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**SUPERIOR COURT OF STATE OF CALIFORNIA**  
**COUNTY OF SAN DIEGO**

SHEILA LOPEZ, GEORGINA BAUTISTA,  
and FE ADRIANO, Individually, and on  
behalf of Plaintiffs and the Proposed FLSA  
Collective and Class,

Plaintiffs,

v.

WILLISTON FINANCIAL GROUP, LLC, a  
Delaware Limited Liability Company; WFG  
NATIONAL TITLE INSURANCE  
COMPANY, a Florida Corporation; MY  
HOME, A WILLISTON FINANCIAL  
GROUP COMPANY, LLC, a Delaware  
Limited Liability Company; WFG  
NATIONAL TITLE COMPANY, a  
California Corporation; WFG NATIONAL  
TITLE COMPANY OF WASHINGTON, a  
business entity unknown; WFG NATIONAL

Case No.: 24CU015835C

**NOTICE OF MOTION AND MOTION  
FOR ORDER GRANTING FINAL  
APPROVAL OF CLASS SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Hearing Date: May 2, 2025

Time: 10:15 a.m.

Dept.: C-66

Judge: Hon. Wendy M. Behan

Complaint Filed: October 8, 2024

Trial Date: None

1 TITLE COMPANY OF TEXAS, LLC, a  
2 business entity unknown; WFG LENDER  
3 SERVICES, LLC, a business entity unknown;  
4 and DOES 1-10, inclusive,  
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This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declarations of Eric K. Yaeckel, Paolo C. Meireles, and Benjamin Galdston filed herewith, and any and all oral argument on the motion and/or evidence as may be offered at the hearing in this matter.

Dated: April 10, 2025

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Collective and Class*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Sheila Lopez (“Lopez”), Georgina Bautista (“Bautista”), and Fe Adriano (“Adriano”)  
4 (collectively “Plaintiffs”), now seek final approval of a wage and hour class action settlement pursuant to  
5 California law on behalf of non-exempt employees who worked in California for Defendants Williston  
6 Financial Group, LLC; WFG National Title Insurance Company; My Home, a Williston Financial Group  
7 Company; WFG National Title Insurance Company of California; WFG National Title Insurance Company  
8 of Clark County, Washington; WFG National Title of Washington, LLC; WFG National Title Company of  
9 Texas, LLC; WFG Lender Services, LLC; and DOES 1-10, inclusive (collectively “Defendants” and,  
10 together with Plaintiffs, the “Parties”). In addition, Plaintiffs seek approval of an overtime collective action  
11 settlement on behalf of non-exempt Escrow Officers who worked for Defendants at any location in the  
12 United States for their claims under the federal Fair Labor Standards Act (“FLSA”). The \$1 million Gross  
13 Fund represents an excellent outcome for the 887 Class Members, Collective Members, and PAGA Group  
14 Members and satisfies all applicable criteria for final approval. The Court should further approve the  
15 FLSA Settlement because it is a fair and reasonable resolution of a bona fide dispute reached after extensive  
16 arms-length negotiations involving experienced counsel for all parties and with the benefit of comprehensive  
17 information necessary to assess the strengths and risks of the parties’ respective claims and defenses.  
18

19  
20 Accordingly, Plaintiffs respectfully request that the Court (1) grant final approval of the Stipulation  
21 of Class, Collective, and Representative Action Settlement (“Settlement Agreement”), attached as **Exhibit**  
22 **A** to the Declaration of Eric K. Yaeckel in Support of Plaintiffs’ Motion for Order Granting Final Approval  
23  
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1 of Class Settlement (“Yaeckel Decl.”).<sup>1</sup>.

## 2 **II. FACTUAL AND PROCEDURAL BACKGROUND**

### 3 **A. Summary of the Claims**

4 Pursuant to the Settlement Agreement and for purposes of settlement only, the Parties agreed to  
5 file Plaintiffs’ Collective, Class, and Representative Action Complaint (the “Complaint”) in this Court.  
6 ( Yaeckel Decl. ¶ 4) The Complaint asserts eight causes of action, including all claims to be resolved by  
7 the Settlement Agreement. ( *Id.*) The First through Seventh Causes of Action (seven claims) arise out of  
8 California law: (1) Failure to Provide Meal Breaks and Rest Periods, California Labor Code §§ 218.5,  
9 226.7, 512, 1198, and IWC Order No. 10-2001; (2) Failure to Provide Minimum Wage and Overtime  
10 Wages, California Labor Code §§ 510, 1194, 1197, 1197.1, and Industrial Welfare Commission (“IWC”)   
11 Order No. 10-2001; (3) Failure to Provide Itemized Wage Statements, California Labor Code § 226; (4)  
12 Failure to Reimburse Business Expenses, California Labor Code § 2802; (5) Failure to Pay Earned Wages  
13 Timely and upon Discharge, California Labor Code §§ 201-204, 210; (6) Unlawful and/or Unfair Business  
14 Practices, California Business & Professions Code §§ 17200, *et seq.* (“Unfair Competition Law”); and (7)  
15 Civil Penalties Under the Private Attorneys General Act (“PAGA”), California Labor Code §§ 2698, *et*  
16 *seq. Id.* The Eight Cause of Action arises out of federal law for Failure to Pay Overtime Wages in violation  
17 of the FLSA, 29 U.S.C. §§ 201 *et seq.* (*Id.*)

### 20 **B. Overview of Investigation and Litigation**

21 Before initiating this action, Plaintiffs’ Counsel conducted a thorough investigation into the merits  
22 of the potential claims and defenses. (Yaeckel Decl. ¶¶ 3, 5-6.) Plaintiffs’ Counsel focused their  
23

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24  
25  
26 <sup>1</sup> All exhibits referenced in this Notice of Motion and Motion are Exhibits to the Yaeckel Declaration  
27 unless indicated otherwise. All capitalized terms have the meaning as defined in the Settlement Agreement  
28 unless indicated otherwise.

1 investigation and legal research on the underlying merits of Class Members' claims, the damages to which  
2 they were entitled, and the propriety of class certification. (*Id.*) As part of their investigation, Plaintiffs'  
3 Counsel conducted multiple in-depth interviews with Named Plaintiffs Lopez, Bautista, and Adriano, and  
4 interviewed other witnesses to establish that other Class Members were also impacted by Defendants'  
5 policy and/or practice of failing to pay overtime wages and failing to reimburse necessary business  
6 expenses, and to assess the extent of their damages. (*Id.*) Additionally, Plaintiffs' Counsel conducted in-  
7 depth background research on Defendants and their business and employment practices, including  
8 obtaining and reviewing documents from Plaintiffs to assess the merits of the claims and defenses.  
9

### 10 **C. Settlement Negotiations**

11 On March 24, 2022, Plaintiffs' Counsel sent a demand letter to Defendants to explore a potential  
12 pre-litigation global resolution of this matter. (Meireles Decl. ¶ 13.) Shortly thereafter, the Parties agreed  
13 to participate in mediation to explore settlement of the claims of the Class, Collective, and PAGA Group  
14 Members. (*Id.*) As part of the agreement, the Parties entered into a tolling agreement on behalf of all Class,  
15 Collective, and PAGA Group Members and exchanged data and documents sufficient for Plaintiffs'  
16 Counsel to conduct damages calculations for the Class, Collective, and PAGA Group. (*Id.*) Defendants  
17 produced employee handbooks, meal and rest periods policies, timekeeping policies, hours and scheduling  
18 policies, telework/cellphone policies, and data regarding class size and number of pay periods/workweeks  
19 needed calculate an estimate of the maximum theoretical damages for Class, Collective, and PAGA Group  
20 Members. (*Id.*)  
21

22 On January 24, 2023, the Parties participated in a full-day mediation with David Rotman, a well-  
23 known mediator with substantial experience in wage and hour class actions. (*Id.* ¶ 15; *see also*  
24 <https://davidrotman.net/html/mediators-david-rotman.html>) Although the dispute did not resolve on that  
25 day, the Parties continued to discuss settlement with the mediator's assistance. (*Id.*)  
26  
27  
28

1 On October 19, 2023, the Parties participated in another full-day mediation, this time with Lou  
2 Marlin, another well-known mediator with substantial experience in wage and hour class actions. (*Id.* ¶  
3 16; *see also* <https://marlinmediation.com/>) Once again, the parties were unable to resolve the claims. (*Id.*)  
4 However, they continued to discuss resolution over the course of the ensuing, several months. (*Id.*)

5 On November 13, 2023, pursuant to PAGA, Plaintiffs’ Counsel filed a PAGA Notice with the  
6 California Labor & Workforce Development Agency (“LWDA”), notifying the LWDA of Plaintiffs’  
7 intent to seek PAGA penalties for Defendants’ alleged labor violations, including failure to pay all  
8 wages (including overtime, straight-time, and minimum wages), failure to provide meal periods and  
9 premium payments in lieu thereof, failure to provide rest periods and premium payments in lieu thereof,  
10 failure to timely pay wages, failure to timely pay wages upon termination, failure to provide compliant  
11 wage statements, and failure to maintain accurate payroll records. (*Id.* ¶ 17.) To date, Plaintiffs have not  
12 received any response from the LWDA. (Yaeckel Decl. ¶ 38, Meireles Decl. ¶ 17.)  
13

14 On May 21, 2024, the parties finally reached an agreement on the material terms of a settlement.  
15 (Yaeckel Decl. ¶ 9.) During the following months, the Parties negotiated the remaining terms of  
16 settlement and formally memorialized their agreement in the Settlement Agreement. (*Id.*) At all times,  
17 settlement negotiations were conducted vigorously and, on an arm’s-length basis. (*Id.*)  
18

19 Plaintiffs provided a copy of the Settlement Agreement to the LWDA concurrent with the filing  
20 of their Motion for Order Provisionally Certifying Settlement Class and Approving Class Settlement.  
21

#### 22 **D. Settlement Approval and Administration**

23 On December 20, 2024, this Court granted preliminary approval of the Settlement Agreement and  
24 provisional certification of the Settlement Class and Collective. Pursuant to the Court’s order on *Ex Part*  
25 Application for Order Authorizing Substitution of Corrected Notice, on February 11, 2025, CPT Group  
26 (“CPT”), the appointed Settlement Administrator, mailed Notice Packets to 637 Class Members. (Decl.  
27  
28

1 of Kaylie O'Connor of CPT ("O'Connor Decl.") ¶ 6.) CPT received 22 Notice Packets as undeliverable.  
2 (*Id.* ¶ 7.) Of these, CPT was able to locate 18 more current addresses through skip tracing, two of which  
3 were subsequently returned as undeliverable. (CPT Decl. ¶ 8.) CPT was ultimately unable to locate 4 Class  
4 Member whose Notice Packet was returned as undeliverable. (*Id.* ¶ 8.) The last date on which Class  
5 Members could opt out or object to the settlement was March 13, 2025. (*Id.* ¶ 6.) Only 1 Class Member  
6 has opted out of the settlement, and no objections have been filed. (CPT Decl. ¶¶ 9-10.)  
7

### 8 **III. SUMMARY OF THE SETTLEMENT TERMS**

#### 9 **A. Settlement Fund**

10 The Settlement Agreement creates a common fund of \$1,000,000.00 (One Million Dollars) to be  
11 paid by Defendants in full resolution of all Released Claims and the Action, which includes all Attorneys'  
12 Fees and Costs, Enhancement Payments, PAGA Fund, Net Settlement Fund to be paid to Settlement Class  
13 Members and Settlement Collective Members, and Settlement Administration Costs ("Gross Fund"). (Ex.  
14 A (Settlement Agreement) ¶ 6(r).) Defendants will pay employer's share of taxes on the wages portion of  
15 Individual Settlement Shares separately and in addition to the Gross Fund. (*Id.*)  
16

#### 17 **B. Eligible Employees**

18 Individuals who are entitled to receive Individual Settlement Payments from the settlement fund  
19 include "Class Members," "Collective Members," and "PAGA Group Members."

20 "Class Members" or the "Class" include "all persons who have been employed by Defendants as  
21 non-exempt *classified* Escrow Officers in California at any time during the Class Period. (Ex. A  
22 (Settlement Agreement) § 14(e).) The "Class Period" is the time period from April 19, 2018 through  
23 March 1, 2024. (*Id.* § 14(f).)  
24

25 "Collective Members" or the "Collective" means "all persons who have been employed by  
26 Defendants as non-exempt classified Escrow Officers anywhere in the United States during the FLSA  
27  
28

Period.” (Ex. A (Settlement Agreement) § 14(i).) The “FLSA Period” is the time period from April 19, 2019, through March 1, 2024. (*Id.* § 14(p).)

“PAGA Group Members” include “all persons who have been employed by Defendants as nonexempt classified Escrow Officers in California at any time during the PAGA Period.” (Ex. A (Settlement Agreement) § 14(y).) The “PAGA Period” is the time period from April 3, 2022 through March 1, 2024. (*Id.* § 14(z).)

### **C. Allocation Formula**

The allocation formula set forth in the Settlement Agreement compensates each Class and Collective Member using a pro-rata formula based on the number of workweeks each Class Member and Collective Member worked during the Class or FLSA Period, respectively. (Ex. A (Settlement Agreement) § 22.) Each workweek worked during the Class Period shall be assigned two points. (*Id.* § 22(a).) Each workweek worked during the FLSA Period shall be assigned one point. (*Id.*) The pro rata portion shall be determined by dividing the total number of points into the Net Settlement Fund to arrive at a value per point and multiplying each Settlement Class and/or Collective Member’s total points by the point value. (*Id.*) For the avoidance of doubt, an employee who qualifies as both a Settlement Collective Member and a Settlement Class Member may receive three total points for the same workweek. (*Id.*)

The allocation formula set forth in the Settlement Agreement compensates PAGA Group Members separately by dividing the total number of workweeks worked during the PAGA Period into the PAGA Settlement Fund to arrive at a value per workweek for each eligible PAGA Group Member. (Ex. A (Settlement Agreement) § 22(b).) The value per workweek shall be multiplied by the number of workweeks worked by each PAGA Group Member during the PAGA Period. (*Id.*) Partial weeks will be counted as full workweeks. (*Id.*)

The Settlement Agreement further provides that, in the event of any dispute over a Class Members’

1 recorded hours, the Parties will meet and confer to resolve the dispute. (Ex. A (Settlement Agreement) §  
2 30.) If the Parties cannot resolve it, the Settlement Administrator shall decide the dispute based on  
3 objective evidence. (*Id.*)

#### 4 **D. Settlement Procedure**

5 Settlement Class Members and PAGA Group Members shall not be required to submit a claim in  
6 order to receive a share of the Net Settlement Fund and PAGA Settlement Fund, respectively, and no  
7 portion of the Gross Fund allocated to Class Members and PAGA Group Members shall revert to  
8 Defendants or result in an unpaid residue. (Ex. A (Settlement Agreement) § 32.) All such uncashed funds  
9 associated with Settlement Class Members and PAGA Group Members' checks will escheat to the State  
10 of California's Controller, to be held in the name of each expired check payee, pursuant to applicable  
11 unclaimed property laws. (*Id.*)

12  
13 Collective Members will only release FLSA claims by negotiating their settlement checks before  
14 the checks expire. (Ex. A (Settlement Agreement) § 29.) Portions of the Net Settlement Fund attributed to  
15 Collective Members, but not cashed by Collective Members within this time frame, shall revert to  
16 Defendants, as no FLSA release will be effectuated as to these individuals. (*Id.*)

#### 17 **E. Tax Characterization**

18  
19 Each Individual Settlement Share will be allocated as follows: 25% to wages and 75% to penalties  
20 and interest. (Ex. A (Settlement Agreement) § 38.) The portion allocated to wages will be reported on an  
21 IRS Form W-2 and the portions allocated to interest and penalties will be reported on an IRS Form-1099  
22 by the Settlement Administrator. (*Id.*) The Settlement Administrator will withhold the employee's share  
23 of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue  
24 checks to Settlement Class Members and Settlement Collective Members for their Individual Settlement  
25 Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). (*Id.*)  
26  
27  
28

Any payment for an Individual PAGA Payment will be allocated as penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary. (*Id.*) Defendants will pay employer's share of taxes and contributions on the wages portion of any distribution from the Net Settlement Fund separately and in addition to the Gross Fund. (*Id.*)

**F. Release**

Upon the Effective Date and distribution of Individual Settlement Payments, Plaintiffs and all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members), will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims during the Class Period, except as to the right to enforce the terms and conditions of this settlement. (Ex. A (Settlement Agreement) § 43.)

Additionally, upon the Effective Date and distribution of Individual Settlement Payments, Plaintiffs and each Settlement Collective Member who timely participates in the settlement by timely cashing, depositing, or otherwise negotiating their Individual Settlement Payment will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released FLSA Claims during the FLSA Period, except as to the right to enforce the terms and conditions of this settlement. (*Id.*) Finally, upon the Effective Date and distribution of Individual PAGA Payments, Plaintiffs and all PAGA Group Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims during the PAGA Period, except as to the right to enforce the terms and conditions of this settlement. (*Id.*)

"Released Class Claims," "Released FLSA Claims," and "Released PAGA Claims" are defined in the Settlement Agreement and are limited to claims that were or could have been pled in the Operative

1 Complaint, arising during the Class, Collective, and/or PAGA Period, respectively. (Ex. A (Settlement  
2 Agreement) §§ 14(ii)-(jj).)

3 **G. PAGA Allocation to LWDA**

4 Pending approval by the Court, the Parties agree that the amount of fifty thousand dollars (\$50,000)  
5 from the Gross Fund will be allocated toward penalties under the Private Attorneys General Act, California  
6 Labor Code Section 2698, *et seq.* (“PAGA Fund”), of which sixty-five percent (65%), or \$32,500, will be  
7 paid to the LWDA (i.e., the LWDA Payment) and thirty-five percent (35%) or, \$17,500 (“PAGA  
8 Settlement Fund”), will be distributed to PAGA Group Members. (Ex. A (Settlement Agreement) § 21.)  
9 The amount allocated to the PAGA claims (\$50,000) represents 5% of the Gross Fund.  
10

11 **H. Attorneys’ Fees & Costs; Enhancement Payment**

12 At the Fairness Hearing, Plaintiffs’ Counsel will apply for up to 35% of the Gross Fund (up to  
13 \$350,000.00) as attorneys’ fees. (Yaeckel Decl. ¶ 17; Ex. A (Settlement Agreement) § 18.) Plaintiffs’  
14 Counsel’s retainers with Named Plaintiffs provide that Plaintiffs’ Counsel may apply for up to thirty-five  
15 percent of any class settlement as attorneys’ fees. (*Id.*) The requested percentage of fees are in line with  
16 market rates, *id.*, and are appropriate under the percentage-of-recovery method. (*see, e.g., Laffitte v. Robert*  
17 *Half Int’l Inc.* (2016) 1 Cal.5th 480, 488-506.) Plaintiffs’ Counsel will further address the justifications  
18 for their fee request in their Notice of Motion and Motion for Attorneys’ Fees and Costs and Enhancement  
19 Payment, filed concurrently herewith. (Yaeckel Decl. ¶ 18.) Additionally, Plaintiffs’ Counsel will seek  
20 reimbursement from the Gross Fund of their reasonable and actual litigation costs and expenses. (*Id.* ¶ 19;  
21 Ex. A (Settlement Agreement) § 18.) Plaintiffs have reviewed and approved in writing Plaintiffs’  
22 Counsel’s fee and cost award application and the fee-splitting agreement as amongst the three law firms.  
23 (*Id.*)  
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1 Plaintiffs will also move for Court approval of an Enhancement Payment of \$5,000.00 for each  
2 Named Plaintiff in recognition of (1) the services they rendered and risk they undertook on behalf of the  
3 Class, Collective, and PAGA Group, and (2) the general release they are agreeing to in the Settlement  
4 Agreement, which is broader than those of other Class Members. (Yaeckel Decl. ¶ 21; Ex. A (Settlement  
5 Agreement) § 19.) This modest enhancement is reasonable in view of the time and effort spent, and the  
6 risks undertaken, by the Named Plaintiffs. Plaintiffs' Counsel will further address the justifications for  
7 their request for an Enhancement Payment award in their Notice of Motion and Motion for Attorneys'  
8 Fees and Costs and Enhancement Payment, filed concurrently herewith. (Yaeckel Decl. ¶ 21.)

#### 10 **IV. ARGUMENT**

##### 11 **A. The Settlement Meets the Standards for Final Approval.**

12 Because the settlement in this case meets all the relevant criteria for final approval of a class action  
13 settlement, final approval should be granted. "A trial court may approve only a settlement of a class action  
14 that is fair, adequate, and reasonable." ( *Roos v. Honeywell Int'l, Inc.* (2018) 241 Cal.App.4th 1472, 1482,  
15 *disapproved of on another ground by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)  
16 "The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class  
17 action settlement agreement include '[1] the strength of plaintiff's case, [2] the risk, expense, complexity  
18 and likely duration of further litigation, [3] the risk of maintaining class action status through trial, [4] the  
19 amount offered in settlement, [5] the extent of discovery completed and stage of the proceedings, [6] the  
20 experience and views of counsel, [7] the presence of a governmental participant, and [8] the reaction of  
21 the class members to the proposed settlement.'" ( *Kullar v. Foot LockerRetail, Inc.* (2008) 168  
22 Cal.App.4th 116, 128, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 (numbers  
23 inserted) (the "*Kullar* Factors").)

1                   **1.       The Strength of Plaintiffs’ Case (*Kullar* Factor 1).**

2           Although Class Counsel believe Plaintiffs have strong claims, they recognize the significant risks  
3 involved in continuing litigation, including the risks of class and/or collective certification being denied,  
4 losing on the merits of their claims, proving damages, and procedural attacks relating to standing and  
5 statutes of limitations. ( Yaeckel Decl. ¶ 22.) In particular, Plaintiffs faced significant risk that they would  
6 not obtain class or conditional certification of the Class and/or Collective. ( *Id.* ¶ 23.) Numerous courts  
7 have denied class and conditional certification where the employers’ policies expressly required  
8 compliance with the FLSA and state law, reasoning that commonality would be defeated by the  
9 individualized inquiries that would be required to determine whether and to what extent employees  
10 deviated from those policies.<sup>2</sup> Although Plaintiffs believe that all Class and Collective Members in these  
11 job titles were impacted by the same common, company-wide policies and practices described in the  
12 Complaint and in this Motion, Defendants would likely have argued that individualized differences  
13 between Class and Collective Members’ different job titles and in their individual circumstances  
14 predominated over the common questions, and therefore should have defeated class certification. ( *Id.* ¶  
15 24.) Given that many courts have denied certification in the presence of such individualized differences,<sup>3</sup>  
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20 <sup>2</sup> (*Brinker*, 53 Cal.4th at 1051-52 (affirming vacatur of off-the-clock claims where employer’s formal  
21 policy prohibited off-the-clock work, reasoning that “proof of off-the-clock liability would have had to  
22 continue in an employee-by-employee fashion, demonstrating who worked off-the-clock, how long they  
23 worked, and whether Brinker knew or should have known of their work”); *see also In re AutoZone, Inc.,*  
24 *Wage and Hour Employment Practices Litig.* (9th Cir. 2019) 789 Fed.Appx. 9, 12 (“[B]ecause AutoZone  
25 had a written policy prohibiting off-the-clock work during the class period, a determination of why some  
employees were under-compensated would have entailed an employee-by-employee analysis.”); *Ordonez*  
*v. Radio Shack, Inc.* (C.D. Cal. 2013) No. CV 10-7060-CAS (JCGx), 2013 WL 210223, at \*6-9 (denying  
class certification of meal break and off-the-clock claims where employer had facially compliant policies);  
*Velasquez v. HSBC Finance Corp.* (N.D. Cal. 2010) 266 F.R.D. 424, 428-32 (denying conditional  
certification of plaintiffs’ off-the-clock claims under FLSA).)

26 <sup>3</sup> (*Moore v. Addus Healthcare, Inc.* (N.D. Cal. 2021) Case No. 19-cv-01519-HSG, 2021 WL 1022875,  
27 \*10-12 (denying class certification of off-the-clock, meal and rest break, expense reimbursement, and  
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1 Class Counsel acknowledges that they faced risk that their claims would not be certified. *Id.* Likewise,  
2 with respect to the expense reimbursement claims,<sup>4</sup> while some courts have granted class certification of  
3 expense reimbursement claims,<sup>5</sup> numerous other courts have denied certification.

4 Even if Plaintiffs obtained certification of a class and/or FLSA collective, Plaintiffs still faced  
5 substantial risks on the merits of their claims. (*Id.* ¶ 25.) Defendants would likely have argued that many  
6 Class, Collective, and PAGA Group Members did not actually work much, if any, overtime, and that they  
7 actually paid class, Collective, and PAGA Group Members for overtime hours that they reported. (*Id.* ¶  
8 26.) As for off-the-clock hours, Defendants would likely have argued that Defendants did not have actual  
9 or constructive notice of hours worked off-the-clock by Class, Collective, and PAGA Group Members and  
10 that it was therefore not liable for their off-the-clock damages. (*Id.* ¶ 27.) On the meal and rest break  
11 claims, Defendants would likely have argued that it provided Class, Collective, and PAGA Group  
12 Members with the opportunity to take duty-free meal and rest breaks, and therefore was not liable for meal  
13 or rest break penalties. (*Id.* ¶ 28.) Defendants would also likely have argued that Plaintiffs' expense  
14 reimbursement claim would have failed because Class, Collective, and PAGA Group Members were  
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20 related wage and hour claims where the court found it would need to make individualized inquiries on  
21 multiple issues, including staffing levels at various branches, employees' personal preferences, client  
22 volume, and employees' motivations for using a personal cellphone); *Ordonez*, 2013 WL 210223, at \*8  
(denying meal break and off-the-clock claims based on "disparate employment settings" among putative  
class members), *Gonzalez v. Millard Mall Servs., Inc.* (S.D. Cal. 2012) 281 F.R.D. 455, 461-64 (denying  
class certification of meal and rest break claims, among others, and listing similar cases).)

23 <sup>4</sup> (*Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137 (reversing denial of class  
24 certification in a case involving failure to reimburse cellphone expenses); *McLeod v. Bank of Am., N.A.*  
25 (N.D. Cal. Dec. 13, 2017) Case No. 16-cv-03294-EMC, 2017 WL 6373020 (granting motion for class  
26 certification in favor of plaintiffs alleging that the employer failed to reimburse plaintiffs and class  
members for use of their personal vehicles); *Trosper v. Stryker Corp.* (N.D. Cal. Aug. 21, 2014) Case No.  
13-CV-0607-LHK, 2014 WL 4145448 (granting class certification of claims for failure to reimburse have  
denied certification).)

provided with company-issued cell phones, had no need to use their personal devices, and were afforded the opportunity to submit their business expenses for reimbursement.<sup>6</sup> (*Id.* ¶ 29.)

Finally, Plaintiffs faced risk in proving the extent of damages. Class, Collective, and PAGA Group Members generally do not have independent records of hours they worked off-the-clock, and therefore would have had challenges quantifying their damages on a class-wide or individual basis. (*Id.* ¶ 30.) Similarly, Class, Collective, and PAGA Group Members generally did not maintain records that would establish the frequency of alleged meal and rest break violations, making it difficult to quantify those damages on a class-wide or individual basis. (*Id.*) A certified class or collective could have been decertified because of manageability issues, *see Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1 (affirming reversal of class certification, where variability among class members was too great, and trial plan was unworkable); and a PAGA representative group could have been vulnerable to similar manageability challenges, *see Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 864-67 (holding that trial court did not abuse its discretion in striking a PAGA claim as unmanageable).

In light of the numerous risks Plaintiffs faced on class and conditional certification, the merits, and damages, this factor weighs heavily in favor of final approval.

## **2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation (Kullar Factor 2).**

The proposed settlement will confer a substantial benefit on Class, Collective, and PAGA Group Members, while further litigation would create significant risks and cause additional expense and delay.

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<sup>6</sup> (*Id.*; *see, also, Tokoshima v. Pep Boys-Manny Moe & Jack of California* (N.D. Cal. Apr. 28, 2014), No. C-12-4810-CRB, 2014 WL 1677979, at \*10 (denying class certification of claims alleging failure to reimburse for tool expenses); *Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341 (affirming denial of class certification involving failure to reimburse gas mileage for travel between store locations); *Chavez v. Lumber Liquidators, Inc.* (N.D. Cal. Mar. 26, 2012) No. CV-09-4812, 2012 WL 1004850, at \*9-10 (denying in part portion of plaintiffs' motion for class certification seeking certification of unpaid reimbursement claims based on failure to reimburse employees for mileage and cellphone usage).)

(Yaeckel Decl. ¶ 31.) Settlement confers the assurance of a recovery in favor of the Class, Collective, and PAGA Group, while further litigation risks the potential for a more limited recovery or potentially no recovery at all. (*Id.*) If litigated through trial, the case would likely involve significant motion practice, including motions to dismiss, motions to compel discovery, motions for class and collective certification and decertification, motions for summary judgment, and motions *in limine*. (*Id.*) At each one of these phases, Plaintiffs could lose on a key issue, and/or the scope of the case could be substantially limited. (*Id.*)

Even if Plaintiffs obtained class and/or conditional certification and survived summary judgment, a fact-intensive trial would still be necessary to determine liability and damages. (*Id.* ¶ 32.) A trial would be lengthy and complex and would consume tremendous time and resources for all Parties and the Court. (*Id.*) Any judgment would likely be appealed, further extending the litigation. (*Id.*)

Given the substantial risks, expense, complexity, and delay that further litigation of this case would entail, final approval is especially appropriate. (*See Bayat*, 2015 WL 1744342, at \*4 (“Absent settlement, the costs and complexity of this case will certainly increase as motions to dismiss, summary judgment motions, and class certification motions (along with associated discovery) will need to be litigated.”).)

### **3. The Risk of Maintaining Class Action Status Through Trial (Kullar Factor 3).**

The fact that Plaintiffs had not yet obtained class or conditional certification in this case weighs strongly in favor of final approval. As set forth in detail in Section VI(A)(1) *supra*, Plaintiffs faced numerous obstacles to obtaining class and conditional certification on his claims. Even if Plaintiffs had obtained certification of the Class and/or Collective on all claims, Defendants could have sought, and the Court could have granted, decertification of the Class and/or Collective in whole or in part at any point up through the trial date. (*See Vasquez v. Super. Ct.* (1971) 4 Cal.3d 800, 821; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440, 1444, *as modified* (Mar. 28, 2007). )

1 Given the substantial risks Plaintiffs faced in obtaining and/or maintaining class and conditional  
2 certification, this factor weighs heavily in favor of granting final approval.

3 **4. The Amount Offered in Settlement (Kullar Factor 4).**

4 The proposed settlement amount of \$1 million weighs in favor of final approval because it offers  
5 substantial, timely, and guaranteed relief to Settlement Class Members. Based on the data and documents  
6 obtained from Plaintiffs and Defendants prior to mediation, Class Counsel calculated that Class,  
7 Collective, and PAGA Group Members' total theoretical maximum recovery was approximately  
8 \$5,325,451.16: \$4,228,091.16 for their FLSA and state law claims, \$1,097,360.00 for the PAGA claims.  
9 ( Yaeckel Decl. ¶ 33.) The proposed \$1,000,000.00 settlement amount is equal to 18.7% of the total  
10 theoretical maximum recovery. (*Id.*) Even though Class Members' total theoretical maximum recovery is  
11 greater than the \$1 million settlement amount, "the tangible, immediate benefits of . . . [s]ettlement  
12 outweigh continued litigation and the uncertainty of a trial." ( *Ebarle v. Lifelock, Inc.* (N.D. Cal. Jan. 20,  
13 2016) No. 15 Civ. 258, 2016 WL 234364, at \*8 (internal quotation marks omitted), citing *In re LinkedIn*  
14 *User Privacy Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 587 ("Immediate receipt of money through  
15 settlement, even if lower than what could potentially be achieved through ultimate success on the merits,  
16 has value to a class, especially when compared to risky and costly continued litigation.").)

17 Given the factors described above, the \$1 million settlement is an outstanding result for the Class  
18 and compares favorably to other cases in which courts have granted approval of class wage and hour  
19 settlements representing a smaller fraction of the maximum theoretical damages.

20 The portion of the settlement amount allocated to PAGA claims (\$50,000.00) also is well within  
21 the range of possible approval. ( Yaeckel Decl. ¶ 34.) Here, the maximum theoretical PAGA penalties  
22 were approximately \$1,097,360.00, or approximately 20% of the total theoretical maximum recovery.  
23 (*Id.*) Because the total settlement amount, as well as the proportion of the settlement allocated to PAGA  
24 penalties, fall within the range of possible approval, this factor weighs in favor of final approval.  
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2                   **5.       The Extent of Discovery Completed and Stage of the Proceedings (Kullar**  
3                   **Factor 5).**

4               The fifth *Kullar* factor examines “the extent of discovery the parties have completed and the current  
5 stage of the litigation to evaluate whether ‘the parties have sufficient information to make an informed  
6 decision about settlement.’” ( *Betancourt v. Advantage Human Resourcing, Inc.* (N.D. Cal. Jan. 28, 2016)  
7 No. 14-cv-1788, 2016 WL 344532, at \*5, quoting *Linner v. Cellular Alaska P’ship* (9th Cir. 1998) 151  
8 F.3d 1234, 1239.)

9               Although the Parties in this case did not engage in formal written discovery or depositions, they  
10 participated in robust pre-mediation discovery. ( Yaeckel Decl. ¶ 35.) Defendants produced hundreds of  
11 pages of documentary discovery, including Plaintiffs’ personnel file, employee handbooks and guides, job  
12 descriptions, and other corporate policy documents, including copies of Defendants’ time-keeping, payroll,  
13 and reimbursement policies. ( *Id.*) In addition to document production, Defendants also produced  
14 comprehensive class data, including unique identifiers, job titles, job locations, dates of employment, rates  
15 of pay, hours recorded, wages and penalties paid, and reimbursements paid. ( *Id.* ¶ 36.) Class Counsel  
16 also performed a significant investigation into the claims and defenses by conducting detailed interviews  
17 with Plaintiffs and other witnesses. ( *Id.* ¶ 37.) During the investigation of this case and negotiation of  
18 this settlement, Class Counsel and Defendants’ counsel also participated in numerous conference calls,  
19 above and beyond the two mediation sessions, to exchange factual information about the claims and  
20 defenses as well as legal arguments. ( *Id.*) This information was more than sufficient for both sides to  
21 adequately evaluate the risks and benefits of continued litigation, and to calculate the potential damages.  
22 ( *Id.*) Accordingly, this factor weighs in favor of final approval.

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25                   **6.       The Experience and Views of Counsel (Kullar Factor 6).**

26               The proposed settlement was reached through vigorous arm’s-length negotiation between Class  
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Counsel and Defendants' Counsel. (Yaeckel Decl. ¶ 9.) The firms representing Plaintiffs have extensive experience litigating wage and hour class actions and are recognized nationally as leading employment lawyers. (Yaeckel Decl. ¶¶ 10-15; Meireles Decl. ¶¶ 4-10; Galdston Decl. ¶¶ 5-9.) The Settlement Agreement was closely scrutinized and vigorously debated over months of negotiations with Defendants' Counsel. (Yaeckel Decl. ¶ 9.) Based on Class Counsel's experience litigating wage and hour class actions, and their analysis of settlements and verdicts in other similar cases, Class Counsel believes that the proposed settlement represents an excellent monetary result for the Class, particularly in light of the risks of continued litigation. (Yaeckel Decl. ¶ 16; Meireles Decl. ¶ 19; Galdston Decl. ¶¶ 13-14.) Accordingly, this factor strongly supports final approval.

**7. The Presence of a Governmental Participant (Kullar Factor 7).**

Here, the proposed settlement did not involve the presence of a governmental participant. (Yaeckel Decl. ¶ 38.) Therefore, this factor is neutral and does not weigh in favor of or against final approval.

**8. The Reaction of Class Members to the Proposed Settlement (Kullar Factor 8).**

Finally, the reaction of Class Members provides strong support for final approval of the settlement. "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." (*Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529.) In this case, no Class Members have objected to any aspect of the settlement, including the overall monetary relief achieved and the amounts set aside for attorneys' fees, costs, and Enhancement Payment, and only one Class Member has opted out of the settlement. (Yaeckel Decl. ¶ 39.) Overall, the lack of objections by Class Members indicates an overwhelmingly positive reaction by the class to the settlement, favoring a finding that the settlement is fair and finally approved. ( *See Weeks v. Kellogg Co.* (C.D. Cal. Nov. 23, 2013) No. CV 09-

08102 MMM RZX, 2013 WL 6531177, at \*17 (collecting cases in which opt-out and objection rates below one percent were found to strongly support an inference that class members supported the settlement); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245-46 (noting that settlement should be presumed fair in part because “[o]ut of over 2.4 million settlement notices sent to class members, only 20 class members objected to the settlement”).)

Because all of the *Kullar* factors (with the exception of Factor 7, which is neutral) indicate that the settlement is fair, adequate, and reasonable, the Court should grant final approval of the settlement.

## V. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant their Motion for Order Granting Final Approval of Class Settlement.

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Respectfully submitted,

/s/ Eric K. Yaeckel

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