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

14
15 MELYNDA SINGH, NARCISSO
16 SANTOR, ANNA SIBAL, JAY
17 SINSON, AND ROBERT
18 TAJANLANGIT, individuals, on
19 behalf of themselves, and on behalf of
20 all persons similarly situated,

21 Plaintiff,

22 vs.

23 TOTAL RENAL CARE, INC., a
24 California Corporation; DVA RENAL
25 HEALTHCARE, INC., a Corporation,
26 and Does 2 through 50, Inclusive,

27 Defendants.

CASE No. **CGC-16-550847**

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

Hearing Date: February 11, 2020

Hearing Time: 9:30 a.m.

**[Reservation not required due to approved
hearing date by the court]**

[Hearing set by Order dated Oct. 10, 2019]

Dept.: 302

Judge: Hon. Ethan P. Schulman

Date Filed: March 8, 2016

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 Settlement Agreement and the Stipulation to Amend Class Action Settlement Agreement
4 (collectively the “Agreement”), a true and correct copy of which is attached as Exhibit #2 to the
5 Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In accordance with the Preliminary
6 Approval Order dated October 10, 2019 (“Preliminary Approval Order”), the approved Class Notice has
7 been disseminated to the Class.²

8 The purpose of this hearing is to determine whether the proposed settlement of the litigation
9 should be finally approved. Plaintiffs Melynda Singh, Narcisso Santor, Anna Sibal, Jay Sinson, and
10 Robert Tajanlangit (“Plaintiffs”) respectfully submits this memorandum in support of the unopposed
11 motion for final approval and the proposed entry of the Final Approval Order and Judgment, submitted
12 herewith. The settlement represents an excellent result for the Class and avoids the delays, risks, and
13 costs of further litigation. After disseminating notice to the members of the Class, there were no
14 objections and a small percentage of opt outs (0.10 %), which means that nearly the entire Class will be
15 participating in the Settlement. Blumenthal Decl. ¶4. This is a positive response from the class
16 evidencing their approval of the settlement. As a result, Plaintiffs respectfully submit that the class
17 settlement should be finally approved for the same reasons that the Court preliminarily approved the
18 settlement as fair, reasonable, and adequate.

19 **II. THE SETTLEMENT BEFORE THE COURT**

20 Plaintiffs and Defendants Total Renal Care, Inc., DVA Renal Healthcare, Inc., DaVita Inc.,
21 RTC-California, Continental Dialysis, Inc., DaVita NephMed of CA, Kidney Care RX, Inc.,
22 Knickerbocker Dialysis, Inc., Phys Dialysis Acquisitions, Renal Life Link, Inc., RMS LifeLink, Inc.,
23 RTC-Illinois, RTC-MidAtlantic, RTC-Southeast, RTC-West, Village Health DM, LLC, GDC Resources,
24 LLC, and Patient Pathways (“Defendants”) reached a full and final settlement of the above-captioned

25 _____
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is “all individuals who are or previously were employed by one or more of the
28 Defendants in California at any time during the Class Period and who were classified as non-exempt.”
The Class Period is March 8, 2012 through May 6, 2019. (Preliminary Approval Order at ¶5.)

1 action, which is embodied in the Agreement filed concurrently with the Court. As consideration for this
2 Settlement, the Gross Settlement Amount to be paid by Defendants is Eight Million Dollars
3 (\$8,000,000). (Agreement at ¶ III(A).) The Gross Settlement Amount consists of the following
4 elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class
5 Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) Class Representative
6 Service Payments to the Plaintiffs; and (5) the LWDA Payment to the State of California. (Agreement
7 at ¶ III(A).) Blumenthal Decl. ¶3(a).

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

11 Defendants shall fund the Gross Settlement Amount and the amount necessary to pay
12 Defendants' share of payroll taxes within fifteen (15) days of the Effective Date. (Agreement at ¶
13 III(E)(9).) Within fifteen (15) days after Defendants fund the Gross Settlement Amount, the Settlement
14 Administrator will pay the Settlement Shares to Participating Class Members and make the other Court-
15 approved distributions. (Agreement at ¶ III(E)(9).) Blumenthal Decl. ¶3(c).

16 The Net Settlement Amount shall equal the net amount available for Settlement Shares to
17 Participating Class Members after deducting the Class Representative Service Payments, the Class
18 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the LWDA Payment, and the
19 Settlement Administration Expenses from the Gross Settlement Amount. (Agreement at ¶ I(S).) The
20 Net Settlement Amount will be distributed among the Class Members who do not timely request
21 exclusion ("Participating Class Members"). (Agreement at ¶¶ I(U) and III(C)(1).) The Settlement Share
22 for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by
23 the total number of workweeks worked for all Participating Class Members that occurred during the
24 Class Period and (b) multiplying the result by each individual Participating Class Member's workweeks
25 worked that occurred during the Class Period. (Agreement at ¶ III(C)(2).) Blumenthal Decl. ¶ 3(d).

26 Class Members were sent the Court approved Class Notice using the procedure approved by the
27 Court by mailing the notice packets after updating class members' addresses using the National Change
28 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to any

1 forwarding address provided or updated address located. Cooley Decl. ¶¶ 3-4. Class Members were
2 provided with the opportunity to exclude themselves or "opt out" if they did not want to participate in
3 the settlement. (Agreement at ¶ III(E)(3).) Cooley Decl. ¶ 6, Exh. A. Class Members who did not "opt
4 out" are deemed Participating Class Members who are bound by the Settlement and will be mailed a
5 settlement payment. (Agreement at ¶ III(E)(3)(c).) The Class Notice also advised Class Members of
6 their right to object to the Settlement, either by filing written objections or by appearing at the final
7 approval hearing to make an oral objection. (Agreement at ¶ III(E)(3) and Cooley Decl. at Exh. A.)
8 Blumenthal Decl. ¶ 3(e).

9 A Participating Class Member must cash his or her Settlement Share check within 180 days after
10 it is mailed. (Agreement at ¶ III(E)(10).) Any settlement checks not cashed within 180 days will be
11 voided and the funds from such uncashed checks will be paid to the Controller of the State of California
12 to be held pursuant to the Unclaimed Property Law in the name of the Participating Class Member.
13 (Agreement at ¶ III(E)(10).) The Parties agree that this disposition results in no "unpaid residue" under
14 California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out.
15 Blumenthal Decl. ¶ 3(f).

16 KCC, LLC was appointed as the Settlement Administrator for the Settlement. (Agreement at ¶
17 III(D).) Payment of the expenses of the Settlement Administrator from the Gross Settlement Amount
18 shall be made for the expenses of effectuating and administering the Settlement. The Settlement
19 Administrator shall receive payment for services in an amount not to exceed \$82,000, which was the
20 lowest bid received. (Agreement at ¶ III(B)(4).) As set forth in the Declaration of Cooley at ¶ 9, the
21 Settlement Administration Expenses are \$82,000. Blumenthal Decl. ¶ 3(g).

22 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
23 to exceed \$2,666,666, which is one-third of the Gross Settlement Amount, as the Class Counsel Fees
24 Payment. (Agreement at ¶ III(B)(2).) 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 \$35,000. (Agreement
26 at ¶ III(B)(2).) Subject to Court approval, the Agreement provides payment of no more than \$10,000
27 as Class Representative Service Payments to the Plaintiffs. (Agreement at ¶ III(B)(1).) In support of
28 this separate motion for attorneys' fees, reimbursement of expenses and service award, Class Counsel

1 will provide evidentiary support, for these requests, including lodestar.³ Blumenthal Decl. ¶3(h).

2 Subject to Court approval, One Hundred Thousand Dollars (\$100,000) will be paid from the
3 Gross Settlement Amount for PAGA penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant
4 to the express requirements of Labor Code § 2699(i), the PAGA Penalty Payment shall be allocated as
5 follows: \$75,000 to the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil
6 penalties pursuant to the PAGA, and \$25,000 to the Net Settlement Amount for distribution to the
7 Participating Class Members. (Agreement at ¶ III(B)(3).) Blumenthal Decl. ¶3(i).

8 The settlement was reached through arm's length negotiations. On August 30, 2017, the Parties
9 participated in an all-day mediation presided over by Louis Marlin, a notable labor and employment
10 attorney and respected mediator of wage and hour class actions. During this first mediation, each side,
11 represented by its respective counsel, were unable to agree to settle the Action. After further litigation,
12 on January 22, 2019, the Parties participated in a second mediation before Louis Marlin. At the
13 conclusion of the second mediation, the mediator made a mediator's proposal. Based upon the expertise
14 of the Mediator and the uncertainties of litigation, all Parties agreed to accept the mediator's proposal.
15 The basic terms were set forth in a signed Memorandum of Understanding. The parties then prepared
16 the full Agreement, and after the Parties made certain revisions requested by the Court, the Agreement
17 received preliminary approval from the Court by Order dated October 10, 2019. Blumenthal Decl. ¶3(j).

18 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
19 the same reasons the Court granted preliminary approval to the settlement, finding that it is "fair,
20 adequate, and reasonable as to all potential Class Members when balanced against the probable outcome
21 of further litigation relating to certification, liability and damages issues." (Preliminary Approval Order
22 at ¶ 3.) Blumenthal Decl. ¶3(k). In sum, this settlement valued at \$8,000,000 is an excellent result for
23 the Class. This result is particularly favorable in light of the fact that liability and class certification in
24 this case were far from certain in light of the defenses asserted by Defendants. There have been few opt
25 outs and no objections. Given the complexities of this case, the defenses asserted, the uncertainty of
26 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is

27
28 ³ Plaintiff Singh is to receive an additional \$5,000 is settlement of her wrongful termination claim.

1 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(k).

2 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
3 **OF CLASS ACTION SETTLEMENTS**

4 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
5 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
6 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
7 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
8 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

20 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that
21 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
22 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
23 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act
24 intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced
25 in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1801, citing
26 Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these
27 factors support a presumption of fairness.

28 The essential evaluation is whether, given the risks of litigation and the range of probable results,

1 the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. Here, the facts and
2 circumstances compel the conclusion that the proposed settlement satisfies that standard and should be
3 finally approved.

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

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

10 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
11 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "The well-recognized factors that the
12 trial court should consider in evaluating the reasonableness of a class action settlement agreement
13 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
14 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
15 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
16 the presence of a governmental participant, and the reaction of the class members to the proposed
17 settlement.'" *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations
18 omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

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

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

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

2 1. The Investigation and Discovery are Sufficient to Allow Counsel and the Court
3 to Act Intelligently

4 On March 8, 2016, Plaintiffs filed a Complaint against defendant Total Renal Care, Inc. in the
5 Superior Court of the State of California, County of San Francisco on behalf of themselves and a
6 putative class. The Complaint alleged claims for: (1) unfair competition in violation of Cal. Bus & Prof.
7 Code §§ 17200, et seq.; (2) failure to pay overtime wages in violation of Cal. Labor Code § 510; (3)
8 failure to provide accurate itemized statements in violation of Cal. Lab. Code § 226; (4) failure to
9 provide wages at termination in violation of Cal. Lab. Code § 203; (5) wrongful termination of plaintiff
10 Melynda Singh in violation of public policy; and, (6) violation of California Labor Code § 1102.5(c)
11 with respect to plaintiff Melynda Singh. Blumenthal Decl. ¶6(a).

12 On June 29, 2016, Plaintiffs filed a First Amended Complaint adding a claim under the Private
13 Attorneys General Act, Cal. Labor Code §§ 2698 et seq. ("PAGA"), based upon the alleged Labor Code
14 violations. On January 4, 2018, Plaintiffs filed an Amendment to Complaint Naming Doe 1 and
15 designated Doe 1 as DVA Renal Healthcare, Inc. On May 3, 2018, Plaintiffs filed a Second Amended
16 Complaint including as defendants Total Renal Care, Inc. and DVA Renal Healthcare, Inc. Blumenthal
17 Decl. at ¶6(b).

18 On June 7, 2018, defendants Total Renal Care, Inc. and DVA Renal Healthcare, Inc. filed an
19 Answer to Plaintiffs' Second Amended Complaint generally denying all claims and asserting 31
20 affirmative defenses. As part of the Settlement, the Parties have agreed to stipulate to the filing of Doe
21 amendments to the Second Amended Complaint adding as Doe defendants DaVita Inc., RTC-California,
22 Continental Dialysis, Inc., DaVita NephMed of CA, Kidney Care RX, Inc., Knickerbocker Dialysis, Inc.,
23 Phys Dialysis Acquisitions, Renal Life Link, Inc., RMS LifeLink, Inc., RTC-Illinois, RTC-MidAtlantic,
24 RTC-Southeast, RTC-West, Village Health DM, LLC, GDC Resources, LLC, and Patient Pathways.
25 Blumenthal Decl. ¶6(c).

26 Over the three years of litigation, the Parties engaged in extensive written discovery including
27 production of documents, class data, and other information, allowing for the full and complete analysis
28 of liabilities and defenses to the claims in this Action. The discovery obtained by Plaintiffs included:

1 (1) Class Data showing all employees and their employment dates; (2) Payroll data for Class Members,
2 which included overtime and bonus information; (3) Defendants' time keeping data concerning all hours
3 worked and recorded meal periods for Class Members; (4) Defendants' employee handbooks applicable
4 for the relevant periods, which outlined the wage and hour policies; (5) employment files for the
5 Plaintiffs; and, (6) samples of wage statements provided by Defendants to employees. Following this
6 discovery, Plaintiffs and Defendants agreed to discuss early resolution of the Action through a
7 mediation. Blumenthal Decl. ¶6(d).

8 Defendants deny these claims and assert, among other defenses, that Plaintiffs and the Class were
9 properly compensated, that all California labor Code requirements were followed. On June 7, 2018,
10 Defendants filed a general denial along with 31 affirmative defenses to the Second Amended Complaint.
11 Blumenthal Decl. ¶6(e).

12 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
13 information in connection with the Action. As part of this process, Defendants provided documents and
14 information to Class Counsel to review and analyze. On August 30, 2017, the Parties participated in an
15 all-day mediation presided over by Louis Marlin, a notable labor and employment attorney and respected
16 mediator of wage and hour class actions. During the mediation, each side, represented by its respective
17 counsel, were unable to agree to settle the Action. After further litigation, on January 22, 2019, the
18 Parties participated in a second mediation before Louis Marlin. The negotiations were arm's length and
19 contentious. At the conclusion of the second mediation, the mediator made a mediator's proposal.
20 Based upon the expertise of the Mediator and the uncertainties of litigation, all Parties agreed to accept
21 the mediator's proposal. The basic terms were set forth in a signed Memorandum of Understanding.
22 The parties then prepared the full Agreement which received preliminary approval from this Court.
23 Blumenthal Decl. ¶6(f).

24 Accordingly, for purposes of this Settlement, the "Class" (which was provisionally certified for
25 settlement purposes by the Court's Preliminary Approval Order) is defined as "all individuals who are
26 or previously were employed by one or more of the Defendants in California at any time during the
27 Class Period and who were classified as non-exempt." The Class Period is March 8, 2012 through May
28 6, 2019. (Preliminary Approval Order at ¶5.) Blumenthal Decl. ¶6(g).

1 Class Counsel has conducted a thorough investigation into the facts of the class action. Over the
2 course of three years, Class Counsel has diligently evaluated the Class Members' claims against
3 Defendants. Both Plaintiffs and Defendants engaged in written discovery, which included the
4 production of thousands of pages of documents. Prior to the settlement negotiations, counsel for
5 Defendants provided Class Counsel with access to information for the Class. In addition, Class Counsel
6 previously negotiated settlements with other employers in actions involving nearly identical issues and
7 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
8 and experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the
9 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
10 facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and
11 potential appellate issues. Blumenthal Decl. ¶6(h). The Court found in the Preliminary Approval Order
12 at ¶ 3 that "the Gross Settlement Amount of Eight Million Dollars (\$8,000,000) and the terms of the
13 Agreement are fair, adequate and reasonable as to all potential Class Members when balanced against
14 the probable outcome of further litigation relating to certification, liability and damages issues."

15 2. The Settlement was Reached Through Arm's Length Bargaining

16 This Settlement was the result of arm's-length negotiations as well as formal and informal
17 settlement conferences between the Parties through their respective attorneys. After comprehensive
18 legal and factual analysis, Class Counsel possessed sufficient information for intelligent evaluation of
19 the case for purposes of settlement. Prior to the initiation of settlement discussions, Class Counsel
20 reviewed and outlined the case based upon the information for the class, and determined the conditions
21 of settlement which would be fair and reasonable to the Class with the assistance of an expert. Class
22 Counsel was experienced in the types of settlement appropriate to resolve these wage and hour claims
23 on behalf of employees. Blumenthal Decl. ¶7(a).

24 The Parties scheduled private mediation to take place before Louis Marlin, Esq., a respected and
25 experienced mediator of class actions and wage and hour lawsuits. In preparation for the mediation,
26 Defendants provided Class Counsel with necessary records and information for the members of the
27 Class. Plaintiffs analyzed the data with the assistance of damages expert DM&A and prepared and
28 submitted a mediation brief to the mediator. After a full day of settlement negotiations at the August

1 30, 2017 mediation, the parties were unable to reach an agreement. On January 22, 2019, the Parties
2 participated in a second mediation before Louis Marlin. At the conclusion of the mediation, the Parties
3 reached an agreement to settle the Action based on a mediator's proposal which was accepted in light
4 of the uncertainties of protracted litigation. As a result of these arm's length negotiations, the Parties
5 signed a Memorandum of Understanding. Blumenthal Decl. ¶7(b).

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

12 From March 2019 through June 2019, the Agreement and exhibits thereto were finalized and
13 executed. Plaintiffs prepared and filed the motion requesting Court preliminary approval of the
14 settlement on July 19, 2019. The Court's ruling for August 14, 2019 requested additional information
15 which Plaintiffs provided in a Supplemental Declaration filed on October 3, 2019. The Order dated
16 October 10, 2019 preliminarily approved the class settlement contained in the Agreement as fair,
17 reasonable and adequate. Blumenthal Decl. ¶7(c).

18 3. Class Counsel is Experienced in Similar Litigation

19 Class Counsel in this matter has extensive class action experience and has represented thousands
20 of persons in class actions including employment litigation, wage and hour class actions, and complex
21 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
22 claims similar to this case and have been approved as experienced class counsel during contested
23 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
24 knowledgeable in this area of law. A list of previous and current class action cases managed and settled
25 by the Class Counsel in this action is provided to the Court as Exhibit #1 to the Blumenthal Decl. Class
26 Counsel have participated in every aspect of the settlement discussions and have concluded the
27 settlement is fair, adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶2.
28

1 4. There Are No Objections and Few Opt Outs

2 The reaction of the Class unequivocally supports approval of the Settlement. On November 7,
3 2019, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members,
4 which provided each class member with the terms of the Settlement, including notice of the claims at
5 issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award that
6 were being sought, how individual settlement awards would be calculated, and the specific, estimated
7 payment amount to that individual See Cooley Decl. ¶¶ 3-7, Exh. A. In disseminating the notice, the
8 Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
9 Approval Order. Cooley Decl. ¶¶ 3-5. Significantly, there have been no objections and 17 opt outs
10 (representing only 0.10% of the Class). Cooley Decl. ¶¶ 6-7. As a result, nearly the entire Class will
11 participate in the Settlement and will be sent a settlement check. Blumenthal Decl. ¶4.

12 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
13 Settlement. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175 (S.D.N.Y.
14 2000) ("If only a small number of objections are received, that fact can be viewed as indicative of the
15 adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29
16 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*, 638 F.2d 954
17 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed settlement should be
18 considered when determining fairness of settlement). Here, where there are no objections, the approval
19 of the class is evident.

20 5. The Strength of Plaintiffs' Case

21 The Action generally alleges that Plaintiffs and other non-exempt employees of Defendants were
22 not paid for overtime at the correct regular rate and were not timely provided with meal periods in
23 accordance with California law. The Action seeks unpaid wages, penalties, civil penalties, attorney fees,
24 litigation costs, and any other equitable or legal relief allegedly due and owing to Plaintiffs and the other
25 Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

26 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
27 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
28 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.

1 Defendants asserted that Defendants' practices complied with all applicable Labor laws. For example,
2 Defendants contend that all employee bonus compensation was properly included in the overtime
3 calculation, and that the Village Bonus does not fall within the flat-sum bonus rule announced in
4 *Alvarado v. Dart Container Corporation of California*, 4 Cal. 5th 542 (2018). Defendants also contend
5 that the written meal and rest period policies fully complied with California law and that Defendants'
6 electronic timekeeping system identifies meal period exceptions and allows the teammates to report
7 involuntary meal period exceptions, such as late, short or missed meal periods which ensures the
8 teammates receive premium pay. Finally, Defendants argue that while hard-copy wage statements
9 omitted some detail, the electronic paystubs were fully compliant. Defendants could also argue that the
10 recent Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened
11 Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims.
12 Defendants also argue that they acted in good faith and without willfulness, which if accepted would
13 negate the claims for waiting time penalties. In fact, under the current state of the law, it is questionable
14 whether these penalties could be awarded for the meal and rest period violations. If successful,
15 Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs
16 believes that these defenses could be overcome, Defendants maintain these defenses have merit and
17 therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

20 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
21 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
22 Associates were misclassified as exempt. In addition to the uncertainties raised by
23 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
24 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.

25 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007 U.S.
26 Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
27 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
28 approval.") As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

11 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
12 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
13 Defendants argued that the individual experience of each individual varied with respect to the claims.
14 Defendants could also contest class certification by arguing injury and good faith were case by case
15 determinations that precluded class certification. Plaintiffs are aware of cases where class certification
16 of similar claims was denied. See e.g. *Ferguson v. Randy's Trucking, Inc.*, 2016 U.S. Dist. LEXIS
17 32719 (E.D. Cal. 2016); *Santos v. TWC Admin. LLC*, 2014 U.S. Dist. LEXIS 199358 (C.D. Cal. 2014).
18 Finally, even if class certification was successful, as demonstrated by the California Supreme Court
19 decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to
20 overcome for a class wide recovery even where the class has been certified. While other cases have
21 approved class certification in wage and hour claims, class certification in this action would have been
22 hotly disputed and was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

23 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
24 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
25 substantial defenses both to liability and to class certification. Currently, the maximum and average
26 class member allocation is estimated to be \$1,499.82 and \$290.55, respectively. Cooley Decl. ¶ 8.
27 Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal, the
28 proposed Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl.
at ¶8(e).

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

As demonstrated by the decision in *Duran*, the complexities and duration of further litigation

1 cannot be overstated. There is little doubt that Defendants would post a bond and appeal in the event
2 of an adverse judgment. A post-judgment appeal by Defendants would have required many more years
3 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
4 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
5 an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

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

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

20 In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and
21 likely duration of further litigation likewise favors the settlement. Regardless of how this
22 Court might have ruled on the merits of the legal issues, the losing party likely would
23 have appealed, and the parties would have faced the expense and uncertainty of litigating
24 an appeal. "The expense and possible duration of the litigation should be 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.

25 *Id.* at *12.

26 7. The Amount Offered in Settlement

27 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
28 to Plaintiffs' claims. As detailed during preliminary approval, the Gross Settlement Amount compares

1 favorably to the value of the claims.

2 The calculations to compensate for the amount due to the Settlement Class Members at the time
3 this Settlement was negotiated were calculated by Plaintiffs' expert, DM&A, in advance of mediation.
4 For the individuals whose claims are at issue in this Action, Plaintiffs analyzed the data for class
5 members and determined the potential maximum damages for the viable class claims. Plaintiffs
6 determined that the maximum potential overtime damages were \$20.5 million, the and the meal and rest
7 period damages were estimated to be \$8.5 million, and the wage statement penalties were calculated to
8 be \$4.2 million. In total, these claims have a maximum value of \$33.2 million. Blumenthal Decl. ¶8(d).

9 Consequently, the settlement of \$8,000,000 represents approximately 24% of the value of the
10 potential maximum damages and penalties at issue in this case at the time this Settlement was
11 negotiated, assuming these amounts could all be proven as collectable at trial. Given the amount of the
12 settlement as compared to the potential value of all claims includes interest and penalties in this case,
13 the settlement is most certainly fair and reasonable.⁴ Blumenthal Decl. ¶8(d). Clearly the goal of this
14 litigation to obtain redress for the class has been met by this settlement. Given the amount of the
15 Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the
16 settlement is fair and reasonable, and is therefore entitled to final approval.

17 **V. CONCLUSION**

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

21 Dated: January 15, 2020

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: /s/ Norman Blumenthal

Norman Blumenthal

Attorneys for Plaintiffs

25 ⁴ See *Glass*, at *13 (approving settlement which "constituted 25 to 35% of the amount of
26 damages"); *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
27 (approving settlement which represented "roughly one-sixth of the potential recovery");
28 *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015)
(granting final approval where "the proposed Total Settlement Amount represents approximately 10%
of what class might have been awarded had they succeeded at trial.")