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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KARLA GODINEZ, as an individual
and on behalf of other similarly
situated employees,

Plaintiff,

v.

MERRITT HOSPITALITY, LLC, a
Delaware limited liability company,
and DOES 1-50, inclusive,

Defendant.

Case No.: 8:20-cv-00941-JWH-KES

*Assigned for all purposes to the
Honorable John W. Holcomb &
Magistrate Judge Karen E. Scott*

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

Date: January 19, 2024

Time: 9:00 a.m.

Place: Courtroom 9D

Action Filed: January 29, 2020
(Orange County Superior Court, Case
No. 30-2020-01127848-CU-OE-CXC)

Trial Date: None

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1
2 **I. Introduction.**

3 On September 27, 2023, the Court granted preliminary approval of the Class
4 Action Settlement Agreement¹ and approved distribution of the Notice of Class
5 Action Settlement (“Class Notice”) to all Class Members. Class Members were
6 given an opportunity to opt out or object to the Settlement (“Response Deadline”).
7 Plaintiff is pleased to report that: (1) no Class Member has objected to the
8 Settlement; (2) only one Class Member opted out of the Class; (3) the average
9 payment from the Settlement is approximately \$312.25. (Declaration of Taylor
10 Mitzner With Respect to Notice and Settlement Administration [“Mitzner Decl.” ¶
11 13.)

12 Plaintiff now seeks final approval of this Settlement with Defendant Merritt
13 Hospitality, LLC. (referred herein as “Defendant”) (collectively with Plaintiff, the
14 “Parties”). The principal terms of the Settlement provide for the following:

- 15 (1) A Settlement Class defined as: All current and former non-exempt
16 employees of Defendant Merritt Hospitality, LLC in California at any
17 time during the period from January 29, 2016 through November 2,
18 2021 (the "Class Period"), excluding employees who were employed
19 by Defendant at the Warner Center Marriott and the Hilton Santa
20 Cruz/Scotts Valley. (Declaration of Armond M. Jackson in Support of
21 Final Approval of Class Action Settlement [“Jackson Decl.”] ¶ 5, Ex.
22 A.)
- 23 (2) An all-inclusive and non-reversionary Gross Settlement Amount of
24 \$1.75 million (including employer payroll taxes). The Gross
25 Settlement Amount includes:

26
27 ¹ Hereinafter, “Settlement” or “Settlement Agreement.” Unless indicated otherwise, all
28 capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

- 1 (a) A Remaining Distribution Fund which will be allocated
2 to all Class Members on a pro-rata basis according to the
3 number of weeks each Class Member worked during the
4 Class Period. **The Remaining Distribution Fund will**
5 **be paid to all Class Members who do not opt out of**
6 **the Settlement Class, and without the need to submit**
7 **claims for payment.**
- 8 (b) Attorneys' fees not to exceed \$437,500.00, and litigation
9 costs and expenses not to exceed \$20,000.00, to
10 Plaintiff's counsel, Jackson Law, APC ("Plaintiff's
11 Counsel").
- 12 (c) Settlement administration costs of \$25,000.00, to the
13 Court-appointed settlement administrator, Phoenix Class
14 Action Administration Solutions ("Phoenix".)
- 15 (d) A class representative service award of \$5,000.00 to
16 Karla Godinez for her services on behalf of the
17 Settlement Class.

18 The relief negotiated on behalf of the Class is fair, reasonable, and valuable.
19 The Settlement was negotiated by the Parties at arm's-length with helpful guidance
20 from the Mark Rudy, Esq., and the Settlement confers substantial benefits to Class
21 Members. This relief—averaging approximately \$312.25 per Class Member—is
22 particularly impressive when viewed against the difficulties encountered by
23 plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than
24 proceeding to trial, Class Members will not have to wait (possibly years) for relief,
25 nor will they have to bear the risk that the class is decertified or of Defendants
26 prevailing at trial or on appeal.
27
28

1 Accordingly, given the Settlement's favorable terms and the manner in
2 which these terms were negotiated and received by Class Members, Plaintiff
3 respectfully requests that the Court grant this Motion for Final Approval of the
4 Settlement Agreement and retain jurisdiction to enforce the Settlement.

5 **II. FACTS AND PROCEDURE**

6 **A. Overview of the Litigation**

7 Defendant is a company that owns and operates a hotel where Plaintiff
8 worked. Defendant facilities are in Orange County, California. The Plaintiff
9 worked for Defendant as non-exempt hourly worker. The claims being released
10 pursuant to the Settlement are limited to those claims which are based on the facts
11 alleged or could have been alleged.

12 1. Plaintiff filed this class action on January 29, 2020, in the Superior
13 Court of the State of California, County of Orange, Case No. 30-2020-01127848-
14 CU-OE-CXC. (Jackson Decl. ¶ 2.) On May 21, 2020, Defendants removed the
15 action to this District. (*Id.*)

16 **B. The Parties Settled at Mediation**

17 On September 2, 2021, the Parties appeared before mediator Mark Rudy,
18 Esq. At mediator and as the result of arm's-length negotiations, At the end of this
19 September 2, 2021 mediation, Mr. Rudy initiated a mediator's proposal that was
20 considered by the parties and finally accepted on September 28, 2021 the Class
21 Action Settlement Agreement. (Jackson Decl. ¶ 5, Ex. A.)

22 **C. The Proposed Settlement Fully Resolves Plaintiff's Claims**

23 **1. Composition of the Settlement Class**

24 The Settlement Class consists of all persons who are or were employed by
25 Defendant in a non-exempt, hourly-paid position in any of Defendant's California
26 hotel locations from January 29, 2016 until November 2, 2021. (Jackson Decl. ¶
27 5, Ex. A pg. 2, ¶ 8.) Although the workweeks and class size slightly increased,
28 this increase did not trigger the 10% workweek escalator clause negotiated in the
settlement agreement.

2. Settlement Consideration

Plaintiff and Defendant have agreed to settle the class claims in exchange for the Gross Settlement Amount of \$1.75 million, all-inclusive and non-reversionary. The Gross Settlement Amount includes: (1) settlement payments to all Class Members who do not opt out of the Settlement Class (including employer payroll taxes on payments); (2) up to \$437,500.00 in attorneys' fees and up to \$20,000.00 in litigation costs/expenses to Plaintiff's Counsel; (3) settlement administration costs of \$25,000.00; and (5) a class representative service award of \$5,000.00 to Sophia Rivas for her service on behalf of the Settlement Class and for a general release of all claims arising out of her employment. (Jackson Decl. ¶ 5, Ex. A. pg. 17, § 50.c.)

Subject to the Court approving attorneys' fees and costs, settlement administration costs, and the class representative service award, the Remaining Distribution Fund will be distributed to all Class Members who do not opt out of the Settlement Class. Because the Gross Settlement Amount is non-reversionary, 100% of the Remaining Distribution Fund will be paid to the Settlement Class, and without the need to submit claims for payment. (Jackson Decl. ¶ 5, Ex. A., pg. 14, § 50.a.)

3. Release by the Settlement Class

In exchange for the Gross Settlement Amount, Class Members who do not opt out will agree to release the Released Claims, which are defined as:

Plaintiff's allegations in the Action and in the Amended Complaint that Defendants ((1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay the one hour premium; (4) failure to provide rest periods or pay the one hour premium; (5) failure to timely pay all wages due during employment and upon termination; (6) failure to furnish accurate itemized wage statements and maintain records; (7) failure to indemnify employees for necessary expenditures; and (8) unfair and unlawful business practices;

1 and (9) civil penalties under PAGA, as a representative action as well
2 as claims that could have been brought in the Complaint.

3 (Jackson Decl. ¶ 5, Ex. A., pg. 9, § 48a.) The Released Claims are those that
4 accrued during the Settlement Period. (Jackson Decl. ¶ 5, Ex. A., pg. 2, § 8.)
5 Accordingly, the release is narrowly tailored to the claims alleged in the Action, or
6 that could have been alleged in the Action. See *Int’l Union of Operating*
7 *Engineers-Employers Canst. Industry Pension, Welfare and Training Trust Funds*
8 *v. Karr*, 994 F.2d 1426, 1430 (9th Cir. 1993) (“res judicata bars not only all claims
9 that were actually litigated, but also all claims that ‘could have been asserted’ in
10 the prior action”).

11 **D. The Notice and Settlement Administration Process Were Completed**
12 **Pursuant to the Court’s Preliminary Approval Order**

13 As authorized by the Court’s Order preliminarily approving the Settlement
14 Agreement, the Parties engaged Phoenix to provide settlement administration
15 services. (Mitzner Decl. ¶ 2.) On October 10, 2023, Phoenix received the Class
16 data in which it prepared Notice Packets based upon the Notice prepared jointly by
17 Class Counsel and counsel for Defendants and approved by the Court. (Mitzner
18 Decl. ¶¶ 3-5.) The Class Notice summarized the Settlement’s principal terms,
19 provided Class Members with an estimate of how much they would be paid if the
20 Settlement received final approval, and advised Class Members about how to opt
21 out of the Settlement and how to object. (*Id.*, Ex. A)

22 Separately, counsel for Defendant provided Phoenix with a mailing list (the
23 “Class List”), which included each Class Member’s full name, last known address,
24 Social Security Number, and information necessary to calculate payments.
25 (Mitzner Decl. ¶¶ 3-5.) The mailing addresses contained in the Class List were
26 processed and updated using the National Change of Address Database maintained
27 by the U.S. Postal Service. (*Id.*) On October 27, 2023, Phoenix mailed Class
28

1 Notices to Class Members via First-Class U.S. mail. (Mitzner Decl. ¶ 5.) Class
2 Members were given 45 days to opt out or object to the Settlement. Plaintiff is
3 pleased to report that to date, no Class Members have objected to the Settlement
4 and only one Class Member opted out of the settlement Class. (*Id.* ¶¶ 8-10.)

5 **III. ARGUMENT**

6 **A. The Standard for Final Approval Has Been Met**

7 A class action may only be settled, dismissed, or compromised with the
8 Court's approval. Fed. R. Civ. Proc. 23(e). The process for court approval of a
9 class action settlement is comprised of three principal stages:

10 Preliminary Approval: The proposed settlement agreement is preliminarily
11 reviewed by the Court for fairness, adequacy, and reasonableness. If the Court
12 believes the settlement falls within the range of reasonableness, such that
13 proceeding to a formal fairness hearing is warranted, it orders notice of the
14 settlement disseminated to the class. See Manual for Complex Litigation § 21.632
15 (4th ed. 2004).

16 Class Notice: Notice of the settlement is disseminated to the class, giving
17 class members an opportunity to object to the settlement's terms or preserve their
18 right to bring an individual action by opting out. See *id.*, § 21.633.

19 Final Approval: A formal fairness or final-approval hearing is held by the
20 Court, at which class members can be heard regarding the settlement, and at which
21 evidence and argument concerning the fairness, adequacy, and reasonableness of
22 the settlement is presented.² Following the hearing, the Court decides whether to
23 approve the settlement and enter a final order and judgment. See *id.*, § 21.634.

24
25 ² A proposed class action settlement may be approved if the Court, after allowing absent
26 class members an opportunity to be heard, finds that the settlement is "fair, reasonable, and
27 adequate." In making this determination, "the court's intrusion upon what is otherwise a private
28 consensual agreement negotiated between the parties to a lawsuit 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." *Rodriguez v. West Publ'g Corp.*, 563

1 The first two steps have been completed. The Court has preliminarily
2 reviewed the proposed settlement for fairness and found it to be within the range of
3 reasonableness meriting court approval. (See Order Granting Motion for
4 Preliminary Approval of Class Action Settlement, Dkt. No. 71.) In addition, the
5 Settlement Administrator has notified Class Members of the proposed settlement
6 and upcoming fairness hearing as directed by the Court. (Mitzner Decl. ¶¶ 3-10,
7 Ex. A.) Plaintiff now moves the Court to grant final approval of the proposed
8 settlement.

9 The decision about whether to approve the proposed settlement is committed
10 to the sound discretion of the trial judge, and will not be overturned except upon a
11 strong showing of a clear abuse of discretion. *Hanlon v. Chrysler Corp.*, 150 F.3d
12 1011, 1026-27 (9th Cir. 1998). The Ninth Circuit has set forth a list of non-
13 exclusive factors that a district court should consider in deciding whether to grant
14 final approval, namely: (1) the strength of plaintiffs’ case, and the risk, expense,
15 complexity, and likely duration of further litigation; (2) the risk of maintaining
16 class action status throughout the trial; (3) the amount offered in settlement; (4) the
17 extent of discovery completed, and the stage of the proceedings; (5) the experience
18 and views of counsel; and (6) the reaction of the class members to the proposed
19 settlement. *Id.* at 963 (citing *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003)).

20 These factors, which are discussed below, confirm that the proposed
21 settlement is more than fair, reasonable, and adequate for Class Members. The
22 settlement provides considerable value; Class Members need not bear the risk and
23 delay associated with trial proceedings to obtain these benefits; and the Settlement
24 has been met with substantial support and no opposition from Class Members.

25
26 F.3d 948, 965 (9th Cir. 2009) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.
27 1998)); see also *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)
28 (“voluntary conciliation and settlement are the preferred means of dispute resolution. This is
especially true in complex class action litigation”)

1 **B. Benefits The Settlement Was Achieved After Evaluating the**
2 **Strengths of Plaintiff’s Case and the Risks, Expense, Complexity,**
3 **and Likely Duration of Further Litigation**

4 As discussed in detail below, an objective evaluation of the Settlement
5 confirms that the relief negotiated on the Class’ behalf—a \$1.75 million non-
6 reversionary total Gross Settlement Amount—is fair, reasonable, and valuable. The
7 Settlement was negotiated by the Parties at arm’s length with helpful guidance
8 from mediator Mark Rudy, Esq., and the Settlement confers substantial benefits to
9 Class Members. The relief offered by the Settlement is particularly impressive
10 when viewed against the difficulties encountered by plaintiffs pursuing wage and
11 hour cases.

12 In determining whether a settlement agreement is fair, adequate, and
13 reasonable to all concerned, the Court may consider the strength of the plaintiff’s
14 case and the amount offered in settlement, among other factors. *Linney v. Cellular*
15 *Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). Ultimately, “the district
16 court’s determination is nothing more than an amalgam of delicate balancing, gross
17 approximations, and rough justice,” and there is no single “formula” to be applied;
18 rather, the Court may presume that the parties’ counsel and the mediator arrived at
19 a reasonable range of settlement by considering Plaintiff’s likelihood of recovery.
20 *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982);
21 *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 965 (9th Cir. 2009).

22 Federal district courts recognize that there is an inherent “range of
23 reasonableness” in determining whether to approve a settlement “which recognizes
24 the uncertainties of law and fact in any particular case and the concomitant risks
25 and costs necessarily inherent in taking any litigation to completion.” *Newman v.*
26 *Stein*, 464 F. 2d 689, 693 (2d Cir. 1972); see also *Nat’l Rural Telecomm. Coop. v.*
27 *Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a
28

proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”).³

Based information and evidence produced by Defendant during discovery, including a sample of time and wage records, Plaintiff’s Counsel were able to calculate Defendant’s maximum potential exposure for the claims at issue, which are summarized in the table below:

Claims	Value
Overtime and Minimum Wage Claims	\$490,766.90
Meal Break Claims	\$571,511.50
Rest Break Claims	\$1,254,689.00
Unpaid Wages Upon Termination	\$1,494,300.60
Wage Statement Claims	\$608,180.50
Reimbursement Claims	\$463,849.38
PAGA Claims	\$863,009.50
TOTAL	\$5,746,277.38

After calculating Defendant’s potential maximum exposure for the above claims, Plaintiff’s Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant’s maximum theoretical liability by: (i) the strength of Defendant’s defenses on the merits; (ii) the risk of class certification being denied; (iii) the risk of losing on any of a number of dispositive motions that

³ See also *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”).

1 could have been brought between certification and trial (e.g., motions to decertify
2 the class, motions for summary judgment, and/or motions in limine) that might
3 have eliminated all or some of Plaintiff’s claims; (iv) the risk of losing at trial
4 (including the Court deeming the trial unmanageable on a representative basis); (v)
5 the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties
6 attendant to collecting on a judgment.

7 With respect to its defenses, among other things, that they correctly
8 calculated and pay the regular rate of pay for overtime and meal/rest period
9 premiums because, among other reasons, the bonuses and incentive pay at issue
10 did not need to be included in the regular rate of pay. Although Plaintiff disagrees
11 with this analysis, this was an unresolved legal issue that created uncertainty and
12 was another consideration with favored settlement. Defendant would have argued
13 that their on-premises rest break policy was not actually enforced, and that there is
14 no published opinion yet adopting Plaintiff’s theory of liability.

15 Defendant would have argued their wage statements accurately reflected the
16 regular rate of pay and the amount of compensation earned. Defendant also would
17 have argued that Plaintiff’s theory of wage statement liability was rejected by the
18 California Court of Appeal in *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App.
19 5th 1308 (2018). *Maldonado* addresses two specific types of wage statement
20 deficiencies: (1) wage statements that do not list all wages “earned” and (2) wage
21 statements that do not list all hours “worked.” Under *Maldonado*, the latter
22 deficiency gives rise to a “presumption of injury” within the meaning of Labor
23 Code section 226(e). *Id.* at 1336. The former does not. *Id.*

24 *Maldonado* involved a class of hourly employees who operated machines
25 used to manufacture plastic bags at Epsilon’s California factory. *Id.* at 1312. At
26 four different times during the class period, class members worked an Alternative
27 Workweek Schedule (“AWS”), under which they were paid for 10 hours at the
28

1 regular rate of pay and 2 hours of overtime. *Id.* at 1312-21. The trial court
2 concluded after a bench trial that the AWS was unlawful as it had not been
3 properly adopted, and concluded that Epsilon’s failure to pay overtime for the
4 ninth and tenth hours of work, in reliance on the improperly adopted AWS, was
5 not in good faith. *Id.* at 1320-26. As a result of the improperly adopted AWS,
6 plaintiffs obtained judgment for unpaid overtime, interest, waiting time penalties,
7 inaccurate wage statement penalties, and attorney’s fees. *Id.* at 1312.

8 The trial court found that the wage statements were inaccurate because,
9 whenever class members worked the AWS, the wage statements did not properly
10 indicate the ninth and tenth hours were paid at the overtime rate. *Id.* at 1326. On
11 appeal, Epsilon argued that the failure to pay overtime flowed from the improperly
12 adopted AWS, rather than from the inaccurate wage statements. *Id.* at 1335. The
13 Court of Appeal agreed, finding that whereas the failure to include “hours worked”
14 would have given rise to a presumption of injury,” the failure to include wages
15 “earned” did not:

16 Subdivision (a) uses both the term “earned” and the term “worked.”
17 That is, categories (a)(1) and (a)(5) require the employer to provide
18 information regarding the “gross wages earned” and “net wages
19 earned” respectively; but these two categories are excluded from
20 subdivision (e)(2)(B)(i)’s list of those categories whose omission
21 gives rise to a presumption of injury. In contrast, categories (a)(2) and
22 (a)(9) refer to the “total hours worked,” and “number of hours worked
23 at each hourly rate.” These categories are included in subdivision
24 (e)(2)(B)(i)—if they are excluded from the wage statement, injury
25 may be presumed. There is a clearly a significance to the Legislature’s
26 decision that injury is not presumed when a wage statement fails to
27 include wages “earned” but is presumed when the wage statement
28 fails to include hours “worked at” a particular rate. The difference, we
believe, is to account for precisely this situation—where at the time
the work was performed, the work was done and paid for at a
particular rate, but it was subsequently determined that the employee
had actually earned the right to additional compensation.

1 *Id.* at 1336. Defendant would also have argued, among other things, that without
2 more, wage statement claims are nothing but technical violations for which Class
3 Members suffer no injury. Before Section 226(e) was amended, the dispositive
4 issue was whether “suffering injury” was satisfied by the deprivation of a legal
5 right (i.e., an employer’s provision of non-compliant wage statements), or by
6 consequential damages caused by the non-compliant wage statements. Employers
7 in federal court have prevailed in arguing for the latter interpretation. Even after
8 the enactment of section 226(e), some courts have held that this amendment merely
9 clarifies existing law and have held that plaintiffs must demonstrate actual injury.
10 *See Loud v. Eden Med. Ctr.*, 2013 U.S. Dist. LEXIS 122873, **36-53 (N.D. Cal.
11 Aug. 28, 2013) (granting summary judgment on wage statement claim because
12 plaintiff could not show injury due to defects and that incorrect wage information
13 is not willful).⁴ Defendant would have also argued that an employer has a
14 complete defense to a waiting-time penalty claim based on a showing of good
15 faith. *Amaral v. Cintas Corp No. 2*, 163 Cal. App. 4th 1157, 1204 (2008) (“So long
16 as no other evidence suggests the employer acted in bad faith, presentation of a
17 good faith defense, based in law or fact, will negate a finding of willfulness.”)

18 The total settlement of \$1,750,000 would amount to 30% of the gross value.
19 Even without incorporating Defendant’s risk exposure analysis for an evaluation of
20 \$10,206,601.27 which was 17% of the Plaintiff’s damages risk analysis without
21 incorporating Defendant’s risk analysis, Courts in this district have approved 9.1%

22
23 ⁴ Moreover, if liability had been established, Defendants would have argued (by analogy
24 to case law interpreting penalties under Labor Code sections 201 and 225.5), that it would be
25 improper to assess \$100 penalties for “subsequent violations” as there has been no formal finding
26 of any “initial” violations. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209
27 (2008) (“Although common sense might suggest a “subsequent” violation is nothing more than a
28 violation that occurs at a later point in time after an “initial” violation, this definition is
inadequate because the statutes provide for multiple penalties for “each failure to pay each
employee” incurred in an initial violation . . . 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.”)

1 of the plaintiff's damages estimates. (*See Ma v. Covidien Holding, Inc.*, 2014 WL
2 360196, *1, 3-5 (C.D. Cal. Jan. 31, 2014) Courts in this district have also approved
3 a settlement for as low as 2% of the potential exposure analysis. (*Shiferaw v.*
4 *Sunrise Senior Living Management, Inc.* 2017 WL 2973182 at * 15 (C.D. Mar. 29,
5 2017) Thus, whether the settlement value is 30% or 17% of the potential exposure,
6 this "settlement is not to be judged against a hypothetical or speculative measure of
7 what might have been achieved by the negotiators." (Officers for Justice, 688 F.2d
8 at 625) A risk of loss still remains as well as a costly and lengthy litigation. The
9 settlement should be considered to fall within a range of reasonableness. (See
10 *Acosta v. Trans Union*, 243 F.R.D. 377, 386 (C.D. Cal. 2007)

11 Furthermore, taking into account the above defenses and the other Discount
12 Factors, and mediator Mark Rudy, Esq.'s guidance and recommendations, and
13 below cited case law, Plaintiff further determined that the settlement is fair and
14 adequate. (*See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-
15 58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to
16 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F.
17 Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the
18 estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58
19 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage*
20 *Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014)
21 (finding that settlement which amounted to 8% of maximum recovery "[fell]
22 within the range of possible initial approval based on the strength of plaintiff's case
23 and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.*,
24 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8%
25 of estimated damages.)
26
27
28

1 **C. The Settlement Was Reached through Arm’s-Length Bargaining in**
2 **Which All Parties Were Represented by Experienced Counsel**

3 As discussed above, the Settlement is the result of arm’s-length negotiations
4 by experienced counsel. The Parties participated in a judicial settlement conference
5 with the mediator Mark Rudy, Esq. Mediator Rudy helped to manage the Parties’
6 expectations and provided a useful, neutral analysis of the issues and risks to both
7 sides. A neutral’s participation weighs considerably against any inference of a
8 collusive settlement. *See In re Apple Computer, Inc. Derivative Litig.*, No. C 06-
9 4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008);
10 *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s
11 involvement in pre-certification settlement negotiations helps to ensure that the
12 proceedings were free of collusion and undue pressure.”) At all times, the Parties’
13 negotiations were adversarial and non-collusive.

14 The Parties were represented by experienced class action counsel throughout
15 the negotiations resulting in this Settlement. Jackson Law, APC employs seasoned
16 class action attorneys who regularly litigate wage and hour claims through
17 certification and on the merits, and have considerable experience settling wage and
18 hour class actions. (See Jackson Decl. ¶¶ 17-24.) Defendant is represented by
19 Ballard Rosenberg Golper & Savitt, LLP.

20 As this Settlement is the “result of arms’-length negotiations by experienced
21 class counsel, [it is] entitled to [a] presumption of fairness.” *In re: Volkswagen*
22 *"Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC),
23 2016 WL 4010049, at *14 (N.D. Cal. July 26, 2016) (internal citation omitted).

24 **D. The Parties Conducted A Thorough Investigation of the Factual and**
25 **Legal Issues**

26 The Settlement is the product of informed negotiations following extensive
27 investigation by Plaintiff’s Counsel. During this matter’s pendency, Plaintiff’s
28 Counsel thoroughly investigated and researched the claims in controversy, their

1 defenses, and the developing body of law. The investigation entailed the exchange
2 of information pursuant to formal and informal discovery methods, including
3 interrogatories and document requests. In the course of exchanging discovery,
4 Plaintiff's Counsel received and analyzed several thousand pages of documents,
5 including Defendant's written policies regarding the claims at issue. (Jackson Decl.
6 ¶ 3.)

7 Overall, Plaintiff's Counsel performed an exhaustive investigation into the
8 claims at issue, which included: (1) determining Plaintiff Godinez's suitability as a
9 putative class representative through interviews, background investigations, and
10 analyses of her employment files and related records; (2) evaluating all of
11 Plaintiff's potential claims; (3) researching similar wage and hour class actions as
12 to the claims brought, the nature of the positions, and the type of employer; (4)
13 analyzing Defendant's labor policies and practices; (5) researching settlements in
14 similar cases; (6) conducting a discounted valuation analysis of claims; (7) drafting
15 the Settlement Conference Statement; (8) participating in the Settlement
16 Conference; and (9) finalizing the Settlement Agreement. The extensive document
17 and data exchanges have allowed Plaintiff's Counsel to appreciate the strengths
18 and weaknesses of the claims alleged against Defendant and the benefits of the
19 proposed Settlement. (Jackson Decl. ¶ 4.)

20 **E. The Settlement Class Has Responded Positively to the Settlement**

21
22 The Settlement Class' response to date demonstrates its support for this
23 settlement—not a single Class Member has objected to the Settlement and only
24 one Class Member opted out of the settlement Class. (Mitzner Decl.¶¶ 8-10.) The
25 average settlement payment is approximately \$312.25, and a highest payment is
26 approximately \$1,212.03. (Mitzner Decl.¶ 13.) A low number of opt-outs and no
27 objections is a strong indicator that a settlement is fair and reasonable. *7-Eleven*
28

1 *Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152-53
2 (2000) (class response favorable where “[a] mere 80 of the 5,454 national class
3 members elected to opt out [(1.5% of the entire Class)] and . . . [a] total of nine
4 members . . . objected to the settlement); *Churchill Village, LLC v. General*
5 *Electric*, 361 F.3d 566 (9th Cir. 2004) (affirming settlement approval where 45 of
6 approximately 90,000 notified class members objected and 500 opted out). The
7 Settlement Class’ response—both in the low rate of opt-outs and the complete
8 absence of objectors—compares favorably to those cases and warrants final
9 approval.

10 Additionally, the average recovery is significantly higher than many wage
11 and hour class action settlements approved by California state and federal courts
12 for broader releases. *See, e.g., Badami v. Grassroots Campaigns, Inc.*, Case No. C
13 07-03465 JSW (N.D. Cal. Sept. 15, 2008) (average net recovery of approximately
14 \$195); *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego
15 County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza*
16 *Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of
17 approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253
18 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v.*
19 *Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.)
20 (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*,
21 Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery
22 of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-
23 JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v.*
24 *Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.)
25 (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*,
26 Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately
27 \$20).

1 **F. The Requested Payment to the Settlement Administrator Is**
2 **Reasonable and Should Receive Final Approval**

3 Plaintiff requests final approval of settlement administration costs in the
4 amount of \$25,000.00. (Mitzner Decl. ¶ 16, Ex. B) Phoenix has promptly and
5 properly distributed the Class Notice to all Class Members and completed its duties
6 in accordance with the settlement terms and the Court’s preliminary approval
7 Order. (Mitzner Decl. ¶¶ 2-10, Ex. A) Accordingly, the \$25,000.00 payment is fair
8 and reasonable and should be accorded final approval along with the rest of the
9 Settlement terms.

10 **IV. CONCLUSION**

11 The Parties have negotiated a fair and reasonable settlement of a case that
12 provides relief that likely would never have been realized but for this class action.
13 Accordingly, final approval of the Settlement should be granted.

14
15 Dated: December 22, 2023

Respectfully Submitted,

JACKSON LAW, APC

By: /s/ Armond M. Jackson

Armond M. Jackson

Attorney for Plaintiff Karla Godinez