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

KAYCIE CROSSLEY, an individual, on
behalf of herself, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

CEREBRAL MEDICAL GROUP, P.A., a
Professional Association; CEREBRAL
MEDICAL GROUP, A PROFESSIONAL
CORPORATION, a Professional
Corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No. CGC-22-599132

[Consolidated with Case No. CGC-22-600627]

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

Hearing Date: October 5, 2023

Hearing Time: 9:30 a.m.

*[Hearing scheduled by Order dated May 31, 2023 at
paragraph 12]*

Judge: Hon. Richard B. Ulmer
Dept: 302

Action Filed: December 28, 2021

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated May 31, 2023 (“Preliminary Approval Order”),
6 the approved Class Notice has been disseminated to the Class.²

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

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

18 Plaintiff and Defendants Cerebral Medical Group, P.A. and Cerebral Medical Group, A
19 Professional Corporation (“Defendants”) reached a full and final settlement of the above-captioned
20 action, which is embodied in the Agreement filed concurrently with the Court. As consideration for
21 this Settlement, the Gross Settlement Amount is One Million Two Hundred Thousand Dollars
22 (\$1,200,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of
23 the following elements: (1) payment of the Individual Class Payments to the Participating Class
24 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)

25
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals who work or previously worked for Defendants in
28 California and were classified as an independent contractor at any time during the Class Period.” The
 “Class Period” is April 11, 2018 through April 24, 2023. (Preliminary Approval Order, ¶ 5.)

1 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5)
2 the PAGA Penalties payment. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The following is a table
3 of the key financial terms of the Settlement and the proposed deductions:

4 **\$1,200,000** (Gross Settlement Amount)

- 5 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 6 - \$15,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 7 - \$400,000 (Class Counsel Fees Payment - not to exceed amount)
- 8 - \$25,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
- 9 - \$10,000 (Administration Expenses Payment - not to exceed amount)

7 **\$740,000** (Net Settlement Amount)

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

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

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

27 Class Members were sent the Court approved Class Notice using the procedure approved by the
28 Court by mailing the notice packets after updating class members' addresses using the National Change

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

10 A Participating Class Member must cash his or her Individual Class Payment check within 180
11 days after it is mailed. (Agreement at ¶ 5.2.) The Settlement Administrator will send a reminder to
12 Participating Class Members who have not cashed their checks within 120 days after its last mailing
13 to the affected individual. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
14 be voided and any funds represented by such checks to the California Controller's Unclaimed Property
15 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
16 of California Code of Civil Procedure Section 384, subd. (Agreement at ¶ 5.4.) Blumenthal Decl. ¶3(f).

17 ILYM Group was appointed as the Settlement Administrator. (Agreement at ¶ 1.2; Preliminary
18 Approval Order at ¶ 9.) From the Gross Settlement Amount, the Settlement Administrator shall be paid
19 for the expenses of administering the Settlement in an amount not to exceed \$10,000. (Agreement at
20 ¶ 3.2(c); Preliminary Approval Order at ¶ 9.) As set forth in the Declaration of Tracey Dantema
21 ("Dantema Decl.") at ¶ 18, the Administration Expenses Payment, including fees and costs incurred
22 to-date, as well as anticipated fees and costs for completion of the settlement administration, are
23 \$10,000. Blumenthal Decl. ¶3(g).

24 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
25 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
26 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
27 Litigation Expenses Payment in an amount not to exceed \$15,000. (Agreement at ¶ 3.2(b).) Subject
28 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as

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

4 Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the
5 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
6 Labor Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code §
7 2699(i), the PAGA Penalties shall be allocated as follows: 75% (\$18,750) shall be allocated to the
8 Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$6,250)
9 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
10 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
11 accompanying proof of service, the LWDA has been served with this motion and the Agreement.
12 Blumenthal Decl. ¶3(i).

13 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
14 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
15 is "fair, adequate and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
16 at One Million Two Hundred Thousand Dollars (\$1,200,000) is an excellent result for the Class. This
17 result is particularly favorable in light of the fact that liability was far from certain in light of the
18 defenses asserted by Defendants. Given the complexities of this case and the defenses asserted, along
19 with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and
20 adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 The Parties attended an arms-length mediation session with Hon. Carl J. West (Ret.), a respected
12 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
13 preparation for the mediation sessions, Defendants provided Class Counsel with necessary information
14 for the members of the Class, including time data, payroll data and data concerning the composition
15 of the Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting
16 Group, and prepared and submitted a mediation brief and damage valuation to the Mediator.
17 Following the mediation, the Parties were able to agree to settle the Action based upon a mediator’s
18 proposal which was memorialized in the form of a Memorandum of Understanding. Blumenthal Decl.
19 ¶7(b).

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

26 From March 2023 to April 2023, the Agreement and exhibits thereto were drafted, finalized and
27 executed, and presented to this Court on for preliminary approval on May 31, 2023. The Court granted
28 preliminary approval on May 31, 2023, and the Preliminary Approval Order was entered by this Court

1 that same day. Blumenthal Decl. ¶7(c).

2 3. Class Counsel is Experienced in Similar Litigation

3 Class Counsel in this matter has extensive class action experience and has represented thousands
4 of persons in class actions including employment litigation, wage and hour class actions, and complex
5 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
6 claims similar to this case and have been approved as experienced class counsel during contested
7 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
8 knowledgeable in this area of law. The experience of counsel and class action cases managed and
9 settled by the Class Counsel in this action is provided to the Court in the Blumenthal Decl. at Exhibit
10 #1. Class Counsel have participated in every aspect of the settlement discussions and have concluded
11 the settlement is fair, adequate and reasonable and in the best interests of the Class. Blumenthal Decl.
12 ¶ 3(j).

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

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

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

1 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
2 settlement should be considered when determining fairness of settlement). Here, where there are no
3 objections, the approval of the class is evident.

4 5. The Strength of Plaintiff's Case

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

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

1 reduce any recovery to the Class. While Plaintiff believe that these defenses could be overcome,
2 Defendants maintains these defenses have merit and therefore present a serious risk to recovery by the
3 Class. Blumenthal Decl. ¶8(a).

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

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

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

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

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

25 There was also a significant risk that, if the Actions were not settled, Plaintiff would be unable
26 to obtain class certification and thereby not recover on behalf of any employees other than himself.
27 Defendants argued that the individual experience of each putative class member varied with respect to
28 the claims. Defendants could also contest class certification by arguing injury and good faith were case-
by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
(2019) (denying certification of rest break claims). Finally, even if class certification was successful,

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

6 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
7 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
8 substantial defenses. **Currently, the maximum and average class member allocation are \$15,178**
9 **and \$3,410, respectively.** See Dantema Decl. ¶17. Given the complexities of this case, the defenses,
10 along with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and
11 adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

13 *Id.* at *12.

14 7. The Amount Offered in Settlement

15 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
16 to Plaintiff's claims. As set forth in the Declaration of Kyle Nordrehaug filed in support of preliminary
17 approval which discussed the value of the class claims in detail, the Gross Settlement Amount compares
18 favorably to the value of the claims. For the 217 Participating Class Members who collectively worked
19 6,094 Workweeks, the Gross Settlement Amount provides an average value of \$5,529 per Class
20 Member and \$196 per workweek, and after deductions, the Net Settlement Amount provides an average
21 recovery of \$3,410 per Class Member and a recovery of \$121 per Workweek. Blumenthal Decl. ¶8(d).

22 The calculations to compensate for the amount due to the Class Members at the time this
23 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting Group, in advance
24 of mediation. As to the Class whose claims are at issue in this Action, Plaintiff used an expert to
25 analyze the data and determine the potential unpaid wages for the employees. For the Class, Plaintiff
26 determined that the maximum value of the claim for unpaid wages due to off the clock work was
27 potentially \$77,913, the maximum potential damages for unpaid meal premiums were estimated to be
28 \$623,000 based upon an alleged 100% violation rate, the maximum potential rest period damages were
estimated to be \$623,300 based upon the same alleged 100% violation rate, and the maximum potential
damages for failure to provide expense reimbursement were calculated to be \$62,330. In total, the
damages for the Class were calculated to have a maximum potential total value of \$1,386,843. In

1 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were
2 \$873,600, and the maximum value of the potential wage statement penalties were \$296,300.³
3 Blumenthal Decl. ¶8(d).

4 Consequently, the Gross Settlement Amount represents more than 85% of the potential
5 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
6 full at trial.⁴ The above maximum calculations should then be adjusted in consideration for both the risk
7 of class certification and the risk of establishing class-wide liability on all claims. Defendants dispute
8 Plaintiff's estimates and believes the amount Plaintiff can recover for the Class, if anything at all, is
9 actually much lower. Given the amount of the Settlement as compared to the potential value of the
10 claims, the Settlement is most certainly fair and reasonable.⁵ Blumenthal Decl. ¶8(d). Clearly, the goal
11 of this litigation has been met.

12 **V. CONCLUSION**

13 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness

14
15 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
16 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
17 asserted by Defendants, including, a good faith dispute defense as to whether any wages were owed
18 given Defendants' position that Plaintiff were properly compensated and classified. *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.").

19 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
20 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
Decl. Nordrehaug at ¶ 33 file in support of Plaintiff's Motion for Preliminary Approval.

21 ⁵ *See e.g. Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
22 settlement where the settlement amount constituted approximately 25% of the estimated overtime
23 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
24 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
v. Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
25 which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman v. W.W. Granger,*
Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the
26 proposed Total Settlement Amount represents approximately 10% of what class might have been
awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
27 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
28 settlement worth "somewhere between 9% and 18%" of full verdict value).

1 established in California law and should therefore be finally approved as fair, reasonable and adequate
2 and requests entry of the Final Approval Order and Judgment, submitted herewith.

3 Respectfully submitted,

4 Dated: September 8, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
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7 Attorney for Plaintiff
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