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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

Coordination Proceeding Special Title
(Rule 3.550)

TARGET WAGE AND HOUR CASES

Included Actions:

Medina et al. v. Target Corporation
San Bernardino Superior Court, Case No.
CIVSB2209126

Torres v. Target Corporation
Sacramento Superior Court, Case No. 34-
2022-00319715

Judicial Council Coordination Proceeding Case
No.: JCCP 5259

Assigned for All Purposes To:
Hon. Wilfred J. Schneider, Jr.
Dept.: S-32

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
SUPPLEMENTAL CLASS ACTION AND
PAGA SETTLEMENT**

Date: May 12, 2025
Time: 8:30a.m
Place: Department S-32

Complaint Filed: September 22, 2022
Trial Date: None Yet Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Gustavo Medina (“Plaintiff Medina”) seeks preliminary approval of the Stipulation Regarding Supplemental Class and Private Attorneys General Act Settlement and Release (the “Supplemental Settlement”), attached as **Exhibit 1** to the Declaration of James R. Hawkins in Support of this Motion (“Hawkins Decl.”).¹ The purpose of this Supplemental Settlement is to provide monetary relief to 156 current and former non-exempt employees of Defendant Target Corporation (“Defendant” or “Target”) who were inadvertently omitted from the Original Settlement, which was granted final approval by this Court on December 5, 2024, on the same terms as the Original Settlement. (Plaintiffs and Defendants are collectively the “Parties.”) (Hawkins Decl. ¶ 6.) In other words, each omitted employee (“Additional Class Member”) will be entitled to receive the same per workweek and per pay period compensation from the Supplemental Settlement as the Original Class Members. (Id.) The principal terms of the Supplemental Settlement are as follows:

- (1) Conditional certification of a supplemental Class of Additional Class Members defined as: all individuals employed by Target at one or more Target distribution centers in the State of California in non-exempt positions at any time during the Class Period from March 21, 2019, through and including December 10, 2023 and who were not provided notice of the Original Settlement Agreement (“Additional Class Members”).
- (2) A **non-reversionary** Supplemental Gross Settlement Amount of \$23,787.38. The Gross Settlement Amount includes:
 - (a) A Net Settlement Amount of \$15,150.98 (the Supplemental Gross Settlement Amount minus the requested Supplemental Class Counsel Costs Award, the Supplemental Settlement Administration Costs, and the PAGA Distribution Amount), which will be allocated to each of the Additional Class Members on a pro-rata basis according to the number of weeks each Additional Class Member worked during the Class Period. **The entire Net Settlement Amount will be distributed amongst all Additional Class Members who do not opt out of the Class, and without the need to submit claims for payment.**

¹ Referred to as the “Settlement” or “Supplemental Settlement.” Unless indicated otherwise, capitalized terms used in this Motion have the same meaning as those defined by the Supplemental Settlement Agreement.

- 1 (b) Class Counsel James Hawkins APLC, Blumenthal Nordrehaug
2 Bhowmik De Blouw LLP, and Haines Law Group, APC will not seek an
3 additional Fees Award from the Supplemental Settlement.
- 4 (c) Supplemental Class Counsel Costs Award up to \$1,500 for costs incurred
5 in the negotiation and administration of this Supplemental Settlement
6 Agreement.
- 7 (d) Supplemental Settlement Administration Costs of approximately
8 \$6,900.00, to be paid to the jointly selected Settlement Administrator,
9 Apex Class Action LLC.
- 10 (d) A \$236.40 PAGA Distribution Amount, of which 75% (\$177.30) will be
11 paid to the Labor and Workforce Development Agency (“LWDA”) (the
12 “Additional PAGA LWDA Payment”), and the remaining 25% (\$59.10)
13 (“Additional PAGA Employee Payment”) will be paid to the Additional
14 PAGA Employees, defined as: all Additional Class Members employed
15 by Target at one or more of its California distribution centers in the
16 State of California in non-exempt positions at any time during the
17 PAGA Period from February 22, 2021, through and including December
18 10, 2023. **The entire Supplemental PAGA Distribution Amount, less
19 the Supplemental PAGA LWDA Payment, will be distributed
20 amongst all Additional PAGA Employees, and without the need to
21 submit claims for payment.**
- 22 (e) The Class Representative will not seek an additional Service Award
23 Payment.

24 In connection with the Original Settlement Agreement, the Court has already engaged in
25 an objective evaluation of the same terms as those set forth in the Supplemental Settlement and
26 determined that the relief negotiated on the Class’s behalf is fair, reasonable, and valuable. The
27 Settlement Class overwhelmingly accepted the Original Settlement as no objections were
28 received. As such, Class Counsel respectfully submits that the Court should grant approval to
this Supplemental Settlement on the same terms as previously approved. (Hawkins Decl. ¶ 7.)

The terms of the Original Settlement, which were subsequently incorporated into the
Supplemental Settlement, were negotiated by the Parties at arm’s length with helpful guidance
from Gig Kyriacou, Esq., a well-respected and highly sought-after class action mediator. The
Supplemental Settlement confers substantial benefits to the Additional Class Members.

As discussed below and in the papers that were originally submitted on the Motion for
Preliminary Approval of the Original Settlement, the proposed Supplemental Settlement
satisfies all criteria for preliminary settlement approval under California law and falls within the
range of reasonableness. Accordingly, Plaintiff respectfully requests that this Court grant

preliminary approval of the Supplemental Settlement Agreement.

II. FACTS AND PROCEDURE

A. Overview of the Litigation and the Claims

Target Corporation is an American retail corporation that operates a chain of discount department stores in the United States, headquartered in Minneapolis, Minnesota. This case involves employees who worked during the Class Period at the distribution center facilities in California which store the goods sold by Target. Specifically, this Supplemental Settlement concerns the claims of 156 non-exempt employees who were employed by Target at distribution centers in California at any time from March 21, 2019 through approximately December 10, 2023. (Hawkins Decl. ¶6.) These individuals were inadvertently omitted from the Settlement Class in connection with the Original Settlement and did not receive notice of the Original Settlement. (Id.)

Defendant employed Plaintiff Medina in distribution center facilities during the Class Period.

On February 23, 2022, Plaintiff Gustavo Medina filed a class action complaint in San Bernardino Superior Court, Case No. CIVSB2204117, alleging the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to Provide Meal Periods; (4) Failure to Authorize or Permit Rest Periods; (5) Failure to Timely Pay Wages Owed Upon Separation from Employment; (6) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions; and (7) Violation of California Business and Professions Code §§17200, et seq. (the “*Medina* Class Action”). (Hawkins Decl. ¶ 8.) Plaintiff Medina served both the LWDA and Defendant with notice of his claims on February 22, 2022. (Id.) The *Medina* Class Action was removed to the United States District Court for the Central District of California on May 11, 2022 as Central District, Case No. 5:22-cv-00805-JVS-SP. (Id. at ¶ 9.)

On May 2, 2022, as a proxy for the State of California, Plaintiff Medina filed a PAGA representative action as San Bernadino Superior Court Case No. CIVSB2209126 which sought

1 PAGA penalties for Labor Code violations including (1) failure to pay all wages owed including
2 minimum wages; (2) failure to accurately calculate and pay overtime wages; (3) failure to
3 provide meal periods; (4) failure to pay compensation for meal periods that were not lawfully
4 provided; (5) failure to authorize and permit rest periods; (6) failure to pay compensation for
5 rest periods that were not lawfully authorized and permitted; (7) failure to timely pay all owed
6 wages during employment; (8) failure to timely pay wages owed upon separation from
7 employment; (9) failure to furnish accurate, itemized wage statements; and (10) unlawful
8 deductions from wages (the “Medina PAGA Action”). (Hawkins Decl. at ¶ 10.) On June 13,
9 2022, Plaintiff Medina filed an amended complaint to add additional allegations (including
10 failure to pay sick leave in violation of Labor Code 246 and unlawful background checks in
11 violation Labor Code § 1024.5), clarify the claims and add a second plaintiff Janira Perez. (Id.
12 at ¶ 11.)

13 As detailed more extensively in the Motion for Preliminary Approval of the Original
14 Settlement and accompanying declarations, multiple other actions were filed by other non-
15 exempt distribution center employees of Target which alleged various wage and hour violations
16 and sought damages and PAGA penalties. (Hawkins Decl. at ¶ 12-24.) The term “Plaintiffs”
17 hereinafter refers to the Plaintiffs in the consolidated action.

18 The various wage and hour actions against Defendant were later essentially consolidated
19 before this Court in connection with the Original Settlement, when the Parties filed a Second
20 Amended Consolidated Complaint in the above- entitled Target Wage and Hour Cases, Judicial
21 Council Coordination Proceeding No. 5259 (the “PAGA Action”) which asserted all claims were
22 investigated and released in the Original Settlement and Supplemental Settlement. An amended
23 notice letter was also sent to the LWDA.² (Hawkins Decl. ¶ 24.)

24
25 ² The Action hereinafter means: (a) the coordinated California Private Attorneys General
26 Act lawsuits currently in the San Bernardino County Superior Court entitled Target Wage and
27 Hour Cases, Judicial Council Coordination Proceeding No. 5259 (the “PAGA Action”); and (b) the
28 consolidated class action lawsuit currently pending in the United States District Court for the
Central District of California entitled *Gustavo Medina, et al. v. Target Corporation*, Case No.
5:22-cv-00805-JGB (SHKx) (the “Class Action”).

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Class Counsel continued a diligent investigation in litigation and in preparing for mediation by: (1) conducting extensive informal and formal discovery, including a Rule 26(f) conference and initial disclosures; (2) reviewing and analyzing thousands of timekeeping and payroll records, Defendants' employee handbooks, Plaintiffs' offer letters, certain pay stubs, forms and acknowledgments, memoranda, Plaintiffs' personnel files, training materials, schedules, roster data, and relevant policies and procedures; (3) reviewing class size data and cross checking data points; (4) researching the applicable law and potential defenses; (5) interviewing Class Members regarding their experience and the claims asserted; (6) conferences between counsel regarding the claims and defenses; and (7) analyzing and calculating Defendant's potential liability with the assistance of an expert. (Hawkins Decl., ¶ 26-29.) Class Counsel investigated the law as applied to the facts of the claims and potential defenses thereto, and the damages and penalties claimed. (Id. at ¶ 30.) From the documentation and data provided, the Parties conducted their own evaluations of the potential recoveries based on the alleged claims. (Id. at ¶ 25-29.)

To facilitate a productive mediation, Class Counsel prepared a comprehensive mediation brief outlining relevant factual and legal issues, providing a detailed analysis of the timekeeping and payroll records, and presenting a complete breakdown of the liability exposure for Defendants if Plaintiffs succeeded on each of their claims at trial. (Hawkins Decl., ¶ 31.)

On November 1, 2023, the Parties participated in full-day mediation with Gig Kyriacou, an

1 experienced mediator of wage and hour class actions. (*Id.* at ¶ 32.) Mr. Kyriacou helped to
2 manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to
3 both sides. (*Id.*) While the Parties were unable to reach a resolution at mediation, the Parties
4 ultimately negotiated a complete settlement of Plaintiffs’ claims with Mr. Kyriacou’s guidance,.
5 (*Id.*) At all times, the Parties’ negotiations were adversarial and non-collusive. (*Id.* at ¶¶ 31-34.)

6 Class Counsel concluded that the terms of the Original Settlement, and therefore the
7 Supplemental Settlement, are fair, reasonable, adequate, and in the best interests of the Class
8 Members and Additional Class Members, considering the sharply contested issues involved, the
9 expense and time necessary to litigate the Action through trial and any appeals, the risk of an
10 adverse outcome, the uncertainty of complex litigation, and the benefits to be received by Class
11 Members. (Hawkins Decl., ¶ 35-38.) Defendant denied each of the allegations and claims
12 asserted against it in the Action, and denied that the claims are proper for representative
13 treatment. (Hawkins Decl., ¶ 36.) Nevertheless, Defendant agreed to settle the Action for the
14 purpose of avoiding the burden, expense, and uncertainty of continuing litigation and for the
15 purpose of putting to rest the controversies. (*Id.*)

16 **C. Preliminary Approval and Final Approval of the Original Settlement**

17 On July 22, 2024, the Court granted Plaintiffs’ motion for preliminary approval of the
18 Original Settlement Agreement. (Hawkins Decl. ¶ 39, Ex. 4.) In connection with the notice
19 process after the Court granted preliminary approval of the Original Settlement Agreement,
20 Target determined there were 156 additional employees who: (i) had worked as a non-exempt
21 employee at a Target distribution center in California during the Class Period; (ii) had not been
22 identified as a Settlement Class Member for purposes of the Original Settlement Agreement; and
23 (iii) consequently were not provided notice of the Original Settlement Agreement. (Hawkins
24 Decl. ¶40.) Based upon a review of its records, Target concluded that these 156 employees
25 collectively worked 6,134 workweeks during the Class Period and 1,970 PAGA pay periods
26 during the PAGA Period at a Target distribution center in California. (*Id.*) On December 5,
27 2024, this Court granted final approval and entered judgment in accordance with the Original
Settlement. (Hawkins Decl. ¶ 41, Ex. 5.)

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1 The Supplemental Class Counsel Costs Award, Supplemental Settlement Administration
2 Costs, and the Supplemental PAGA Distribution Amount are subject to Court approval.

3 The average net recovery will be approximately \$97.12 before payroll withholdings.
4 This average net recovery is consistent with many other wage and hour class action settlements
5 approved by California state and federal courts.³

6 The Additional Class Member Payments are made to resolve the Class Claims on
7 behalf of the Additional Class Members. The Additional Class Member Payments are payable
8 from the Supplemental Gross Settlement Amount and each Additional Class Member Payment
9 shall be paid at the same rate as such payments were made under the Original Settlement
10 Agreement (i.e., \$2.47 per qualifying workweek). The Additional Class Member Payments
11 will be allocated: 20% wages subject to deduction for employee-side employment taxes and
12 withholdings, and IRS Form W-2 reporting; and 80% as penalties, interest, and reimbursement
13 of expenses, and will be subject to IRS Form 1099 reporting. (Ex. 1, Settlement, ¶ 3.5.1.5.)

14 The Additional PAGA Employees Payment will be allocated to all Additional PAGA
15 Employees based on the number of pay periods the employee worked for Defendant in a non-
16 exempt position at one or more Target distribution centers in California during the PAGA
17 Period. (*Id.* at ¶ 3.5.1.4.2.)

18 **3. Release by Participating Additional Class Members and Additional**
19 **PAGA Employees**

20 ³ See, e.g., *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego
21 County Super. Ct. Dec. 7, 2010) (average net recovery of approximately \$145); *Fukuchi v. Pizza*
22 *Hut*, Case No. BC302589 (L.A. County Super. Ct. Sept. 29, 2006) (average net recovery of
23 approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
24 County Super. Ct. Sept. 10, 2009) (average net recovery of approximately \$120); *Ressler v.*
25 *Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 27, 2009)
26 (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-
27 3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65);
28 *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)
(average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No.
04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately
\$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct. July 23, 2010)
(average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-
05206-FMO-AJW (C.D. Cal. July 11, 2016) (average net recovery of approximately \$50); and
Palencia v. 99 Cents Only Stores, No. 34-2010-00079619 (Sacramento County Super. Ct. Oct.
11, 2012) (average net recovery of approximately \$80).

1 Upon the Effective Date and full funding of the Supplemental Gross Settlement Amount,
2 Plaintiff and Participating Class Members will agree to release the Released Class Claims
3 during the Class Period. (Ex. 1, Settlement, ¶¶ 3.5.2.) The “Released Class Claims” means the
4 claims released by Participating Additional Class Members, and include:

5 [A]ny and all claims, rights, demands, and liabilities of every nature and description,
6 whether known or unknown, suspected or unsuspected, arising under federal, state, or local
7 law, that were asserted or that could have been asserted based on the facts alleged in the
8 Second Amended Consolidated Class Action and PAGA Complaint, that arose during the
9 Class Period, including but not limited to: unfair competition in violation of California
10 Business & Professions Code section 17200, et seq.; failure to pay for all hours worked
11 including due to rounding of time punches, off-the-clock work, time spent in security
12 screenings (including but not limited to bag and other security checks), time spent in COVID
13 screenings (including but not limited to temperature checks and symptom questionnaires),
14 controlled walking time, and/or controlled meal and rest periods; failure to pay minimum
15 wages in violation of California Labor Code sections 1194, 1197, and 1197.1 including due
16 to rounding of time punches, off-the-clock work, time spent in security screenings (including
17 but not limited to bag and other security checks), time spent in COVID screenings (including
18 but not limited to temperature checks and symptom questionnaires), controlled walking time,
19 and/or controlled meal and rest periods; failure to accurately pay all wages based on the
20 regular rate of pay by failing to include incentive pay based on employee performance in the
21 regular rate calculation; failure to pay overtime wages in violation of California Labor Code
22 section 510 and the applicable IWC Wage Order including due to rounding of time punches,
23 off-the-clock work, time spent in security screenings (including but not limited to bag and
24 other security checks), time spent in COVID screenings (including but not limited to
25 temperature checks and symptom questionnaires), controlled walking time, controlled meal
26 and rest periods, and failure to accurately calculate the regular rate of pay; failure to provide
27 meal periods and to pay meal period premiums at the correct regular rate of pay in violation
28 of California Labor Code section 512 and the applicable IWC Wage Order, including missed,
late, short, controlled, and/or interrupted meal periods; failure to provide rest periods and to
pay rest period premiums at the correct regular rate of pay in violation of California Labor
Code section 226.7 and the applicable IWC Wage Order, including missed, late, short,
controlled, and/or interrupted rest periods; failure to pay sick pay wages at the correct regular
rate of pay in violation of California Labor Code sections 201-204, 223, and 246; failure to
pay reporting time pay wages when due or at the correct regular rate of pay; unlawful
deductions from wages in violation of in violation of California Labor Code section 221;
failure to provide accurate wage statements in violation of California Labor Code section
226; failure to reimburse business expenses in violation of California Labor Code section
2802; failure to pay wages when due in violation of California Labor Code sections 201-204;
attorneys’ fees and costs incurred to prosecute the Action on behalf of Additional Class
Members; and any other derivative remedies, penalties, and interest available under the law
based on the facts alleged in the Second Amended Consolidated Class Action and PAGA
Complaint. The release of Class Claims will run through the Class Period. Except as set forth
in this Agreement, the Additional Class Members who do not opt out of the Settlement do not
release any other claims, including claims for vested benefits, wrongful termination, violation

of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Ex. 1, Settlement, ¶¶ 1.9, 1.15, 1.26, 3.5.2.)

Upon the Effective Date and full funding of the Supplemental Gross Settlement Amount, Plaintiff, the State, and the Additional PAGA Employees will also agree to release the Released PAGA Claims during the PAGA Period. (Ex. 1, Settlement, ¶ 3.5.3.) The "Released PAGA Claims" include

any and all claims, rights, demands, and liabilities of every nature and description, whether known or unknown, for civil penalties that were asserted or that could have been asserted based on the facts alleged in the Second Amended Consolidated Class Action and PAGA Complaint that arose during the PAGA Period, including, but not limited to, claims for civil penalties for alleged violations of California Labor Code sections 201-204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198, and 2802, violations of California Code of Regulations, Title 8, Section 11000, et seq., and violations of the applicable IWC Wage Order(s), and by incorporation any and all of the alleged conduct included in the defined Class Claims. The release of PAGA claims will run through PAGA Period.

(Ex. 1, Settlement, ¶ 1.21, 3.5.3.)

4. Notice Procedure

The proposed Notice of Supplemental Settlement ("Class Notice") provides information regarding the nature of the Action, a summary of the Supplemental Settlement's terms, the Supplemental Class and Class Period definitions, the Additional Class Member's Workweeks during the Class Period, the estimated individual Additional Class Member Payment, and the formula for calculating the Payment, instructions to submit Requests for Exclusion or Objections, the Response Deadline, and the claims released by the Settlement. (Ex.1, Ex. A, Class Notice). Defendant will provide the Additional Employee List to Settlement Administrator within fifteen (15) calendar days after entry of the Supplemental Preliminary Approval Order. (Ex. 1, Settlement, ¶ 3.6.4.) Before mailing, the Settlement Administrator will conduct a National Change of Address database search and a skip trace for updated contact information. (Id. at ¶ 3.6.5.)

Within twenty-one (21) calendar days after receipt of the Additional Employee List, the Settlement Administrator will mail a Class Notice to all Additional Class Members via

1 First-Class USPS. (Ex.1, Settlement, ¶3.6.5.) Any Class Notice returned as non-deliverable
2 on or before the Response Deadline will be remailed in accordance with the provisions of
3 Section 3.6.6 of the Supplemental Settlement Agreement. The “Response Deadline” is sixty
4 (60) calendar days from the initial mailing. (Id. at ¶ 1.28.) As such, Class Members will have
5 sixty days to request exclusion from the Settlement, or object to the Settlement by following
6 the procedures set forth therein. (Id. at ¶ 3.6.8-3.6.9.) The remailing of a Class Notice shall
7 not extend the Response Deadline. (Id. at 3.6.6.)

8 **5. Processing of Payments**

9 Within fourteen (14) calendar days following funding of the Supplemental Gross
10 Settlement Amount, the Administrator will issue payments as provided for in the Settlement.
11 (Ex.1, Settlement, ¶¶ 3.7.1-3.7.8.) Checks issued to Participating Additional Class Members or
12 Additional PAGA Employees will remain valid and negotiable for 180 days from their date of
13 issuance. The checks will become void on the 181st day after mailing. (Ex. 1, Settlement, ¶
14 3.7.8.) Any amounts attributable to checks that remain uncashed by the Void Date shall be
15 transmitted within fourteen days of the Void Date to a cy pres, Legal Aid at Work. (Id.)

16 **III. ARGUMENT**

17 **A. The Court Should Preliminarily Approve the Proposed Supplemental** 18 **Settlement.**

19 At the outset, it should be noted that the Court has already granted preliminary and
20 final approval of the Original Settlement which provided monetary consideration for
21 approximately 24,528 current and former employees of Defendant in California during the Class
22 Period on the same terms as set forth in the Supplemental Settlement. (See, Exs. 4 and 5.) As
23 such, Counsel respectfully submits that there is no need for the Court to engage in a new,
24 independent evaluation of the claims and defense in connection with the approval of this
25 Supplemental Settlement. Moreover, the Supplemental Settlement cannot be viewed in a
26 vacuum as it is part and parcel to the Original Settlement, and merely deals with a group of
27

1 Class Members⁴ which were inadvertently omitted from the Original Settlement and the notice
2 process in that case. (Hawkins Decl. ¶57.) Nevertheless, Class Counsel provides the following
3 discussion to ensure completeness of the record.

4 **1. Courts Review Class Action Settlements to Ensure that the Terms**
5 **Are Fair, Adequate, and Reasonable**

6 The law favors settlements. (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374,
7 1382.) This is particularly true in class actions. However, a class action may not be dismissed,
8 compromised or settled without Court approval. (Cal. Civ. Code § 1781(f); Cal. R. Ct. 3.769
9 (a).) A class action may be settled only after the parties (1) obtain preliminary approval of the
10 settlement from the Court; (2) give notice to Class Members as directed by the Court; and (3)
11 undergo a final approval hearing to inquire into the fairness of the settlement. (Cal. R. Ct.
12 3.769(c), (e)-(f).)

13 The decision to approve a proposed settlement lies within the Court’s discretion. (*Kullar*
14 *v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128; *Wershba v. Apple Computer, Inc.*,
15 (2001) 91 Cal. App. 4th 224, 234-25.) Nevertheless, in considering a settlement for approval, a
16 court is not to turn the approval hearing “into a trial or rehearsal for trial on the merits...[or] to
17 reach any ultimate conclusions on the contested issues of fact and law which underlie the merits
18 of the dispute.” (*Officers for Justice v. Civil Serv. Comm’n*, (9th Cir. 1992) 688 F.2d 615, 625.)
19 The Court’s duty is to determine whether the settlement is fair, adequate, and reasonable. (*Dunk*
20 *v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.) The Court should consider factors
21 including:

22 [T]he strength of plaintiff’s case, the risk, expense, complexity and likely duration
23 of further litigation, the risk of maintaining class action status through trial, the
24 amount offered in settlement, the extent of discovery completed and the stage of
25 the proceedings, the experience and views of counsel...and the reaction of the
26 class members to the proposed settlement. (*Id.* at p. 1801.)

26 Furthermore, the Court must give “[due] regard to what is otherwise a private consensual

27 ⁴ Hereinafter, the term “Class Members” refers to the Original Class Members and the
28 Additional Class Members unless otherwise indicated.

1 agreement between the parties.” (*Wershba, supra*, 91 Cal. App. 4th at p. 245.) The inquiry must
2 be limited “to the extent necessary to reach a reasoned judgment that the agreement is not the
3 product of fraud or overreaching by, or collusion between, the negotiating parties.” (*Ibid.*)

4 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
5 settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.”
6 *See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085,
7 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002)
8 (“Newberg”). Reasonableness and fairness are presumed where, as here: (1) the settlement is
9 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
10 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
11 the percentage of objectors is small. collectively, “*Dunk Factors*”). *Dunk v. Ford Motor Co.*, 48
12 Cal. App. 4th 1794, 1802 (1996).⁵ As shown below, the Original Settlement and the
13 Supplemental Settlement falls well within the range of approval because there are no grounds to
14 doubt its fairness.

15 **2. The Investigation and Discovery Are “Sufficient To Allow Counsel** 16 **and The Court To Act Intelligently”**

17 As set forth in greater detail in the Hawkins Declaration and in connection with the
18 Motion for Preliminary Approval of the Original Settlement, Class Counsel thoroughly
19 investigated and evaluated the factual and legal strengths and weaknesses of the claims and

20
21 ⁵ The presumption of fairness is consistent with California’s public policy goal of
22 favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely
23 favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public
24 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners*
25 *for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary
26 conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially
27 true in complex class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884,
28 891 (1992) (“public policy strongly discourages litigation and encourages settlement [because
settlements] can produce peace and goodwill in the community while reducing the expense and
persistence of litigation”). Additionally, in reviewing the fairness of a class action settlement,
due regard should be given to what is “otherwise a private consensual agreement between the
parties.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry “must be
limited to the extent necessary to reach a reasoned judgment that the agreement is not the
product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1118.

1 defenses at issue and engaged the assistance of an expert before entering into the Original
2 Settlement. (Hawkins Decl. ¶¶ 25-35.) Based on an analysis of documents and class data
3 produced by Defendant—including Defendant’s California labor policies and procedures
4 manuals and a 10% sampling of more than 2,200 Class Members’ time and pay records—Class
5 Counsel was able to realistically assess the value of Plaintiffs’ claims and intelligently engage
6 defense counsel in settlement discussions that culminated in the proposed settlement terms now
7 before the Court (as the relevant terms related to the monetary consideration and release mirror
8 those in the Original Settlement). (Hawkins Decl. ¶ 35.)

9 By engaging in a thorough investigation and evaluation of Plaintiffs’ claims, Class
10 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the
11 Supplemental Settlement Agreement, is fair, reasonable, and adequate, and is in the best
12 interests of the Additional Class Members in light of all known facts and circumstances,
13 including the risk of significant delay and uncertainty associated with litigation, various
14 defenses asserted by Defendant. (Id. at ¶¶35-37)

15 **3. The Terms of the Supplemental Settlement Were Reached Through**
16 **Arm’s-Length Bargaining in Which All Parties Were Represented by**
17 **Experienced Counsel**

18 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a
19 proposed settlement’s fairness.” *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986).
20 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
21 evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are
22 conducted in good faith. Newberg, § 11.51.

23 The Parties participated in an all-day mediation with highly experienced wage and hour
24 mediator, Gig Kyriacou. The mediation helped manage the Parties’ expectations and provided a
25 useful, neutral analysis of the issues and risks to both sides. The Parties were unable to reach a
26 resolution that day, but committed to continued negotiations with the mediator’s assistance.
27 The terms of the Settlement achieved is the product of extensive arm’s length bargaining by

the Parties and a mediator’s proposal. (Hawkins Decl. ¶ 32.) At all times, the negotiations were adversarial and non-collusive. The Parties were represented by experienced class action counsel throughout the negotiations resulting in the terms memorialized in the Original Settlement (which informs the Supplemental Settlement). Plaintiff and the Additional Class Members are represented by James Hawkins APLC, Blumenthal Nordrehaug Bhowmik De Blouw LLP, and the Haines Law Group, APC. Class Counsel are seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 78, 83-89; Ex.6, Haines Decl. in Support of Original Motion for Preliminary Approval, ¶¶ 1-16, Ex. 7, Nordrehaug Decl. in Support of Original Motion for Preliminary Approval, ¶¶3-5; 11.) Defendants are represented by DLA Piper LLP (US), a respected defense firm.

4. The Supplemental Settlement Should Be Approved As It Is A Fair and Reasonable Compromise of the Claims in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation

In seeking approval, a settling party must provide sufficient information to “enable the court to make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982).

Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar does not ... require any such explicit statement of [maximum] value**; it requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against the amount

1 offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As
2 explained in detail in the Declaration of James R. Hawkins, the Gross Settlement Amount, and
3 ergo the Supplemental Gross Settlement Amount, is within the range of reasonableness in light
4 of the nature and magnitude of the claims being settled and the various potential impediments to
5 recovery. (Hawkins Decl. ¶¶ 57-74; see also Exs. 4 and 5.)

6 Ultimately, Class Counsel determined an appropriate range of recovery for settlement
7 purposes by offsetting Defendants’ maximum theoretical liability by: (i) the strength of the
8 defenses to the merits of Plaintiffs’ claims; (ii) the risk of class certification being denied; (iii)
9 the risk of losing on any of a number of dispositive motions that could have been brought
10 between certification and trial (e.g., motions to decertify the class, motions for summary
11 judgment, and/or motions in limine) that might have eliminated all or some of Plaintiffs’ claims,
12 or barred evidence and testimony in support of the claims; (iv) the risk of losing at trial; (v) the
13 chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to
14 collecting on a judgment (collectively, the “Discount Factors”). (*Id.* at ¶72.)

15 **a. The Settlement is Within the Range of Reasonableness.**

16 This Settlement compares favorably to other similar class settlements in terms of
17 potential recovery. (See *In re MyFord Touch Consumer Litig.*, (2019) WL 1411510, at p. 10
18 (citing cases where settlement ranges from 5% to 10% of potential recovery).) While Plaintiff
19 believes in the strength of the allegations asserted in the Actions and that the claims are
20 appropriate for class certification, certification was far from certain given Defendant’s defenses
21 and the state of the law regarding certification. (Hawkins Decl., ¶¶ 59-74.) The risks that
22 Defendant could defeat certification and Plaintiffs’ representative claims, and prevail on its
23 defenses, were substantial enough to warrant a compromise. (*Id.*) Following arms-length
24 negotiations between experienced and informed counsel and with the assistance of a mediator,
25 the Parties accepted the mediator’s proposal and agreed to the Original Settlement which informs
26 the terms memorialized in this Supplemental Settlement. (*Id.*, ¶¶ 31-34). As the court in *Glass*
27 held:

1 In light of the above-referenced uncertainty in the law, the risk, expense,
2 complexity, and likely duration of further litigation likewise favors the settlement.
3 Regardless of how this Court might have ruled on the merits of the legal issues,
4 the losing party likely would have appealed, and the parties would have faced the
5 expense and uncertainty of litigation an appeal. “The expense and possible
6 duration of the litigation should be considered in evaluating the reasonableness of
7 [a] settlement.” (*Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 WL
8 221862, at *9 (quoting *In re Mego Financial Corp. Securities Litigation* (9th Cir.
9 2000) 213 F.3d 454, 458.)

10 “Generally, unless the settlement is clearly inadequate, it is acceptable and approval are
11 preferable to lengthy and expensive litigation with uncertain results,” (*Ching v. Siemens Indus,*
12 *Inc.*, (N.D. Cal. June 27, 2014) 2014 WL 2926210, at *4 (quotation omitted).) At approximately
13 23 % of the estimated realistic liability, the Gross Settlement Amount, and therefore the
14 Supplemental Gross Settlement Amount, is fair and reasonable, and will provide certain,
15 meaningful relief to the Additional Class Members on the same terms previously approved.
16 (Hawkins Decl., ¶ 73; Exs. 4 and 5.) This factor weighs in favor of approval.

17 **b. The Risks Inherent in Continued Litigation Are Great.**

18 In its assessment of a class action settlement, the Court should consider “[t]he strength of
19 plaintiff’s case, the risk, expense, complexity, and likely duration of further litigation, [and] the
20 risk of maintaining class action status.” (*Dunk, supra*, 48 Cal. App. 4th at p. 1801.)

21 Defendant presented strong defenses to Plaintiffs’ claims, asserting, among other things,
22 that Defendant maintained facially lawful policies, trained Class Members to follow the lawful
23 practices implemented, paid Class Members for walking time and temperature checks as hours
24 worked, provided lawfully compliant meal periods and authorized and permitted the taking of
25 15-minute rest periods, provided grace periods to employees to ensure that all hours worked were
26 compensated, automatically paid premiums for any purported violations, prohibited off the clock
27 work, and provided all equipment and items necessary for employees to perform their job duties.
28 These defenses create a possibility that the claims might not be certified or might fail on the
merits. Counsel recognized the expense and length of proceedings necessary to continue the
litigation through trial and any appeals. Counsel also considered the uncertainty and risk of
further litigation, and the difficulties and delays inherent in such litigation. (Hawkins Decl. ¶¶
57-74.)

1 In entering into the terms of the Original Settlement, Plaintiffs and Class Counsel
2 balanced their evaluation of the validity and merit of the asserted claims against potential
3 problems of proof, the legal standards governing litigation of class claims, uncertainty of
4 obtaining and maintaining class certification, the potential for appeals, and the expense and
5 burden of prolonged litigation. (Id. at ¶ 37.) Based on Class Counsel's evaluation, the terms of
6 the Settlement are fair, adequate, and reasonable and in the best interest of the Additional Class
7 Members. (Id. at ¶ 38.) This factor also weighs in favor of approval.

8 **c. The Fairness of the Distribution to Additional Class Members**
9 **Also Supports Approval.**

10 The Settlement treats all Additional Class Members equally, providing no preferential
11 treatment for any segment of the Class as the purpose of this Supplemental Settlement is to ensure
12 that the Additional Class Members are treated in the same manner as the Original Class
13 Members. The Parties have allocated Additional Class Member Payments to the Additional
14 Class Members according to the number of weeks worked by the Additional Class Member for
15 Defendant in a non-exempt position at one or more Target distribution centers in California
16 during the Class Period versus the total weeks worked by all Class Members in non-exempt
17 positions at one or more Target distribution centers in California during the Class Period. (Ex.1,
18 Settlement ¶ 1.2; 3.7.7.) The allocations are calculated to ensure the same compensation is
19 received by the Additional Class Members as the Original Class Members on a per workweek
20 and per pay period basis. This allocation is fair because it ensures that each payment to the
21 Additional Class Members is proportional to the harm experienced by the Additional Class
22 Member. This factor favors approval.

23 **d. Class Counsel Experienced in Similar Litigation Endorse the**
24 **Settlement.**

25 The opinion of the attorneys actively conducting the litigation "is entitled to significant
26 weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge-Lee Indus,*
27 *Inc.* (E.D. Pa. 1985) 630 F. Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D.Cal. 1980)
28 87 F.R.D. 15, 18, *affd.* (*9th Cir. 1981) 661 F.2d 939; *Boyd v. Bechtel Corp* (N.D. Cal. 1979)

1 485 F. Supp. 610, 616-17.) Class Counsel are experienced in wage-and-hour class actions.
2 (Hawkins Decl. ¶ 80-88; Haines Decl. ¶¶ 1-16, Nordrehaug Decl. ¶¶ 3-5; 11.) Counsel
3 negotiated the terms of the Settlement at arm's length and believe this is a fair and reasonable
4 settlement given the complexities of the case, the state of the law, and uncertainties of class
5 certification and litigation. Given the risk inherent in litigation and the defenses asserted, this
6 settlement is fair, adequate, and reasonable and in the best interests of the Additional Class
7 Members and should be preliminarily approved. (Hawkins Decl. ¶ 90; Haines Decl. ¶17;
8 Nordrehaug Decl. ¶ 9.)

9 **e. The Court Should Preliminarily Approve the Negotiated Class**
10 **Counsel Litigation Costs**

11 Class Counsel has elected to forego an additional fee award request from the
12 Supplemental Gross Settlement Award, but rather only seeks to recover the additional costs
13 incurred by the negotiation and administration of this Supplemental Settlement. At final
14 approval, Plaintiff will seek Court approval of up to \$1,500.00 in litigation costs incurred.

15 **B. Conditional Certification Of The Class Is Appropriate.**

16 California Rule of Court 3.769(d) provides that the Court may issue an order approving
17 certification of a provisional class at the preliminary approval stage. Trial courts should use a
18 "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as
19 opposed to a litigation class. (*Dunk, supra*, 48 Cal.App.4th at p. 1807 n.19.) Because no trial is
20 anticipated in a settlement, case management issues inherent in determining if the class should
21 be certified need not be confronted, and the trial court's fairness review of the settlement protects
22 the interests of the class members. (*Id.*) Here, for the purposes of this settlement, Plaintiff asks
23 this Court to provisionally certify the Additional Class Members (which were inadvertently
24 omitted from the Original Class).

25 **1. Numerosity and Ascertainability**

26 Numerosity is met if a proposed class is so large that joinder of all members would be
27 impracticable. (Cal. Code Civ. Proc. § 382.) A proposed class is ascertainable if the class
28 members can be objectively identified and given notice of the litigation without unreasonable

1 time or expense. (*Medraza v. Honda of N. Hollywood* (2008) 166 Cal. App. 4th 89, 101.) The
2 Class is ascertainable as all of the Class Members worked for Defendant and can be identified
3 through employee files and payroll records. Defendant has identified approximately 156
4 Additional Class Members. (Hawkins Decl. ¶ 6, 78.) As such, the Additional Class Members
5 are sufficiently ascertainable and numerous to warrant conditional class certification. (Id.)

6 **2. Well-Defined Community of Interest**

7 To justify certification, the class proponent must show that questions of law or fact
8 common to the class predominate over the questions affecting the individual members. (*Arenas*
9 *v. El Torito Rests, Inc.* (2010) 183 Cal. App. 4th 723, 732.) Here, the claims of the Plaintiff and
10 the Additional Class Members all flow from the same facts and legal claims. In addition, these
11 Additional Class Members were inadvertently omitted from the broader Class in connection with
12 the Original Settlement. Under these circumstances, the commonality requirement is satisfied.
13 (Hawkins Decl., ¶ 76.)

14 **3. Typicality**

15 Typicality “focuses on whether there exists a relationship between the plaintiff’s claims
16 and the claims alleged on behalf of the class.” (*Newberg*, § 3.13.) Here, the typicality requirement
17 is met because the proposed Class Representative and Additional Class Members all claim
18 Defendant committed similar violations based upon similar conduct, policies and practice and
19 they seek the same remedies. Plaintiff’s claims are typical because they arise from the same
20 factual basis and legal theories as those of the Additional Class Members. (Hawkins Decl. ¶ 77.)

21 **4. Adequacy of Representation**

22 The proposed class representative must establish that he or she will adequately represent
23 the proposed class. (*See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal. App. 4th 540,
24 546.) Here, the Class Representative is a member of the Class which should have encompassed
25 the Additional Class Members and has no interests adverse to the Class. (Hawkins Decl. ¶ 83-
26 90.)

27 Adequacy of counsel may be established by the fact that counsel are experienced
28 practitioners. (*See Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands*,

1 *Inc.* (9th Cir. 2001). 244 F.3d 1152, 1162. Here, Class Counsel are experienced in wage-and-hour
2 litigation. (Hawkins Decl. ¶ 80-85; Haines Decl. ¶¶ 1-16; Nordrehaug Decl. ¶¶3-5; 11) Thus,
3 the adequacy requirements are satisfied.

4 **IV. THE COURT SHOULD APPOINT APEX CLASS ACTION LLC AS**
5 **SETTLEMENT ADMINISTRATOR AND APPROVE THE CLASS NOTICE**

6 The parties propose that the Court appoint Apex Class Action LLC to serve as the
7 Settlement Administrator. Apex has estimated its fees and costs for this Settlement will not
8 exceed \$6,900.00. (Hawkins Decl. ¶ 53; Ex.1, Settlement, ¶ 1.29, 3.4.)

9 California statutory and case law grants courts broad discretion in fashioning an
10 appropriate notice program. What constitutes adequate notice will depend on the circumstances
11 of each case, and such efforts and their costs must be proportional to the magnitude of the claims.
12 The notice plans here satisfy all due process requirements. The Notice attached at Exhibit A to
13 the Supplemental Settlement Agreement is modeled after the notice previously provided to the
14 Class Members in the Original Settlement. The Class Notice meets the applicable legal standards
15 since it appraises the Additional Class Members “of the terms of the proposed compromise and
16 of the options open to dissenting class members.” (*Wershba v. Apple Computers, Inc.* (2001) 91
17 Cal.App.4th 224, 251 [citation omitted]; see Cal. R. Ct., Rule 3.766, subd. (d).)

18 There is no statutory or due process requirement that all Class Members actually receive
19 notice of the settlement. Rather, “[t]he notice given should have a reasonable chance of reaching
20 a substantial percentage of the class members....” (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960,
21 973.) This is satisfied by mailing the Notice of Class Action Settlement by First-Class USPS to
22 all Additional Class Members on the Employee List (Ex. 1, Settlement, ¶ 3.6.5 to ¶ 3.6.7).

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1 **V. CONCLUSION**

2 For all these reasons, Plaintiff respectfully requests that the Court preliminarily approve
3 the Supplemental Settlement which provides for consideration on the same terms as the Original
4 Settlement, approve the Class Notice, and conditionally certify the Additional Class for settlement
5 purposes.

6 Dated: April 8, 2025

Respectfully submitted,

7 **JAMES HAWKINS APLC**

8
9 By: _____

James Hawkins
Christina Lucio
Mitchell Murray