully submit that
16 the class settlement should be finally approved for the same reasons that the Court preliminarily
17 approved the settlement as fair, reasonable, and adequate.

18 **II. THE SETTLEMENT BEFORE THE COURT**

19 Plaintiffs and Defendants Gallo Glass Company and Nigel Dart (“Defendants”) reached a full
20 and final settlement of the above-captioned action, which is embodied in the Agreement filed
21 concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount is
22 Three Million Eight Hundred Twenty Thousand Dollars (\$3,820,000) (Agreement at ¶ 12.) 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 current and former employees of Defendant Gallo Class Company
27 who worked for Gallo Glass Company in the State of California, while classified as non-exempt, at any
28 time during the Class Period.” The “Class Period” is December 1, 2017 to April 14, 2023. (Preliminary
Approval Order, ¶ 5)

1 Individual Class Payments to the Participating Class Members; (2) Class Counsel's Attorney's Fees and
2 Litigation Expenses; (3) Settlement Administration Fees and Expenses; (4) the Service Payments to
3 Plaintiffs; and (5) the PAGA Settlement Amount. (Agreement at ¶ 12.) The Gross Settlement Amount
4 does not include Defendant Gallo Class Company's share of payroll taxes. (Agreement at ¶ 41.) The
5 Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ 41.)
6 Blumenthal Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and the
7 proposed deductions:

8 **\$3,820,000** (Gross Settlement Amount)

- 9 - \$40,000 (Plaintiffs' proposed Service Awards not to exceed \$10,000 each)
- \$30,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$1,273,333 (Class Counsel Fees Payment - not to exceed amount)
- \$100,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 11 - \$14,000 (Settlement Administration Expenses - not to exceed amount)

12 **\$2,362,667** (Net Settlement Amount)

13 Within fourteen (14) days of the Effective Date, Defendant Gallo Glass Company shall deposit
14 the Gross Settlement Amount with the Settlement Administrator. (Agreement at ¶ 60(b).) Thereafter,
15 the distribution of Individual Class Payments to Participating Class Members shall be made by the
16 Settlement Administrator within seven (7) days after the Gross Settlement Amount is funded.
(Agreement at ¶ 60(c).) Blumenthal Decl. ¶3(c).

17 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
18 amounts for Plaintiffs' Service Payments, Class Counsel's Attorneys' Fees and Litigation Expenses, the
19 Settlement Administrator's fees and expenses, and the PAGA Settlement Amount (called the "Net
20 Settlement Amount") shall be allocated to Class Members as their Individual Class Payments.
21 (Agreement at ¶¶ 17 and 46(a).) Each Participating Class Member will receive a pro rata share of the
22 Net Settlement Amount based on the number of Workweeks that he or she worked in each position
23 covered by the Settlement during the Class Period (the "Individual Class Payment"), calculated as
24 follows: (Class Member's Workweeks worked ÷ Class Workweeks worked by all Participating Class
25 Members during the Class Period) × Net Settlement Amount = Participating Class Member's Individual
26 Class Payment. (Agreement at ¶ 46(a).) Workweeks were based on Defendants' records; however Class
27 Members had the right to challenge the number of workweeks. Blumenthal Decl. ¶ 3(d).

28 Class Members were sent the Court approved Class Notice using the procedure approved by the

1 Court by mailing the notice packets after updating class members' addresses using the National Change
2 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to
3 any forwarding address provided or updated address located. (Agreement at ¶ 54(b), Ex. A.) Class
4 Members were provided with the opportunity to exclude themselves or "opt out" if they did not want
5 to participate in the settlement. (Agreement at ¶ 54(b).) The Class Notice also advised Class Members
6 of their right to object to the Settlement and/or dispute their workweeks. . (Agreement at ¶ 54(b), Ex.
7 A.) Blumenthal Decl. ¶ 3(e).

8 A Participating Class Member must cash his or her Individual Class Payment check within 180
9 days after it is mailed. (Agreement at ¶ 61.) Any settlement checks not cashed within 180 days will
10 be voided and any funds from such uncashed checks will be paid to the California Controller's
11 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject
12 to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 61.)
13 Blumenthal Decl. ¶3(f).

14 Phoenix Settlement Administrators was appointed as the Settlement Administrator. (Agreement
15 at ¶ 29; Preliminary Approval Order at ¶ 9.) From the Gross Settlement Amount, the Settlement
16 Administrator shall be paid for the expenses of administering the Settlement in an amount not to exceed
17 \$25,000. (Agreement at ¶ 44; Preliminary Approval Order at ¶ 9.) As set forth in the Kevin Lee
18 Declaration ("Lee Decl."). at ¶17, the Settlement Administration Expenses, including fees and costs
19 incurred to-date, as well as anticipated fees and costs for completion of the settlement administration,
20 are \$14,000. Blumenthal Decl. ¶3(g).

21 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
22 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment, which will
23 be divided as follows: 50% to Bibiyan Law Group, P.C., and 50% Blumenthal Nordrehaug Bhowmik
24 De Blouw LLP. (Agreement at ¶ 42.) Class Counsel will also be allowed to apply separately for an
25 award of Class Counsel Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement
26 at ¶ 42.) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
27 to each Plaintiff as his or her Service Payment. (Agreement at ¶ 43.) Blumenthal Decl. ¶3(h).

28 Subject to Court approval, One Hundred Thousand Dollars (\$100,000) will be paid from the

1 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
2 Labor Code Section 2698, *et seq.* ("PAGA"). (Agreement at ¶25.) Pursuant to the express requirements
3 of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% (\$75,000) shall be
4 allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and
5 25% (\$25,000) allocated to the Individual PAGA Payments to be distributed to the Aggrieved
6 Employees based on the number of their respective pay periods worked during the PAGA Period.
7 (Agreement at ¶¶ 16 and 46(b).) As set forth in the accompanying proof of service, the LWDA has been
8 served with this motion and the Agreement. Blumenthal Decl. ¶3(i).

9 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
10 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
11 is "fair, adequate and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
12 at Three Million Eight Hundred Twenty Thousand Dollars (\$3,820,000) is an excellent result for the
13 Class. This result is particularly favorable in light of the fact that liability was far from certain in light
14 of the defenses asserted by Defendants. Given the complexities of this case and the defenses asserted,
15 along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and
16 adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

17 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL** 18 **OF CLASS ACTION SETTLEMENTS**

19 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
20 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
21 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
22 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
23 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

24 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
25 action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (*citing*
26 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The
27 court must decide whether the proposed settlement falls within the range of reasonable settlements,
28 taking into account that settlements are compromises between the parties reflecting subjective,

1 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See Wershba v.*
2 *Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to be judged
3 against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed
4 at trial.”) In *Wershba*, appellants argued that the settlement was too low given the “clear” liability,
5 however, the Court rejected this argument and held that “the merits of the underlying class claims are
6 not a basis for upsetting the settlement of a class action.” *Id.*; *see also 7-Eleven, supra*, at 1150.

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

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

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

24 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
25 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the
26 trial court should consider in evaluating the reasonableness of a class action settlement agreement
27 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
28 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the

1 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
2 the presence of a governmental participant, and the reaction of the class members to the proposed
3 settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations
4 omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

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

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

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

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

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

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

25 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
26 before an experienced and well-respected mediator. Defendants have expressly denied and continue
27 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
28 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released

1 Class Claims of the Class in accordance with this Settlement. Class Counsel are experienced and
2 qualified to evaluate the class claims, the viability of the defenses asserted, and the risks and benefits
3 of trial and settlement, and Class Counsel are experienced in wage and hour employment law class
4 actions, as Class Counsel has previously litigated and certified similar claims against other employers.
5 Blumenthal Decl. ¶7(a).

6 The Parties attended an arms-length mediation session with Jeffrey Ross, Esq., a respected and
7 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
8 for the mediation sessions, Defendants provided Class Counsel with necessary information for the
9 members of the Class, including time data, payroll data and data concerning the composition of the
10 Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger Consulting Group,
11 and prepared and submitted a mediation brief and damage valuation to the Mediator. Following the
12 mediation, the Parties were able to agree to settle the Action based upon a mediator's proposal.
13 Blumenthal Decl. ¶7(b).

14 The fact that the settlement was negotiated with the assistance of an experienced mediator
15 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
16 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
17 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
18 litigation, with the assistance of a well-respected mediator with substantial experience in employment
19 litigation[, and] this factor supports approval of the settlement”).

20 From January 2023 to February 2023, the Agreement and exhibits thereto were drafted, finalized
21 and executed, and presented to this Court on for preliminary approval on April 14, 2023. The Court
22 granted preliminary approval on April 14, 2023, and the Preliminary Approval Order was entered by
23 this Court that same date. Blumenthal Decl. ¶7(c).

24 3. Class Counsel is Experienced in Similar Litigation

25 Class Counsel in this matter has extensive class action experience and has represented thousands
26 of persons in class actions including employment litigation, wage and hour class actions, and complex
27 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
28 claims similar to this case and have been approved as experienced class counsel during contested

1 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
2 knowledgeable in this area of law. The experience of counsel and class action cases managed and
3 settled by the Class Counsel in this action is provided to the Court in the Blumenthal Decl. at Exhibit
4 #1 and in the Declaration of David Bibiyan at ¶¶ 2-10. Class Counsel have participated in every aspect
5 of the settlement discussions and have concluded the settlement is fair, adequate and reasonable and in
6 the best interests of the Class. Blumenthal Decl. ¶3(j).

7 4. There Are No Objections And Few Opt-Outs

8 The reaction of the Class unequivocally supports approval of the Settlement. On June 12, 2023,
9 the Settlement Administrator mailed the Court-approved Class Notice to the Class Members, which
10 provided each class member with the terms of the Settlement, including notice of the claims at issue
11 and the financial terms of the settlement, including the attorneys' fees, costs, and service awards that
12 were being sought, how individual settlement awards would be calculated, and the specific, estimated
13 payment amount to that individual. See Lee Decl. ¶ 5, Exh. A. In disseminating the notices, the
14 Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
15 Approval Order. Significantly, there have been no objections and only three opt-outs. Lee Decl. ¶¶ 8-9.
16 As a result, nearly the entire Class will participate in the Settlement and will be sent a settlement check,
17 representing 99.69% of the Class. See Lee Decl. at ¶¶ 11, 14. Blumenthal Decl. ¶4.

18 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
19 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
20 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
21 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d.
22 Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*,
23 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
24 settlement should be considered when determining fairness of settlement). Here, where there are no
25 objections, the approval of the class is evident.

26 5. The Strength of Plaintiffs' Case

27 The Action generally alleges that Plaintiffs and other Class Members were not provided all
28 minimum wages and overtime compensation and at the correct rate, were not provided and/or paid for

1 meal and rest periods, were not reimbursed for reasonable business expenses, and were not provided
2 accurate itemized wage statements. The Action seeks unpaid wages, penalties, attorney fees, litigation
3 costs, and any other equitable or legal relief allegedly due and owing to Plaintiffs and the other Class
4 Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

5 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
6 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
7 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
8 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
9 maintained that Labor Code §514 barred wage claims on behalf of union employees and union
10 employees constitute the vast majority of the Class. Defendants argued that all work time was paid for
11 and that the regular rate was properly calculated when paying wages. Defendants contend that their
12 meal and rest period policies fully complied with California law and that Defendants' timekeeping
13 system recorded meal periods, and was not required to record rest periods. Defendants maintain that
14 employees attested daily whether they did or did not have the opportunity to take compliant meal and
15 rest periods, and were paid a premium when they were not. Defendants established that they paid
16 premiums which could be argued as evidence of lawful practices. Defendant also maintained that
17 employees waived their second meal period for shifts worked between 10 and 12 hours, and in such
18 cases received a complaint first meal period. As to expenses reimbursement, Defendants contended that
19 they paid for all legally required business expenses and any unpaid cell phone usage was merely
20 convenient and voluntary such that reimbursement was not legally required. Finally, Defendants could
21 argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened
22 Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims.
23 Defendants also argues that based on their facially lawful practices, they acted in good faith and without
24 willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate
25 wage statements. If successful, Defendants' defenses could eliminate or substantially reduce any
26 recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendants
27 maintain these defenses have merit and therefore present a serious risk to recovery by the Class.
28 Blumenthal Decl. ¶8(a).

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

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

8 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
9 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
10 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
11 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

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

27 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
28

1 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
2 substantial defenses. Currently, the maximum and average class member allocations from the class
3 settlement (excluding PAGA) are \$4,370.12 and \$2,433.23, respectively. *See* Lee Decl. ¶14. Given the
4 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
5 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

27 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
28 and likely duration of further litigation likewise favors the settlement. Regardless of how
 this Court might have ruled on the merits of the legal issues, the losing party likely

1 would have appealed, and the parties would have faced the expense and uncertainty of
2 litigating an appeal. "The expense and possible duration of the litigation should be
3 considered in evaluating the reasonableness of [a] settlement." See *In re Mego Financial*
Corp. Securities Litigation, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further
litigation is substantial.

4 *Id.* at *12.

5 7. The Amount Offered in Settlement

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

10 The calculations to compensate for the amount due to the Class Members at the time this
11 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting Group, in advance
12 of mediation. As to the Class whose claims are at issue in this Action, Plaintiffs used the expert to
13 analyze the data and determine the potential unpaid wages for the employees. The maximum potential
14 damages were calculated to be \$929,304 for the alleged unpaid wages due to off the clock work,
15 \$9,662,167 for alleged meal period damages based upon a 64% violation rate potentially found in the
16 time punch records and after deducting premiums paid by Defendants, \$8,657,004 for alleged rest
17 period damages based upon the alleged 100% violation rate, and \$168,655 for the alleged unreimbursed
18 business expenses. Therefore, it was calculated that Defendants were subject to a maximum damage
19 claim in the amount of \$19,417,130. As to potential penalties, Plaintiffs calculated that wage statement
20 penalties were a maximum of \$3,150,100 and potential waiting time penalties were \$3,011,667.³
21 Blumenthal Decl. ¶8(d).

22 Consequently, the Gross Settlement Amount of \$3,820,000 represents more than 19% of the
23

24 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
25 226, at mediation, Plaintiffs recognized that these claims were subject to additional, separate defenses
26 asserted by Defendants, including, a good faith dispute defense as to whether any premium wages for
27 meal or rest periods or other wages were owed given Defendants' position that Plaintiffs were properly
28 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.").

1 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated,
2 assuming these amounts could all be proven in full at trial.⁴ The above maximum calculations should
3 then be adjusted in consideration for both the risk of class certification and the risk of establishing class-
4 wide liability on all claims. Given the amount of the settlement as compared to the potential value of
5 claims in this case and the defenses asserted by Defendants, this settlement is fair and reasonable.⁵
6 Blumenthal Decl. ¶8(d). Clearly, the goal of this litigation has been met.

7 **V. CONCLUSION**

8 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness
9 established in California law and should therefore be finally approved as fair, reasonable and adequate
10 and requests entry of the Final Approval Order and Judgment, submitted herewith.

11 Respectfully submitted,

12 Dated: August 8, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

13 By: /s/ Kyle Nordrehaug
14 Kyle R. Nordrehaug
15 Attorney for Plaintiffs
16
17
18

19 ⁴ 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 ⁵ 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 v.*
Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F. 3d 454, 459 (9th Cir. 2000) (affirming approval of
26 a class settlement which represented “roughly one-sixth of the potential recovery”). See also *Viceral*
v. Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
27 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).