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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE**

ROXANNE POND, an individual, on
behalf of herself and on behalf of all
persons similarly situated, and on behalf
of the State of California as a private
attorney general,

Plaintiff,

vs.

GLEN IVY HOT SPRINGS, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **CVRI2104986**
[Consolidated with CVRI2105059]

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

Hearing Date: October 10, 2023
Hearing Time: 8:30 a.m.
[Hearing scheduled by Order dated May 23, 2023]

Judge: Hon. Harold W. Hopp
Dept: 10

Action Filed: November 1, 2021
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated May 23, 2023 (“Preliminary Approval Order”),
6 the approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiff Roxanne Pond (“Plaintiff”) respectfully submit this memorandum
9 in support of the unopposed motion for final approval and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class
11 and avoids the delays, risks, and costs of further litigation. After disseminating the notice to the
12 members of the Class, there were **no objections and only three (3) requests for exclusion**, which
13 means that almost the entire Class 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 Glen Ivy Hot Springs, Inc. (“Defendant”) reached a full and final
19 settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with
20 the Court. As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
21 is One Million Five Hundred Thousand Dollars (\$1,500,000). (Agreement at ¶¶ 1.22 and 3.1.) Under
22 the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the
23 Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and
24

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals employed by Glen Ivy Hot Springs in California who
27 were classified as hourly, non- exempt employees at any time during the Class Period.” The “Class
28 Period” is defined as “November 1, 2017, through January 1, 2023.” (Preliminary Approval Order at
paragraph 5.)

1 Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class
2 Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment. (Agreement at ¶
3 1.22.) Blumenthal Decl. ¶3(a).

4 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement
5 at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement
6 at ¶ 3.1.) Blumenthal Decl. ¶3(b).

7 Within thirty (30) days of the Effective Date, Defendant shall deposit the Gross Settlement
8 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
9 to Participating Class Members along with the other Court-approved distributions shall be made by the
10 Administrator within fourteen (14) days after Defendant funds the Gross Settlement Amount.
11 (Agreement at ¶ 5.1.) Blumenthal Decl. ¶3(c).

12 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
13 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
14 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
15 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
16 Members as their Individual Class Payments. (Agreement at ¶¶ 1.23, 1.28 and 3.2.) From the Net
17 Settlement Amount, the Individual Class Payment for each Participating Class Member will be
18 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by
19 all Participating Class Members during the Class Period and (b) multiplying the result by each
20 Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks were based on
21 Defendant's records, however, Class Members had the right to challenge the number of Workweeks.
22 Blumenthal Decl. ¶ 3(d).

23 Class Members may choose to opt-out of the Settlement by following the directions in the Class
24 Notice. (Agreement at ¶ 8.5, Ex. A.) The Class Notice Packet will include an Exclusion Form and an
25 Objection Form. (Agreement at ¶¶ 8.5(a), 8.7(b), Ex. A.) All Class Members who do not "opt out" will
26 be deemed Participating Class Members who will be bound by the Settlement and will be entitled to
27 receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including
28 those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will

1 remain subject to the release of the Released PAGA Claims regardless of their request for exclusion.
2 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
3 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
4 Blumenthal Decl. ¶ 3(e).

5 A Participating Class Member must cash his or her Individual Class Payment check within 180
6 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
7 be voided and any funds from such uncashed checks will be sent to the California Controller's
8 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject
9 to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.)
10 Class Members can then claim their funds through the Controller's website. Blumenthal Decl. ¶3(f).

11 ILYM Group was appointed by the Court as the Administrator for the Settlement. (Agreement
12 at ¶ 1.2). From the Gross Settlement Amount, the Administrator will be paid for settlement
13 administration in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(c).) As set forth in the
14 Declaration of Nicole Bench ("Bench Decl.") at ¶ 15, the Administration Expenses Payment, including
15 fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement
16 administration, are \$19,400. Blumenthal Decl. ¶3(g).

17 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
18 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
19 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
20 Litigation Expenses Payment in an amount not to exceed \$17,000. (Agreement at ¶ 3.2(b).) Subject
21 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as
22 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) In support of this separate motion
23 for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is providing
24 evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

25 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
26 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
27 *et seq.* ("PAGA"). The PAGA Penalties are \$30,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to
28 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:

1 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
2 penalties and and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
3 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As
4 set forth in the accompany proof of service, the LWDA has been served with this motion and the
5 Agreement. Blumenthal Decl. ¶3(i).

6 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
7 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
8 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
9 at \$1,500,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
10 that liability and class certification in this case were far from certain in light of the defenses asserted
11 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
12 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
13 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

14 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
15 **OF CLASS ACTION SETTLEMENTS**

16 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
17 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
18 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
19 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
20 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

21 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
22 action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing
23 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The
24 court must decide whether the proposed settlement falls within the range of reasonable settlements,
25 taking into account that settlements are compromises between the parties reflecting subjective,
26 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See Wershba v.*
27 *Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be judged
28 against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed

1 at trial.”) In *Wershba*, appellants argued that the settlement was too low given the “clear” liability,
2 however, the Court rejected this argument and held that “the merits of the underlying class claims are
3 not a basis for upsetting the settlement of a class action.” *Id.*; *see also 7-Eleven, supra*, at 1150.

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

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

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

21 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
22 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that the
23 trial court should consider in evaluating the reasonableness of a class action settlement agreement
24 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
25 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
26 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
27 the presence of a governmental participant, and the reaction of the class members to the proposed
28 settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations

omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

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

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

A. The Settlement Satisfies the California Test for Fairness

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

Over the course of nearly two years of litigation, the Parties engaged in the investigation of the claims, including the production of documents, class data, and other information, allowing for the full and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and investigation performed was detailed at length in support of the motion for preliminary approval. The Settlement was the product of one arms-length mediation and contentious negotiations through an all-day mediation presided over by Hon. Carl West (ret.), a respected and experience mediator of wage and hour class actions. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(h).

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

This Settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has

1 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

2 The Parties attended an arms-length mediation session with Hon. Carl West (ret.), a respected
3 jurist and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
4 preparation for the mediation, Defendant provided Class Counsel with necessary information for the
5 members of the Class, including time data, payroll data and data concerning the composition of the
6 Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and
7 prepared and submitted a mediation brief and damage valuation to the Mediator. Following this all-day
8 mediation, the Parties agreed to this Settlement. Blumenthal Decl. ¶7(b).

9 The fact that the settlement was negotiated with the assistance of an experienced mediator
10 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
11 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
12 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
13 litigation, with the assistance of a well-respected mediator with substantial experience in employment
14 litigation[, and] this factor supports approval of the settlement”).

15 From December 2022 to April 2023, the settlement agreement and exhibits thereto were drafted,
16 finalized and executed, and the motion for preliminary approval was to this Court. On May 23, 2023,
17 the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the
18 Class. Blumenthal Decl. ¶7(c).

19 3. Class Counsel is Experienced in Similar Litigation

20 Class Counsel in this matter has extensive class action experience and has represented thousands
21 of persons in class actions including employment litigation, wage and hour class actions, and complex
22 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
23 claims similar to this case and have been approved as experienced class counsel during contested
24 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
25 knowledgeable in this area of law. A list of class action cases managed and settled by the Class
26 Counsel in this action is provided to the Court as Exhibit #1 to the Blumenthal Decl. Class Counsel
27 have participated in every aspect of the settlement discussions and have concluded the settlement is fair,
28 adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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4. There Are No Objections and Only Three (3) Requests for Exclusion

The reaction of the Class unequivocally supports approval of the Settlement. On June 21, 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each class member with the terms of the Settlement, including notice of the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award that were being sought, how individual settlement awards would be calculated, and the specific, estimated payment amount to that individual. See Bench Decl. ¶ 9, Exh. A. In disseminating the notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have been no objections and only three (3) valid requests to opt-out. Bench Decl. ¶¶ 13, 14. As such, nearly the entire Class will participate in the Settlement and will be sent a settlement check. See Bench Decl. at ¶ 13; Blumenthal Decl. ¶ 4.

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

5. The Strength of Plaintiff's Case

The Action generally alleges that Plaintiff and other Class Members were not properly paid all overtime wages for hours worked, were not provided meal and rest periods, were not timely paid earned wages, were not provided reimbursement for required expenses, were not provided accurate itemized wage statements, were not paid all wages at the time of termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶ 5.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by

1 Defendant, however, present serious threats to the claims of the Plaintiff and the other Class Members.
2 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
3 argued that Class Members were paid for all time worked and that all work time was properly recorded.
4 Defendant contends that its meal and rest period policies fully complied with California law and
5 Defendant did not fail to provide the opportunity for legally required meal and rest breaks. Plaintiffs'
6 theory of liability for rest breaks was based upon an on premise restriction, which Defendant disputed
7 and argued that this theory has been rejected by Courts as sufficient alone to establish liability for
8 on-duty rest breaks. *See, e.g., Ritenour v. Carrington Mortg. Servs., LLC*, 2018 WL 5858658, at *7
9 (C.D. Cal. 2018) (holding that defendant's on-premises rest period policy was facially valid and legal);
10 *Hubbs v. Big Lots Stores, Inc.*, 2018 WL 5264141, at *5 (C.D. Cal. 2018) (citing *Augustus* and
11 dismissing on-premises rest period claims for failure to state a claim); *Bell v. Home Depot U.S.A., Inc.*,
12 2017 WL 1353779, at *2 (E.D. Cal. 2017) (declaring defendant's argument that *Augustus* implied
13 on-premises rest periods were legal as "more persuasive and accurate" than plaintiff's argument to the
14 contrary). Defendant contended that there was no failure to pay for business expenses and any cell
15 phone usage was merely convenient and voluntary such that reimbursement was not legally required.
16 Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.
17 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal
18 and rest period claims. Defendant also argues that based on its facially lawful practices, Defendant
19 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
20 penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or
21 substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be
22 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
23 recovery by the Class. Blumenthal Decl. ¶8(a).

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

26 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
27 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
28 Associates were misclassified as exempt. In addition to the uncertainties raised by
Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
Defendants notes that the question of an employer's duty to provide rest and meal

1 periods is an open one, signaling even less certainty for Plaintiffs. [...T]he gross
2 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.

3 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
4 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the strength of Plaintiff's case, legal
5 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
6 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

7 The potential complexity and possible duration of trial also weigh in favor of granting
8 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
9 uncertainty of outcome, and believe defendant would appeal in the event of adverse
10 judgment. A post-judgment appeal would require many years to resolve and delay
payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
11 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.

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

14 In additional, there was also a significant risk that, if the Action was not settled, Plaintiff would
15 be unable to obtain a certified class and maintain the certified class through trial, and thereby not
16 recover on behalf of any employees other than herself. At the time of the mediation, Defendant
17 forcefully opposed the propriety of class certification, arguing that individual issues precluded class
18 certification. Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank*
19 *National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery
20 even where the class has been certified. While other cases have approved class certification in wage
21 and hour claims, class certification in this action was hotly disputed and the maintenance of a certified
22 class through trial was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

23 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
24 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
25 substantial defenses both to liability and to class certification. Currently, the maximum and average
26 class member allocation are \$3,419.15 and \$705.04, respectively. *See* Bench Decl. ¶17. Given the
27 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
28 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

Id. at *12.

1 7. The Amount Offered in Settlement

2 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
3 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
4 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
5 favorably to the value of the claims. Based upon 1,310 Class Members who collectively worked 72,934
6 Workweeks, the Gross Settlement Amount provides an average value of \$1,145 per Class Member and
7 \$20.56 per Workweek and after deductions the Net Settlement Amount provides an average recovery
8 of \$705 per Class Member and a recovery of \$12.66 per Workweek. Blumenthal Decl. ¶8(d).

9 The calculations to compensate for the amount due for the Class at the time of the mediation
10 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
11 issue in this Action, Plaintiff used this expert to analyze the data and determine the potential unpaid
12 wages for the employees. The maximum potential damages were calculated to be \$293,976 for the
13 potential unpaid wages due to alleged reporting time, \$341,586 for alleged unpaid wages due to
14 donning / doffing and health screening, \$3,932,259 for alleged rest period damages based upon a 100%
15 assumed potential violation rate from on premise restriction, \$358,400 for alleged unreimbursed
16 business expenses for assumed personal cell phone usage at \$20 per month. The meal break claim had
17 nominal value because Defendant established that it paid the meal period premium for every violation
18 apparent in the time records. As a result, the total damage valuation was calculated that Defendant was
19 subject to a maximum damage claim in the amount of \$4,926,221. As to potential penalties, Plaintiff
20 calculated that potential waiting time penalties were a maximum of \$2,070,708 and potential wage
21 statement penalties were between \$598,600 and \$1,173,750, depending on the predicate violation.
22 Defendant vigorously disputed Plaintiff's calculations and exposure theories. Blumenthal Decl. ¶8(d).

23 Given these uncertainties, the Gross Settlement Amount of \$1,500,000 is fair and reasonable.
24 This amount represents more than 30% of the maximum value of the alleged damages at issue in this
25 case at the time this Settlement was negotiated.³ In addition, the above maximum calculations should

26 _____
27 ³ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
28 Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The
PAGA claim was addressed in the Motion for Preliminary Approval in the Decl. Nordrehaug at ¶33.

1 then be adjusted in consideration for both the risk of class certification and the risk of establishing
2 class-wide liability on all claims. Given the amount of the settlement as compared to the potential value
3 of claims in this case and the defenses asserted by Defendant, this settlement is fair and reasonable.⁴
4 Clearly, the goal of this litigation has been met.

5 **V. CONCLUSION**

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

9
10 Dated: September 14, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

11 By: /s/ Kyle Nordrehaug
12 Kyle R. Nordrehaug, Esq.
13 Attorneys for Plaintiff
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22 ⁴ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
25 (N.D. Cal. 2015) (granting final approval where “the proposed Total Settlement Amount represents
26 approximately 10% of what class might have been awarded had they succeeded at trial.”); *Dunleavy*
27 *v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
28 of a class settlement which represented “roughly one-sixth of the potential recovery”.) See also *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 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 maximum valuation).