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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

GRETA BARTEK, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

THE COMPUTER MERCHANT, LTD., a
Massachusetts Corporation; and DOES 1-50,
Inclusive.

Defendants.

Case No. 34-2023-00336866

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

Hearing Date: October 11, 2024

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SECONDARY SOURCES

38	Newberg & A. Conte, <i>Newberg on Class Actions</i> (3d ed. 1992) at § 4.25 at 4-82, 4-83 §11.41, p.11-88	6-7, 13
39		
40	<i>Manual for Complex Litigation</i> , Second §30.44 at 229	6
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1 **I. INTRODUCTION**

2 Plaintiff GRETA BARTEK (“Plaintiff”) respectfully submits this memorandum in support
3 of the motion for preliminary approval of the Stipulation of Settlement of Class Action Claims and
4 Release of Claims (the “Agreement”) in *Bartek v. The Computer Merchant, et al.*, Case No. 34-
5 2023-00336866 (the “Action”) and seeks entry of an order: (1) preliminarily approving the proposed
6 settlement of the Action with Defendant The Computer Merchant, LTD., (hereinafter “Defendant”);
7 (2) approving the form and method for providing class-wide notice; (3) directing that notice of the
8 proposed settlement be given to the class; and (4) scheduling a final approval hearing date to
9 consider Plaintiff’s motion for final approval of the settlement and entry of the Judgment, and
10 Plaintiff’s motion for approval of attorneys’ fees and litigation expenses.

11 Plaintiff and Defendant have reached a full settlement of the Action, which is embodied in
12 the Agreement. A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration
13 of Shani O. Zakay (“Decl. Zakay”), served and filed herewith. The Settlement is fair, reasonable,
14 and adequate, and should be preliminarily approved. Plaintiff respectfully requests that this Court
15 grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

16 **II. DESCRIPTION OF THE SETTLEMENT**

17 The Gross Settlement Amount to be paid by Defendant is Two Hundred and Fifty Thousand
18 Dollars and Zero Cents (\$250,000.00). Under the Settlement, the Gross Settlement Amount consists
19 of the following elements: (1) the Individual Settlement Payments to Class Members, (2) the
20 Attorneys’ Fees and Attorneys’ Expenses, (3) Administration Costs, (4) the PAGA Settlement, and
21 (5) the Service Award to the Plaintiff. The Gross Settlement Amount does not include Defendant’s
22 share of employer payroll taxes, which Defendant shall pay to the Administrator separately. The
23 Gross Settlement Amount shall be all-in with no reversion to Defendant. (Decl. Zakay at ¶ 17.)

24 After Final Approval and the Judgment becomes final (the “Effective Date” as defined in
25 the Agreement), Defendant will fund the Gross Settlement Amount. No later than fifteen (15) days
26 after Defendant funds the Gross Settlement Amount, the Settlement Administrator will pay: the
27 Settlement Class Members their Individual Settlement Payments and the PAGA Class Members
28 their PAGA Class Member Payments, Class Counsel their Attorneys’ Fees and Attorneys’

1 Expenses; the LWDA its share of the PAGA Settlement; and the Settlement Administrator its
2 Administration Costs, all in the amounts approved by the Court. (Decl. Zakay at ¶ 18.)

3 The Net Settlement Amount shall equal the net amount available for Individual Settlement
4 Payments to Settlement Class Members from the Gross Settlement Amount after deducting the
5 Court-approved amounts for the Service Award, the Attorneys' Fees and Attorneys' Expenses, the
6 PAGA Settlement, and the Administration Costs. The Settlement Administrator will pay an
7 Individual Settlement Payment from the Net Settlement Amount to each Settlement Class Member.
8 The submission of a claim form is not required for the Settlement Class Member to be paid his or
9 her Individual Settlement Payment. The Individual Settlement Payment for each Settlement Class
10 Member will be calculated by dividing the Net Settlement Amount by the total number of
11 workweeks worked by all Settlement Class Members during the Class Period and then multiplying
12 that amount (the "Payment Ratio") by the total number of workweeks worked by each Settlement
13 Class Member during the Class Period. The entire Net Settlement Fund shall be distributed. (Decl.
14 Zakay at ¶ 19.)

15 Class Members will have forty-five (45) days after the mailing of the Notice Packet to
16 exclude themselves or submit written objections by following the directions in the Notice Packet.
17 (Agreement at ¶ I(HH).) All Class Members who do not "opt out" will be deemed Settlement Class
18 Members and will be bound by the Settlement. The Notice will advise the Class Members of their
19 right to object to the Settlement. (Agreement at ¶ III(L)(2)(a).) (Decl. Zakay at ¶ 20.)

20 If a check is returned to the Settlement Administrator, the Settlement Administrator will
21 make all reasonable efforts to obtain a correct address for the Settlement Class Member and re-mail
22 the check to the Settlement Class Member at his or her correct address. If a Settlement Class
23 Member's Individual Settlement Payment check is not cashed within 180 days after the Settlement
24 Administrator's last mailing to the Settlement Class Member, the funds from such uncashed checks
25 will be transmitted to Koinonia Family Services pursuant to California Code of Civil Procedure
26 section 384. (Agreement at ¶ III(M)(8).) (Decl. Zakay at ¶ 21.)

27 The Parties have agreed to use Apex Class Action, LLC, as the Settlement Administrator.
28 Payment of the expenses of the Settlement Administrator from the Gross Settlement Amount shall

1 be made for the expenses of effectuating and administering the Settlement. The Settlement
2 Administrator shall receive payment for services estimated at \$7,990.00. (Decl. Zakay at ¶ 22.)

3 Subject to Court approval, the Agreement provides for Attorneys' Fees not to exceed 1/3 of
4 the Gross Settlement Amount and Attorneys' Expenses up to \$25,000.00. (Agreement at ¶ I(G).)
5 In support of this request, Class Counsel will provide evidentiary support, including lodestar method
6 calculations. Subject to Court approval, the Agreement provides for payment of a Service Award
7 of no more than \$7,500.00 for Plaintiff or such lesser amount as may be approved by the Court at
8 Final Approval.¹ (Decl. Zakay at ¶ 23.)

9 Subject to Court approval, \$10,000.00 will be paid for settlement of civil penalties under
10 PAGA, Labor Code Section 2698 *et seq.* Pursuant to the requirements of Labor Code §2699(i), the
11 PAGA Settlement shall be allocated \$7,500.00 (75%) to the LWDA (the "LWDA Payment") as the
12 LWDA's share of the settlement of civil penalties and \$2,500.00 (25%) for distribution to the
13 Aggrieved Employees. (Agreement at ¶ III(M)(11).) (Decl. Zakay at ¶ 24.)

14 **III. CASE BACKGROUND**

15 On March 23, 2023, Plaintiff filed a Notice of Violations with the Labor and Workforce
16 Development Agency (LWDA) and served the same on Defendant. (Decl. Zakay at ¶ 7.)

17 On March 30, 2023, Plaintiff filed a Class Action complaint in the Sacramento Superior
18 Court Case No. 34-2023-00336866 ("Class Action"), alleging claims for: (1) Unfair Competition
19 In Violation Of Cal. Bus. & Prof. Code §17200 *et seq*; (2) Failure To Pay Minimum Wages In
20 Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure To Pay Overtime Wages In
21 Violation Of Cal. Lab. Code §§ 510, *et seq*; (4) Failure To Provide Required Meal Periods In
22 Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure To
23 Provide Required Rest Periods In Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
24 IWC Wage Order; (6) Failure To Provide Accurate Itemized Statements In Violation Of Cal. Lab.

25
26
27 ¹ Plaintiff will address the reasonableness of this award when filing her final approval papers,
28 including the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App.
4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 Code § 226; and (7) Failure To Provide Wages When Due In Violation Of Cal. Lab. Code §§ 201,
2 202 and 203. (Decl. Zakay at ¶ 8.)

3 On July 19, 2023, Plaintiff filed a First Amended Complaint to add an eighth cause of action
4 for alleged violations of the Private Attorneys General Act California Labor Code §§ 2698 *et seq.*
5 (“PAGA”). (Decl. Zakay at ¶ 9.)

6 Plaintiff seeks to represent a putative class of all non-exempt employees who worked for
7 Defendant, The Computer Merchant, Ltd., in California at any time during the period beginning
8 March 24, 2019, to May 25, 2024, (the “Class Members”). There are approximately 166 Class
9 Members that worked a total of 4,356 Workweeks during the Class Period. The Complaint
10 generally alleges the causes of actions listed above. The Action seeks unpaid wages, statutory and
11 PAGA penalties, attorneys’ fees, and litigation costs². (Decl. Zakay at ¶ 10.)

12 Plaintiff also seeks to represent a PAGA group of Aggrieved Employees which is comprised
13 of all non-exempt employees who worked for Defendant The Computer Merchant, Ltd., in
14 California (“Aggrieved Employees”) during the period of March 23, 2022, to May 25, 2024, (the
15 “PAGA Period”). *See* Agreement at §§ I(C), I(Y). (Decl. Zakay at ¶ 11.)

16 Prior to mediation, Class Counsel investigated the facts relevant to the Action, including
17 conducting an independent investigation as to the allegations, reviewing documents and information
18 exchanged through informal discovery, and reviewing documents and information provided by
19 Defendant pursuant to informal requests for information to prepare for mediation. As part of this
20 process, Defendant provided Plaintiff’s personnel file including her check history register, emails
21 regarding onboarding, employment agreement, guidelines and expectations, offer letter, placement
22 record and time sheets. Defendant also produced 100% of the payroll data for 166 class members;
23 and 103 pages of relevant documents including Subcontractor travel and expense reimbursement
24 policies, Gainwell California meal and rest period policies, Frequently asked questions, The
25 Computer Merchant California Meal and Rest Period Policy for Non-exempt Workers, Arbitration
26 Agreement, The Computer Merchant Subcontractor Time Reporting Policy, Second Meal break
27

28 ² Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 Waiver, Plaintiff's earning statements, written weekly project time logs for class members, time
2 records for class members, relevant emails regarding schedules for class members, Gainwell work
3 schedules, and Gainwell Time sheets for class members. a significant sample of payroll records, as
4 well as other relevant policies and agreements to Class Counsel to review and analyze. (Decl. Zakay
5 at ¶ 12.)

6 On March 25, 2024, the Parties participated in mediation presided over by Judge Carl West
7 (Ret.), a respected jurist and an experienced mediator of wage and hour class and PAGA actions.
8 At the conclusion of the mediation, the Parties accepted a Mediator's settlement proposal, which
9 was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the
10 Parties documented the agreement in the form of a Settlement Agreement, which was signed by the
11 Parties and is now presented to this Court for preliminary approval. (Decl. Zakay at ¶ 13.)

12 Although a resolution has been reached, Defendant denies any liability or wrongdoing of
13 any kind associated with the claims alleged in the Action, disputes any wages, damages and
14 penalties claimed by the Class Representative, alleged in the Operative Complaint, and/or alleged
15 in the Class Representative's PAGA notices to the LWDA are owed, and further contend that, for
16 any purpose other than settlement, the Action is not appropriate for class or representative action
17 treatment. Defendant contends, among other things, that at all times it complied with the California
18 Labor Code and the Industrial Welfare Commission Wage Orders. Plaintiff contends that Defendant
19 violated California wage and hour laws. Plaintiff further contends that the Action is appropriate for
20 class certification on the basis that Plaintiff's claims meet the requisites for class certification.
21 Without admitting that class certification is proper, Defendant has stipulated that the above Class
22 may be certified for settlement purposes only. The Parties agree that certification for settlement
23 purposes is not an admission that class certification would be proper if the class certification issues
24 were litigated. Further, the Agreement is not admissible in this or any other proceeding as evidence
25 that the Class could be certified absent a settlement. Solely for purposes of settling the Action, the
26 Parties stipulate and agree that the requisites for establishing class certification with respect to the
27 Class, as defined above, are satisfied. (Decl. Zakay at ¶ 15.)
28

1 Class Counsel has conducted a thorough investigation into the facts of the action. Class
2 Counsel has diligently evaluated the Class Members' claims against Defendant. Prior to the
3 mediation, counsel for Defendant provided Class Counsel with access to the necessary data and
4 information to evaluate the claims by the Class. Class Counsel reviewed the production of
5 documents from the Defendant and conducted an extensive review of payroll data and policies with
6 the assistance of an expert (Berger Consulting Group ("BCG")). Based on the foregoing and their
7 own independent investigation, evaluation and experience, Class Counsel believes that the
8 Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all
9 known facts and circumstances, including the risk of significant delay, defenses asserted by
10 Defendant, and potential appellate issues. (Decl. Zakay at ¶ 16.)

11 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 12 **COURT TO GRANT PRELIMINARY APPROVAL**

13 When a proposed class-wide settlement is reached, the settlement must be submitted to the
14 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
15 p.11-87.) California "[p]ublic policy generally favors the compromise of complex class action
16 litigation." (*Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
17 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
18 approved where the proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor*
19 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d
20 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).)

21 The primary question presented on an application for preliminary approval of a proposed
22 class action settlement is whether the proposed settlement is "within the range of possible approval."
23 (*Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
24 (7th Cir. 1982).) Preliminary approval is merely the prerequisite to giving notice so that "the
25 proposed settlement... may be submitted to members of the prospective Class for their acceptance
26 or rejection." (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*,
27 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist.
28 LEXIS 151997, *3 (C.D. Cal. 2010).) There is an initial presumption of fairness when a proposed

1 settlement, which was negotiated at arm's length by counsel for the Class, is presented for court
2 approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
3 224, 245 (2001) [citation omitted]; *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th
4 734, 742-45 (2009) (upholding trial court's determination that settlement was "fair, reasonable and
5 adequate" where the settlement "provided valuable benefits to the class ... that were 'particularly
6 valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.'").)
7 However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate
8 is made after notice of the settlement is given to the Class Members and a final settlement hearing
9 is held by the Court.

10 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

11 Approval of a proposed settlement of a class action suit is a matter within the broad
12 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794.)
13 In considering a potential settlement for preliminary approval purposes, the trial court does not have
14 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
15 dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal. App. 4th at 239-40;
16 *Dunk, supra*, 48 Cal. App. 4th at 1807.) The Ninth Circuit explains, "the very essence of a settlement
17 is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" (*Officers for Justice*
18 *v. Civil Service Com'n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).) The question
19 whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and
20 evaluation by the attorneys for the parties based upon a comparison of "the terms of the
21 compromise with the likely rewards of litigation." (*Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d
22 Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of*
23 *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).) Thus, when analyzing the
24 settlement, the amount is "not to be judged against a hypothetical or speculative measure of what
25 might have been achieved by the negotiators." (*Officers for Justice*, 688 F.2d at 625, 628.) With
26 regard to class action settlements, the opinions of counsel should be given considerable weight both
27 because of counsel's familiarity with this litigation and previous experience with cases such as
28 these. (*Id.* at 625.) "The recommendations of plaintiffs' counsel should be given a presumption of

1 reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979).) As a result, courts
2 hold that the recommendation of counsel is entitled to significant weight. (*Nat’l Rural Telecomms.*
3 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).)

4 **B. Factors To Be Considered In Granting Preliminary Approval**

5 In determining whether to grant preliminary approval, the court considers whether the “(1)
6 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations,
7 (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class
8 representatives or segments of the class, and (4) falls within the range of possible approval.” (*In re*
9 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).) No one factor should be
10 determinative. Here, the Settlement meets all of these criteria for preliminary approval.

11 **1. The Settlement is the Product of Serious, Informed and Arm’s Length**
12 **Negotiations by Experienced Counsel**

13 This Settlement is the result of extensive and hard-fought litigation and negotiations before
14 an experienced and well-respected mediator. Defendant denied and continues to deny any
15 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
16 Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the
17 Released Class Claims.³ Plaintiff and Class Counsel recognize the expense and time involved in
18 continuing to litigate and ultimately trying the Action against Defendant through possible appeals
19 which could take several years. Class Counsel have also taken into account the uncertain outcome
20 and risk of litigation, especially in complex actions such as the one here. Class Counsel are also
21 mindful of, and recognize, the inherent problems of proof under, and asserted defenses to, the claims
22 asserted in the Action. Based upon their evaluation, Plaintiff and Class Counsel have determined
23 that the Settlement set forth in the Agreement is in the best interest of the Class Members. (Decl.
24 Zakay at ¶ 25.)

25 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
26 capable advocacy on both sides. The Parties were represented by experienced counsel who
27 zealously advocated their respective positions with the assistance of an experienced mediator.

28 ³ Released Class Claims are defined in the Settlement Agreement at ¶ I(EE).

1 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were
2 vigorously conducted at arms’ length and without any suggestion of undue influence.” (*In re Wash.*
3 *Public Power*, 720 F. Supp. at 1392.)

4 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of** 5 **Approval**

6 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
7 possible approval. All Class Members will receive an opportunity to participate in the Settlement
8 and receive payment according to the same formula if they do not opt out.

9 Defendant’s total exposure for the alleged violations at the time this Settlement was
10 negotiated was calculated by BCG, Plaintiff’s damage expert. Plaintiff used BCG to analyze the
11 data and determine the potential damages for the employees. For the Class, Plaintiff estimates that
12 Defendant was subject to maximum liability for damages in the amount of \$1,126,858, consisting
13 of \$275,064 for unpaid wages, \$396,522 for rest periods, \$396,522 for meal periods, and \$58,750
14 for unreimbursed expenses. In addition, Plaintiff’s expert calculated \$1,353,960 in waiting time
15 penalties and \$180,050 for wage statement penalties.⁴ Finally, Plaintiff’s expert calculated that
16 Defendant could be liable for PAGA penalties in an amount of \$907,500.⁵ Consequently, the
17 Settlement of \$250,000 represents approximately 22.2% of the maximum estimated *damages*, and
18 9.4% of the maximum combination of damages and waiting time and wage statement penalties to
19 the Class, assuming all of these amounts could be proved at trial. Given the amount of the Settlement
20 as compared to the potential value of claims in this case, the Settlement is fair and reasonable.

21 ⁴ While Plaintiff alleged claims for statutory penalties, she recognizes that this claim is subject to various defenses
22 asserted by Defendant. Plaintiff’s claims pursuant to Labor Code Section 226 and various PAGA penalties are also
23 subject to a good faith defense as to whether any premium wages for meal or rest periods or other wages were owed
24 given Defendant’s position that Plaintiff and the Class were properly compensated. (*See Reber v. AIMCO/Bethesda*
Holdings, Inc., 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant’s motion for summary judgment
on claim for failure to provide accurate itemized wage statements “because a good faith dispute exists... [therefore,
defendant] was not ‘knowing and intentional’ in failing to provide [Section 226] statements”).)

25 ⁵ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by Defendant, including that
26 Class Members may not be able to recover subsequent penalties until, at a minimum, Plaintiff provided PAGA notice.
27 (*See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008) (“Until the employer has been notified that it is
violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer
cannot be presumed to be aware that its continuing underpayment of employees is a “violation” subject to penalties.”).)
28 In addition, Plaintiff recognizes that PAGA claims bear some risk. (*See Carrington v. Starbucks Corp.*, 30 Cal. App.
5th 504 (2018).) In *Carrington*, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the
maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. (*Id.* at
517.)

1 Clearly, the goal of this litigation – to provide compensation to Class Members for unpaid time and
2 for allegedly missed meal and rest breaks – has been met. (Decl. Zakay at ¶ 6.)

3 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
4 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
5 amount constituted roughly 10% of the estimated actual damages to the class. Here, the settlement
6 consideration exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court
7 ruled that the settlement which represented approximately 10% of the estimated loss to the class
8 was fair, reasonable, and adequate. As a result, this Settlement, which exceeds the percentage
9 approved in *Stovall-Gusman*, is entitled to preliminary approval.

10 Moreover, where both sides face significant uncertainty, the attendant risks favor settlement.
11 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) Here, a number of defenses
12 asserted by Defendant presented serious threats to the claims of the Plaintiff and the other Class
13 Members. For instance, Defendant asserted that the employment practices complied with all
14 applicable Labor Laws. Specifically, Defendant argued that the Supreme Court decision in *Brinker*
15 *v. Superior Court*, 53 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on
16 liability, value, and class certifiability as to the meal and rest period claims. A major component of
17 the damages alleged to have been suffered by the Class Members are attributed to missed meal and
18 rest breaks. Before and during the mediation, Defendant aggressively argued that Defendant's
19 policies and culture afforded the Class Members an opportunity to take timely meal and rest breaks,
20 and that employees like the Plaintiff *chose* not to take compliant breaks. Defendants argued,
21 therefore, that under the *Brinker* decision they have no liability for the missed breaks whatsoever.
22 Defendants argued that they adopted and strictly enforced lawful policies and afforded Plaintiff and
23 the Class Members compliant meal and rest breaks. If successful, these defenses could eliminate or
24 substantially reduce any recovery to the Class. While Plaintiff believes that these defenses, and
25 others, could be overcome, Defendant maintains these defenses have merit and therefore present a
26 serious risk to recovery for the Class. (Decl. Zakay at ¶¶ 27.)

27 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
28 to obtain class certification and thereby not recover on behalf of any employee other than herself.

1 Defendant argued that the individual experience of each employee varied with respect to the alleged
2 claims. While other cases have approved class certification of wage and hour claims, class
3 certification in this action would have been hotly disputed and was by no means a foregone
4 conclusion. Finally, even if class certification was successful, as demonstrated by the California
5 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
6 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
7 (Decl. Zakay at ¶ 28.) Here, the risk of further litigation is substantial. After arm's-length
8 negotiations between experienced and informed counsel, the Parties recognized the potential risks
9 and agreed on the Settlement. (Decl. Zakay at ¶ 29.)

10 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the**
11 **Class Representative or Segments of The Class**

12 The relief provided in the Settlement will benefit all Class Members who do not opt out.
13 The Settlement does not improperly grant preferential treatment to the Plaintiff or segments of the
14 Class in any way. Each Class Member will be entitled to a cash payment based on the plan of
15 allocation described herein. Each Settlement Class Member's Individual Settlement Payment will
16 be determined based upon the weeks worked by that employee during the prescribed Class Period.
17 (Decl. Zakay at ¶ 4.) Plaintiff will apply to the Court for a Service Award in consideration for her
18 service, and for the risks undertaken on behalf of the Class. Plaintiff performed her duties admirably
19 by working with Class Counsel. The requested Plaintiff's service payment is within the accepted
20 range of awards for purposes of preliminary approval. (Decl. Zakay at ¶ 31.)

21 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
22 **Preliminary Approval Of The Settlement**

23 The stage of the proceedings at which this Settlement was reached also militates in favor of
24 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
25 a thorough investigation into the facts of the class action. Class Counsel began investigating the
26 Class Members' claims before this action was filed. Prior to the mediation, Class Counsel performed
27 significant review and analysis of Defendants' documents and pay records. Class Counsel engaged
28 in thorough research and analysis of the relevant claims and data. Class Counsel is also experienced
with the claims at issue here, as Class Counsel previously litigated and settled similar claims in

1 numerous other actions. Accordingly, the Settlement did not occur until Class Counsel possessed
2 sufficient information to make an informed judgment regarding the likelihood of success on the
3 merits and results that could be obtained through further litigation. (Decl. Zakay at ¶ 32.)

4 There can be no doubt that Counsel for both Parties possessed sufficient information to make
5 an informed judgment regarding the likelihood of success on the merits and the results that could
6 be obtained through further litigation.

7 In *Glass v. UBS Financial Services, Inc.*, the Northern District of California granted final
8 approval of an unpaid wages action although in *Glass* no formal discovery had been conducted prior
9 to the settlement:

10 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
11 observed, however, “[i]n the context of class action settlements, ‘formal discovery
12 is not a necessary ticket to the bargaining table’ where the parties have sufficient
13 information to make an informed decision about settlement.” See *In re Mego
Financial Corp. Securities Litigation*, 213 F.3d [454,] 459. (*Glass*, 2007 WL
221862 at *4.)

14 Here, Class Counsel was in a strong position to evaluate the fairness of this Settlement
15 because Class Counsel had the same, if not more, sufficient information, as well as an informal
16 document production.

17 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

18 Plaintiff contends that the proposed Settlement meets all the requirements for class
19 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
20 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
21 should conditionally certify the Class for settlement purposes only, defined as follows: all non-
22 exempt employees who worked for Defendant The Computer Merchant, Ltd., in California at any
23 time during the Class period. “Class Period” means the period beginning March 24, 2019, to May
24 25, 2024. (Agreement at ¶I(I).) Defendant estimated at the time of mediation the number of work
25 weeks during the Class Period to be approximately 4,356. (Declaration of Keelia K. Lee “Decl.
26 Lee” at ¶ 4.)⁶

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28 _____
⁶ Defendant will file a revised declaration prior to the October 11th hearing.

1 **A. California Code of Civil Procedure §382**

2 Plaintiff seeks certification of this Class for settlement purposes under California Code of
3 Civil Procedure section 382. While Defendant reserves all rights to dispute that the Plaintiff can
4 satisfy any of these requirements, Defendant will not dispute that these requirements may be
5 satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified
6 for purposes of settlement only.

7 **B. The Proposed Class Is Ascertainable and Numerous**

8 Here, the approximately 166 current and former employees that comprise the Class are
9 sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955)
10 (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934
11 (1981) (class of 48 members satisfies numerosity requirement.)) All of these employees are
12 ascertainable because the Class Members can readily be determined through examination of
13 Defendant’s employment files. (Decl. Zakay at ¶ 34(a).) For purposes of settlement only, Defendant
14 will not oppose a finding of numerosity.

15 **C. Common Issues of Law and Fact Predominate**

16 Predominance of common issues of law or fact does not require that the common issues be
17 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
18 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992).) “Predominance is a comparative
19 concept, and ‘the necessity for class members to individually establish eligibility and damages does
20 not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334.) Commonality exists
21 if there is a predominant common legal question regarding how an employer’s policies impact its
22 employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) (“[T]he
23 common legal question remains the overall impact of Diva’s policies on its drivers.”).) Whether
24 Plaintiff is likely to prevail on his theory of recovery is irrelevant at the certification stage since the
25 question is “essentially a procedural one that does not ask whether an action is legally or factually
26 meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).)

27 Here, Plaintiff contends that common questions of law and fact are present. Specifically: (i)
28 whether Defendant failed to pay Class Members for all hours worked; (ii) whether Defendant failed

1 to provide meal and rest periods to Class Members; (iii) whether Defendants failed to timely furnish
2 accurate, itemized and legal wage statements; (iv) whether Defendant subjected Class Members to
3 unfair business practices; and (v) whether Defendant are liable for attorneys' fees and costs. (Decl.
4 Zakay at ¶ 34(b).) Defendant will not oppose a finding of commonality for purposes of settlement
5 only.

6 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

7 The typicality requirement requires Plaintiff to demonstrate that the members of the class
8 have the same or similar claims as Plaintiff. "The typicality requirement is met when the claims of
9 the Plaintiff [] arise from the same event or are based on the same legal theories." (*Tate v.*
10 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983).) In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
11 (9th Cir. 1998), the Ninth Circuit held that "[u]nder the rule's permissive standards, representative
12 claims are 'typical' if they are reasonably coextensive with those of absent class members; they
13 need not be substantially identical." (50 F.3d at 1020.)

14 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied.
15 Plaintiff, like every other member of the Class was employed by Defendant and is a member of the
16 Class. Plaintiff was subject to the same employment practices, meal and rest periods, and received
17 similar wage statements. Thus, the claims of the Plaintiff and the Class Members arise from the
18 same course of conduct by the Defendant, involve the same employment policies, and are based on
19 the same legal theories. (Decl. Zakay at ¶ 34(c).) For purposes of settlement only, Defendant will
20 not oppose typicality.

21 **E. The Class Representative Fairly and Adequately Protected the Class**

22 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
23 not have any conflicts of interest with other Class Members, and (b) will prosecute the case
24 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiff is well aware of her
25 duties as a representative of the Class and has actively participated in the prosecution of this case
26 to date. First, Plaintiff effectively communicated with Class Counsel, provided documents to them
27 and participated in investigation and negotiations in the Action. Second, Plaintiff retained
28 competent counsel who are experienced in employment class actions. Third, there is no antagonism

1 between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class
2 Members seek monetary relief under the same set of facts and legal theories. (Decl. Zakay at ¶
3 34(d).) Defendant will not dispute such a finding for purposes of this settlement only.

4 **F. The Superiority Requirement Is Met**

5 To certify a class, the Court must determine that a class action is superior to other available
6 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
7 common issues will reduce litigation costs and promote greater efficiency, a class action may be
8 superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th
9 Cir. 1996).) Here, a class action is the superior mechanism for resolution of the claims as pled by
10 the Plaintiff. Defendant will not dispute such a finding for purposes of this settlement only.

11 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

12 The Court has broad discretion in approving a practical notice program. The Parties have
13 agreed upon procedures by which the Class Members will be provided with written notice of the
14 Settlement similar to that approved and utilized in hundreds of class action settlements. The Notice
15 Packet, drafted jointly and agreed upon by the Parties through their respective counsel and to be
16 approved by the Court, includes all relevant information. (See Exhibit A to the Agreement.) The
17 Notice Packet will state that the Class Members shall have forty-five (45) days from the date that
18 the Notice Packet is mailed to them to request exclusion or to submit an objection. The Class
19 Members will be given an opportunity to object to the terms of the Agreement and/or the request
20 for attorneys’ fees and costs and to participate at the final approval hearing, in accordance with the
21 instructions set forth in the Notice Packet. Class Members will be instructed to only contact the
22 Settlement Administrator and/or Class Counsel and not the Court. Class Members who do not opt
23 out will automatically receive an Individual Settlement Payment. This notice program was designed
24 to meaningfully reach the Class Members and advise them of all pertinent information concerning
25 the Settlement. The mailing and distribution of the Notice Packet satisfies the requirements of due
26 process, is the best notice practicable under the circumstances, and constitutes due and sufficient
27 notice to all persons entitled thereto. The Notice Packet provides information on the terms and
28 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,

1 time, and place of the final settlement approval hearing; and the procedure and deadline for
2 submitting comments, objections, and requests for exclusion. The Notice Packet complies with
3 Rules of Court 3.766 and 3.769(f). (Decl. Zakay at ¶ 36.)

4 **VII. CONCLUSION**

5 Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement
6 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
7 final fairness hearing for a date that is at least one hundred twenty (120) days after the date of
8 Preliminary Approval.

9
10 DATED: September 18, 2024

ZAKAY LAW GROUP, APLC

11 By: 
12 Shani O. Zakay,
13 Attorney for Plaintiffs
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