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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN MATEO**

16 ADRIAN OCHOA-ANDRADE, an
17 individual, on behalf of himself, and on
18 behalf of all persons similarly situated,

19 Plaintiffs,

20 vs.

21 SEE'S CANDIES, INC; a California
22 Corporation; and DOES 1 through 50,
23 inclusive,

24 Defendants.

Case No. 22-CIV-02481

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

Hearing Date: November 28, 2023
Hearing Time: 2:00 p.m.

*[Hearing scheduled by Order dated August 14, 2023
at paragraph 12]*

Judge: Hon. Marie S. Weiner
Dept.: 2

Action Filed: June 16, 2022
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 August 14, 2023 (“Preliminary Approval
6 Order”), 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 Adrian Ochoa-Andrade (“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 Judgment, submitted herewith. The settlement represents an excellent result for
11 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 Defendant See's Candies, Inc. (“Defendant”) reached a full and final settlement
19 of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court.
20 As consideration for this Settlement, the Gross Settlement Amount is Nine Hundred Thousand Dollars
21 (\$900,000). (Agreement at ¶ 1.23.) Under the Settlement, the Gross Settlement Amount consists of the
22 following elements: (1) payment of the Individual Class Payments to the Participating Class Members;
23 (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration
24

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who were employed by Defendant See's Candies Inc. in
27 California and classified as non-exempt manufacturing employees at any time during from November
28 22, 2020 through July 26, 2023, plus the claims of Plaintiff Adrian Ochoa-Andrade and Nehusita
Osamu for the period of June 16, 2018 through July 26, 2023.” (Preliminary Approval Order, ¶ 5.)

1 Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5) the PAGA
2 Penalties payments to the LWDA and to Aggrieved Employees). (Agreement at ¶ 1.23.) Blumenthal
3 Decl. ¶3(a). The following is a table of the key financial terms of the Settlement and the proposed
4 deductions:

5 **\$900,000 (Gross Settlement Amount)**

- 6 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 7 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 8 - \$300,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 9 - \$20,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 10 - \$25,000 (Administration Expenses Payment - not to exceed amount)

11 **\$525,000 (Net Settlement Amount)**

12 For the 1,431 Class Members who collectively worked 58,875 Workweeks, the Gross Settlement
13 Amount provides an average value of \$628 per Class Member and \$15 per Workweek and after
14 deductions the Net Settlement Amount provides an average recovery of \$366.88 per Class Member and
15 a recovery of \$8.91 per Workweek.

16 The Gross Settlement Amount does not include Defendant's share of payroll taxes on the
17 portion of the Individual Class Payments allocated to wages. (Agreement at ¶ 3.1.) The Gross
18 Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Blumenthal
19 Decl. ¶3(b).

20 If no objection to the settlement is made, within 30 days of entry of the order granting final
21 approval, Defendant shall deposit the Gross Settlement Amount with the Administrator. (Agreement
22 at ¶ 4.3.) If any objection to the settlement is made but no appeal is filed Defendant shall fully fund the
23 Gross Settlement Amount within 30 days of the running of the appeal period. If an appeal is filed,
24 Defendant shall fully fund the Gross Settlement Amount within 30 days of the date the judgment is final
25 and no longer subject to appeal. The distribution of Individual Class Payments to Participating Class
26 Members along with the other Court-approved distributions shall be made by the Administrator within
27 fourteen (14) days of the Effective Date. (Agreement at ¶ 5.1.) Blumenthal Decl. ¶3(c).

28 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the

1 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
2 Members as their Individual Class Payments. (Agreement at ¶¶ 1.29 and 3.2.) From the Net Settlement
3 Amount, the Individual Class Payment for each Participating Class Member will be calculated by (a)
4 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating
5 Class Members during the Class Period and (b) multiplying the result by each Participating Class
6 Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks were based on Defendant's records,
7 however, Class Members had the right to challenge the number of Workweeks. Blumenthal Decl. ¶
8 3(d).

9 Class Members were sent the Court approved Class Notice using the procedure approved by the
10 Court by mailing the notice packets after updating class members' addresses using the National Change
11 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to
12 any forwarding address provided or updated address located. (Agreement at ¶ 8.5, Ex. A.) Class
13 Members were provided with the opportunity to exclude themselves or "opt out" if they did not want
14 to participate in the settlement. (Agreement at ¶ 8.5(c), Ex. A.) The Class Notice also advised Class
15 Members of their right to object to the Settlement and/or dispute their workweeks. (Agreement at ¶¶
16 8.6 and 8.7, Ex. A.) Blumenthal Decl. ¶ 3(e).

17 A Participating Class Member must cash his or her Individual Class Payment check within 180
18 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
19 be voided and any funds from such uncashed checks will be paid to the California Controller's
20 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
21 subject to the requirements of California Code of Civil Procedure section 384, subd. (b). (Agreement
22 at ¶ 5.4.) Blumenthal Decl. ¶3(f).

23 Apex Class Action Administration was appointed as the Settlement Administrator. (Agreement
24 at ¶ 1.2; Preliminary Approval Order at ¶ 9.) From the Gross Settlement Amount, the Administrator
25 shall be paid for the expenses of administering the Settlement in an amount not to exceed \$25,000.
26 (Agreement at ¶ 3.2(c); Preliminary Approval Order at ¶ 9.) As set forth in the Declaration of Madely
27 Nava ("Nava Decl.") at ¶18, the Administration Expenses Payment, including fees and costs incurred
28

1 to-date, as well as anticipated fees and costs for completion of the settlement administration, are
2 \$20,446.64. Blumenthal Decl. ¶3(g).

3 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
4 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
5 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
6 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(b).) Subject
7 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as
8 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) In support of this separate motion
9 for attorneys' fees, reimbursement of expenses and service award, Class Counsel is providing
10 evidentiary support for these requests, including lodestar. Blumenthal Decl. ¶3(h).

11 Subject to Court approval, Twenty Thousand Dollars (\$20,000) will be paid from the Gross
12 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
13 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
14 the PAGA Payment shall be allocated as follows: 75% (\$15,000) shall be allocated to the Labor
15 Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$5,000)
16 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
17 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
18 accompanying proof of service, the LWDA has been served with this motion and the Agreement.
19 Blumenthal Decl. ¶3(i).

20 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
21 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
22 is "fair, adequate and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
23 at Nine Hundred Thousand Dollars (\$900,000) is an excellent result for the Class. This result is
24 particularly favorable in light of the fact that liability was far from certain in light of the defenses
25 asserted by Defendant. Given the complexities of this case and the defenses asserted, along with the
26 uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and
27 should be finally approved. Blumenthal Decl. ¶3(j).

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

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

8 Courts decide whether the proposed settlement falls within the range of reasonable settlements,
9 taking into account that settlements are compromises between the parties reflecting subjective,
10 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See Wershba v.*
11 *Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be judged
12 against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed
13 at trial.") In *Wershba*, appellants argued that the settlement was too low given the "clear" liability,
14 however, the Court rejected this argument and held that "the merits of the underlying class claims are
15 not a basis for upsetting the settlement of a class action." *Id.*; *see also 7-Eleven, supra*, at 1150.

16 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
17 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
18 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
19 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
20 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
21 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*,
22 48 Cal. App. 4th 1794, 1801 (1996); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128
23 (2008). Here, the facts and circumstances compel the conclusion that the presumption applies and the
24 proposed settlement satisfies that standard for approval.

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

26 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
27 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
28 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether

1 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The
2 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
3 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
4 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
5 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
6 experience and views of counsel, the presence of a governmental participant, and the reaction of the
7 class members to the proposed settlement.’” *Kullar*, 168 Cal. App. at 128 (internal citations omitted);
8 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 an arms-length mediation and contentious negotiations presided over by
26 David Rotman, Esq., a respected and experienced mediator of wage and hour class actions. The details
27 of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(h).

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

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

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

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

24 In June and July of 2023, the Agreement and exhibits thereto were drafted, finalized and
25 executed, and presented to this Court on for preliminary approval. The Court granted preliminary
26 approval, and the Preliminary Approval Order was entered by this Court on August 14, 2023.
27 Blumenthal Decl. ¶7(c).

1 3. Class Counsel is Experienced in Similar Litigation

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

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

13 The reaction of the Class unequivocally supports approval of the Settlement. On August 31,
14 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
15 each class member with the terms of the Settlement, including notice of the claims at issue and the
16 financial terms of the settlement, including the attorneys' fees, costs, and service awards that were being
17 sought, how individual settlement awards would be calculated, and the specific, estimated payment
18 amount to that individual. See Nava Decl. ¶7, Exh. A. In disseminating the notices, the Administrator
19 followed the notice procedures authorized by the Court in its Preliminary Approval Order.
20 Significantly, there have been no objections and no opt-outs. Nava Decl. ¶¶ 11, 12. As a result, the
21 entire Class will participate in the Settlement and will be sent a settlement check, representing 100%
22 of the Class. See Nava Decl. at ¶¶ 13-15. Blumenthal Decl. ¶4.

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

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, were not paid used sick
8 pay at the correct rate of pay, and were not provided accurate itemized wage statements. The Action
9 seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief
10 allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing claims.
11 Blumenthal Decl. ¶5.

12 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
13 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
14 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Plaintiff
15 expects that Defendant will argue that its practices complied with all applicable wage and hour laws.
16 Plaintiff expects that Defendant will argue that all Class Members' work time was properly recorded
17 and compensated and that there was no unpaid wages from rounding practices. Plaintiff expects that
18 Defendant will argue that its meal and rest period policies and practices provide Class Members with
19 meal and rest periods that satisfy the requirements of California law. Plaintiff also expects that
20 Defendant will argue that it paid missed meal period premiums, which could evidence compliance with
21 the law. Moreover, the fact that the Class Members work pursuant to a collective bargaining agreement
22 that meets the requirements of Labor Code §514, precludes Plaintiff's and those Class Members' claims
23 for alleged unpaid overtime. As to expense reimbursement, Plaintiff expects that Defendant will argue
24 that it did not fail to provide reimbursement for necessary business expenses because, among other
25 things, and employees are not required to use their personal cell phones to perform their work. Plaintiff
26 expects that Defendant will argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004
27 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's*
28

1 *Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), seriously weaken Plaintiff's claims in terms of liability
2 and value, and preclude his claims from proceeding on a class or representative basis. Plaintiff also
3 expects that Defendant will argue that a good-faith dispute and absence of willfulness would negate the
4 claims for waiting time penalties and failure to provide accurate itemized wage statements. If
5 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
6 While Plaintiff believes that these defenses could be overcome, Plaintiff expects that Defendant will
7 argue that such defenses have merit and therefore present a serious risk to recovery by the Class.
8 Blumenthal Decl. ¶8(a).

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

11 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
12 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
13 Associates were misclassified as exempt. [...]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.

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

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

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 Action was not settled, Plaintiff would be unable
26 to obtain class certification and thereby not recover on behalf of any employees other than himself.
27 Plaintiff expects that Defendant will argue that the individual experience of each putative class member
28 varied with respect to the claims, which would preclude the claims from proceeding on a class or

1 representative basis. For instance, Plaintiff's meal and rest period claims would require individualized
2 inquiries into whether each employee took a compliant meal or rest period on a given shift and, if not,
3 why. Plaintiff is aware of other cases where class certification of similar claims was denied. *See e.g.*
4 *Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification of rest break claims).
5 Finally, even if class certification was successful, as demonstrated by the California Supreme Court
6 decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014), there are significant hurdles
7 to overcome for a class-wide recovery even where a class has been certified. While other cases have
8 approved class certification of wage and hour claims, class certification in this Action would have been
9 hotly disputed and was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

10 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
11 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
12 substantial defenses. Currently, the maximum and average Class Member net recoveries are \$1,268.23
13 and \$370.05, respectively. *See* Nava Decl. ¶15. Given the complexities of this case, the defenses, along
14 with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate,
15 and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

23 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant
24 through possible appeals which could take at least another two or three years. Class Counsel also have
25 taken into account the uncertain outcome, the risk of litigation, especially in complex actions such as
26 this one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and
27 alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions and appeals would
28

1 have been inevitable. Costs would have mounted and recovery would have been delayed if not denied,
2 thereby reducing the benefits of an ultimate victory. Plaintiff and Class Counsel believe that the
3 Settlement confers substantial benefits upon the Class. Based upon their evaluation, Plaintiff and Class
4 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
5 Class. Blumenthal Decl. ¶8(c).

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

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

18 *Id.* at *12.

19 7. The Amount Offered in Settlement

20 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
21 to Plaintiff's claims. As set forth in the Declaration of Kyle Nordrehaug filed in support of preliminary
22 approval which discussed the value of the class claims in detail, the Gross Settlement Amount compares
23 favorably to the value of the claims. For the 1,431 Class Members who collectively worked 58,875
24 Workweeks, the Gross Settlement Amount provides an average value of \$628 per Class Member and
25 \$15 per Workweek and after deductions the Net Settlement Amount provides an average recovery of
26 \$366.87 per Class Member and a recovery of \$8.91 per Workweek. Blumenthal Decl. ¶8(d).

27 The calculations to compensate for the amount due to the Class Members at the time this
28 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting Group, in advance
of mediation. As to the Class whose claims are at issue in this Action, Plaintiff used an expert to
analyze the data and determine the potential unpaid wages for the employees. For the Class, the
maximum value of the claim for unpaid wages due to rounding was \$305,447, the maximum potential

1 damages for alleged meal period violations were estimated to be \$2,630,327 based upon a potential
2 45% violation rate and after deducting the premiums paid, the maximum potential damages for alleged
3 rest period violations were estimated to be \$2,820,129 based upon the same 45% violation rate, and the
4 maximum potential damages for the alleged failure to reimburse business expenses were calculated to
5 be \$69,008. In total, the damages for the Class were calculated to have a maximum potential total value
6 of \$5,824,911. In addition, Plaintiff calculated that the maximum value of the potential waiting time
7 penalties were \$5,568,327, and the maximum value of the potential wage statement penalties were
8 \$4,086,400.³ Blumenthal Decl. ¶8(d).

9 Consequently, the Gross Settlement Amount represents more than 15% of Plaintiff's
10 calculation of the potential maximum damages at issue for the Class in this case, assuming these
11 amounts could all be proven in full at trial.⁴ The above maximum calculations should then be adjusted
12 in consideration for both the risk of class certification and the risk of establishing class-wide liability
13 on all claims. Defendant disputes Plaintiff's estimates and believes the amount Plaintiff can recover
14 for the Class, if anything at all, is actually much lower. Given the amount of the Settlement as
15 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁵

17 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
19 asserted by Defendant, including but not limited to, a good-faith dispute defense as to whether any
20 premium wages for meal or rest periods or other wages were owed given Defendant's position that
21 Plaintiff and Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal.
App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have
a good faith dispute as to whether and when the wages were due.").

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

24 ⁵ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 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 settlement worth "somewhere between 9% and 18%" of full verdict value).

1 Blumenthal Decl. ¶8(d). Clearly, the goal of this litigation has been met.

2 **V. CONCLUSION**

3 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
4 established in California law and should therefore be finally approved as fair, reasonable and adequate
5 and requests entry of the Final Approval Order and Judgment, submitted herewith.

6 Respectfully submitted,

7 Dated: November 1, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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9 By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug
Attorney for Plaintiff
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