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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF CONTRA COSTA

16 Robert Anthony Gonzalez, Maurice  
17 Frank, and Ethan Collins individually and  
18 on behalf of all similarly situated  
19 individuals and all aggrieved employees,

20 Plaintiff,

21 v.

22 Golden Gate Bell, LLC and  
23 DOES 1 to 100,

24 Defendants.  
25  
26  
27  
28

Case No. MSC21-00956

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

Date: October 19, 2023  
Time: 9:00 a.m.  
Dept.: 12  
Judge: Hon. Charles Treat

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## I. INTRODUCTION

After more than five years of litigation encompassing multiple actions and litigation in both state and federal court, Plaintiffs have delivered a wage and hour settlement that provides \$4,500,000 for a group of 19,854 employees who worked in California Bay Area Taco Bell fast-food restaurants operated by Defendant Golden Gate Bell (“GGB” or “Defendant”). This Court has already granted preliminary approval and all that remains is final approval of the settlement. The Settlement Administrator has given notice in accordance with this Court’s orders; there has not been one single objection to the Settlement, and only two individuals have opted out of the settlement. Plaintiffs now seek final approval of the settlement.

The total lack of objections and extraordinarily small number of opt-outs is consistent with the excellent terms of the Settlement. There was no requirement for Class Members to file claim forms, and there will be no reversion of funds to Defendant. Every Class Member will receive a check and all of the money will be paid out. The average payment for all Class Members, including even short-term employees who worked just a few days, is over \$112; the average payment for long-term employees is over \$854.

Procedurally, the Settlement comes after extremely vigorous litigation. The case has included thousands of pages of document discovery, depositions, and vigorous motion practice, including a motion for summary adjudication that was pending at the time of settlement. The result of this vigorous litigation has been an extraordinarily well-informed settlement. Plaintiffs have obtained time records, payroll records, policy documents, manuals, and have performed an exhaustive technical analysis of the available data. This case has been the subject of two full-day mediations, and the instant settlement only came after additional follow-up work from the neutral that presided over the second mediation.

In granting preliminary approval, this Court found that the settlement is fair, adequate, and reasonable, “subject only to such objections as may be raised to final approval.” There have been no objections and final approval is appropriate.

## II. PROCEDURAL HISTORY

The settlement resolves multiple cases that bring wage and hour claims against the same employer. Those cases are the consolidated proceedings in *Collins and Frank v. Golden Gate Bell, LLC*, Case Nos. RG18913275, RG19037980, and HG18919698 pending in Alameda Superior Court, and *Gonzalez v. Golden Gate Bell, LLC*, Case No. MSC21-00956 pending in this Court. The parties have agreed to seek approval of the settlement in this Court and have informed the Alameda Superior Court that this Court will be handling the approval process. The Alameda Court has stayed proceedings in the *Collins/Frank* matter pending this Court's approval of the settlement. A detailed procedural history of all the settled cases is provided in the Motion for Preliminary Approval.

Plaintiffs litigated the *Frank* and *Collins* cases vigorously. Discovery included three sets of requests for admission, six sets of special interrogatories, and five sets of requests for production of documents. Graves Decl. ¶14. There was also a deposition of Defendant's Person Most Qualified corporate witness, five informal discovery conferences, and two motions to compel. *Id.* at ¶¶15-16. The discovery yielded more than 1,790 pages of documents, electronic data on hundreds of thousands of employee shifts, and contact information for thousands of class members. Graves Decl. ¶17. Documents included policy manuals and presentations on timekeeping and other topics relevant to the claims in the action, and the data acquired included detailed electronic time and payroll records. *Id.* The parties litigated a motion to remand, a demurrer to Defendant's answer, and a motion for summary adjudication with regard to the paystub claims that was pending at the time of settlement. *Id.* at ¶18.

The parties have attended two separate mediations in this matter. In August of 2020, Plaintiffs Frank and Collins and Defendant attended an all-day mediation with noted mediator David Rotman. Prior to the mediation, Plaintiff's counsel engaged in a vigorous analysis that included payroll records, time records, and paystubs. Graves Decl. ¶20. To better understand the data, counsel for Plaintiff Collins designed an extensive

1 data analysis. *Id.* at ¶21. The analysis included multiple alternative calculations of  
2 potential violations and the recovery to the Class under different legal theories and  
3 possible rulings. *Id.* Class Counsel also used information gathered by interviewing  
4 multiple employees and reviewing thousands of pages of policy documents. *Id.* at ¶21.  
5 Counsel for Collins drafted a 31-page single-spaced mediation brief with 41 exhibits. *Id.*  
6 at ¶22. Despite the immense preparation, the parties failed to come to reach a settlement.  
7 *Id.* at ¶23.

8 In April of 2022, all parties attended a second mediation with noted mediator  
9 Tripper Ortman. The second mediation included Defendant and Plaintiffs Frank, Collins,  
10 and Gonzalez. Graves Decl. ¶24. Prior to the second mediation, Defendant provided  
11 updated data, including time and payroll records. *Id.* at ¶25. Counsel for Collins again  
12 went through an intensive review of all available data to build a detailed liability analysis  
13 that allowed for dynamic calculation of potential liability based on different factual and  
14 legal outcomes. *Id.* Counsel for Collins drafted a 37-page single-spaced mediation brief  
15 with 57 exhibits. *Id.* at ¶27. Counsel for Frank reviewed and contributed to the brief and  
16 exhibits. *Id.* at ¶28. Although the mediation was productive, a settlement was not  
17 reached. *Id.* at ¶29.

18 After the second mediation, the parties continued to negotiate through mediator  
19 Ortman while Plaintiffs worked on motions for partial summary judgment and class  
20 certification. In September of 2022, the parties executed an initial Memorandum of  
21 Understanding. Graves Decl. ¶31. Months of additional negotiation were required to  
22 reach the final settlement agreement. Defendant provided signatures on the Class Action  
23 and PAGA Settlement Agreement on April 4, 2023. Graves Decl. Exh. 2.

24 This Court granted preliminary approval on June 28, 2023. Since then, the  
25 appointed Settlement Administrator has executed the notice process as directed by the  
26 Court. A detailed description of that process and the class response can be found in  
27 Section VII below.  
28

### III. THE CLASS

The Settlement Class is the same class described in the Plaintiffs' complaints, and is composed of all individuals employed by Defendant Golden Gate Bell in California as non-exempt employees from July 18, 2014 to November 1, 2022. Graves Decl. Exh. 2 at ¶1.5-1.12. Before opt-outs, the Class contained 19,854 individuals. Admin Decl. ¶9. With two opt-outs, the final class size will be 19,852.

### IV. VALUE OF THE CLAIMS

Plaintiffs have provided a detailed description of the liability analysis in Section V of the MPA in Support of Preliminary Approval. A summary of that analysis follows:

#### A. Off-the-Clock Wages

Off-the-clock wages are based on an estimate of 30 minutes per week. Graves Decl. ¶34. The maximum possible estimated liability was \$4,911,266.11. *Id.*

#### B. Reimbursement

Plaintiffs performed multiple analyses of reimbursement liability. The maximum potential estimate for all reimbursement claims was \$12,140,656.39. Graves Decl. ¶35.

#### C. Reporting Time Pay

Among the multiple analyses run by Plaintiffs, the maximum potential estimated reporting time pay was \$1,616,020.51. Graves Decl. ¶36.

#### D. Meal and Rest Break Premium Pay (Labor Code §226.7)

Based on the data provided by Defendant, the maximum possible premium pay damages are \$35,766,219.24. Graves Decl. ¶37.

#### E. Interest

Plaintiffs assume interest at ten percent per annum for wages (including off-the-clock wages, meal and rest break premium wages, and reporting time wages) and reimbursement. Total estimated interest assuming the largest possible estimated value for all wages and reimbursements was \$13,860,885.92. Graves Decl. ¶38.

## **F. PAGA and Statutory Penalties**

25% of each PAGA penalty will be available to the Class Members. Notably, Defendant can only be required to pay a given penalty one time for an individual employee on a given workweek. For example, if Defendant issued paystubs that were defective both in that they omitted the name and address of the employer and also failed to accurately state all wages earned, the company would still be subject to, at most, a single civil penalty and a single statutory penalty for that violation.

### **1. Labor Code §558**

Failure to pay wages results in a penalty of \$50 for the initial pay period, and \$100 for each subsequent pay period. Cal. Lab. Code §558. The total maximum potential liability for this penalty was \$26,827,450. Graves Decl. ¶39.

### **2. Labor Code §203**

The total estimated penalty here is \$30,015,745.57. Graves Decl. ¶40. Defendant argued that the failure to pay is not willful, so no penalty should apply.

### **3. Labor Code §210**

For each instance in which an employer fails to timely pay wages, the employer is subject to a civil penalty of \$100 dollars for the initial failure, and \$200 for each subsequent failure, plus 25% of the wages withheld. The maximum estimated penalty under this section was \$45,142,451.19. Graves Decl. ¶41.

### **4. Labor Code §226.3**

Failure to provide an accurate paystub can trigger a civil penalty of \$250 for the first violation and \$1,000 for each subsequent violation under Section 226.3. The maximum estimated penalty was \$163,842,750. Graves Decl. ¶42.

### **5. Labor Code Section 226(e)**

Paystub violations can also trigger a statutory penalty under Labor Code §226(e), which prescribes a penalty of \$50 for the initial pay period, and \$100 for each subsequent pay period. The penalty is subject to a cap of \$4,000 per individual. The maximum estimated liability for this penalty was \$16,512,450. Graves Decl. ¶43.

1           **6. Labor Code §1197.1**

2           Section 1197.1 requires the employer, in addition to paying the wages owed, to  
3 pay a penalty of \$100 for the first pay period in which a minimum wage violation is  
4 committed, per employee; and \$200 for each subsequent pay period, per employee, in  
5 which a violation is committed. These penalties total \$41,837,500. Graves Decl. ¶44.

6           **7. Labor Code §2699(f)**

7           The Labor Code does not identify civil penalties for two alleged violations: failure  
8 to reimburse (Labor Code §2802) and failure to accurately record hours worked (Wage  
9 Order ¶ 7(A)(3); Labor Code §1198). Each of these is thus subject to a penalty of \$100  
10 for an initial violation and \$200 for each subsequent violation under Labor Code  
11 §2699(f). The maximum estimated penalties for each of these violations is \$46,885,300.  
12 Graves Decl. ¶45. The penalties for these two violations total \$93,770,600. *Id.*

13           **G. Total Liability**

14           Class Counsel built multiple liability models with different assumptions about how  
15 a court might resolve various issues in calculating penalties and damages. Prior to any  
16 judicial reduction, and excluding attorney fees, total liability under these models ranged  
17 from \$367,023,163.28 to \$486,243,994.93. Graves Decl. ¶46. Accounting for the 75%  
18 distribution of PAGA penalties to the State, recovery for Class Members (prior to any  
19 judicial reduction) ranges from \$148,014,778.33 to \$195,294,094.04. Graves Decl. ¶47.

20                           **V. LITIGATION RISKS**

21           The maximum theoretical penalties in this case are large, but Defendant has  
22 asserted multiple defenses and any payment of penalties would be contingent on  
23 Plaintiffs prevailing at trial. The key risks included:

24           **Loss on the Merits.** Defendant presented a vigorous defense on the merits of  
25 each claim and the case presented novel legal and factual disputes. For example,  
26 Plaintiffs contended that a three-part folding mailer used to transmit employee pay stubs  
27 violated the Labor Code §226(a) because it listed the employer's name and address on the  
28 return address panel of the mailer, but not on the paystub panel of the same document.

1 Defendant argued that the return address panel was attached to the paystub and thus  
2 satisfied the requirements of Section 226(a). Given a lack of controlling law dealing with  
3 this type of mailing document, the claim presented substantial uncertainty. The other  
4 claims in the case were likewise subject to extensive factual and legal disputes.

5 **Reduction of Penalties.** Labor Code §2699(e)(2) gives the trial court discretion  
6 to reduce penalties under some circumstances. For example, in *Fleming v. Covidien,*  
7 *Inc.*, 2011 U.S. DIST. LEXIS 154590, 9 (CD. Cal. 2011), the court imposed an 82%  
8 reduction. In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), the  
9 reduction took total penalties from \$70 million to \$150,000, a 99.98% reduction. In this  
10 case, the total penalty liability is exponentially higher than the underlying wage liability.  
11 Plaintiffs perceived a significant risk that this Court would impose a dramatic reduction  
12 in penalties if they were awarded.

13 **Class Certification.** Because a denial of certification could eliminate any  
14 recovery for the Class, and because reversal of a class certification ruling is difficult to  
15 obtain on appeal, the risk associated with certification reduces the value of the claims.  
16 Defendants routinely argue that claims involving meal and rest breaks, for example, turn  
17 on the experience of individual employees and are thus not appropriate for class  
18 certification. Although Plaintiffs strongly disagreed with this position, defendants do  
19 sometimes prevail on these arguments, and that risk affects the value of the claims.

## 20 VI. VALUE OF THE SETTLEMENT

### 21 A. The Common Fund

22 The settlement provides a common fund with no reversion to Defendant. Graves  
23 Decl. Exh. 2 at ¶1.21. The parties refer to the amount that Defendant will pay to create  
24 the common fund as the “Gross Settlement Amount.” Once this Court grants final  
25 approval, the distributions from the Gross Settlement Amount will look like this:  
26  
27  
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|                                       |                       |
|---------------------------------------|-----------------------|
| Gross Settlement Amount               | \$4,500,000.00        |
| LWDA Payment <sup>1</sup>             | (\$300,000.00)        |
| Requested Service Awards <sup>2</sup> | (\$40,000.00)         |
| Requested Attorney Fees <sup>3</sup>  | (\$1,800,000.00)      |
| Attorney Costs                        | (\$64,367.39)         |
| Administration Costs                  | (\$63,900.00)         |
| Net Distribution Amount               | <b>\$2,231,732.61</b> |

## **B. Payments to Class Members**

The entire Net Distribution Amount will be distributed among the Settlement Class Members. Graves Decl. Exh. 2 at ¶1.27. Settlement Class Members are those Class Members who do not exclude themselves from the Settlement. Graves Decl. Exh. 2 at ¶1.35. There is no requirement to submit a claim form to receive payment. *Id.*

The Individual Settlement Payment for each Settlement Class Member will be based on the number of pay periods worked by each individual, with payments being proportional to the time worked. Graves Decl. Exh. 2 at ¶3.1.4. The Settlement Class includes many short-term employees who worked only a few days or weeks of the class period. Including even these short-term Class Members, the average Individual Settlement Payment will be approximately \$112. Admin. Decl. at ¶20. For long-term Class Members, the average settlement payment is more than \$854. *Id.*

Each Notice included an estimated payment. Because Class Counsel have managed attorney costs and administration costs below the amounts initially estimated, the final Net Distribution Amount is more than \$20,000 higher than the estimate provided at preliminary approval. That means that the payment amount to each Class Member will be higher than the estimate described on the first page of each individual Notice.

---

<sup>1</sup> The total PAGA payment is \$400,000. Pursuant to the Act, 75% will be paid to the LWDA for civil penalties and 25% will be distributed to employees who worked during the PAGA period as part of the Net Settlement Fund. Graves Decl. Exh. 2 at ¶3.1.5.

<sup>2</sup> The Settlement provides for service payments to each of the three Plaintiffs, with Collins and Frank each receiving \$15,000 and Gonzalez receiving \$10,000, for a total of \$40,000.

<sup>3</sup> Plaintiffs are concurrently filing a request for award with fees for two of the three counsel supported by detailed contemporaneous time records recorded in 1/10th hour increments.

1 For tax treatment, individual Settlement Payments will be allocated as follows:  
2 20% for back wages and 80% for claims of statutory and civil non-wage payments.  
3 Graves Decl. Exh. 2 at ¶3.1.4.1. Back wages will be reported on IRS Form W-2. The  
4 remainder will be reported on IRS Form-1099 as required. *Id.*

### 5 **C. Release of Claims by the Class**

6 The claims released by the Class correspond exactly to the allegations in the  
7 operative complaints. Graves Decl. Exh. 2 at ¶5. Class Members release claims that  
8 “alleged or could have been alleged . . . based upon facts alleged in the Operative  
9 Complaints or PAGA Notices.” *Id.* at ¶5.2. The period of release is limited to the period  
10 for which the Class is receiving compensation. *Id.*

## 11 **VII. NOTICE AND RESPONSE**

12 On July 28, 2023, the settlement administrator, ILYM Group, Inc.  
13 (“Administrator” or “ILYM”), mailed the Class Notice, in the form approved by the  
14 Court, to each Class Member. Admin Decl. ¶12. The process that followed was  
15 carefully directed to maximize the Class Members’ understanding of the Settlement:

16 **The Notice contains a brief easy-to-read summary of the case and claim**  
17 **procedures.** Delivering a short, clear message is the best way to immediately show each  
18 Class Member that the Settlement is relevant to them and gives each Class Member a  
19 reason to read the Notice. In this case, the information in the Notice begins with a critical  
20 short summary and is organized into sections that address the most common questions in  
21 a way that is accessible to Class Members. Admin Decl. Exh. 1.

22 **Address correction, skip tracing, and re-mailing.** Before mailing, the  
23 Settlement Administrator performed a search of the National Change of Address system  
24 for every Class Member. Admin Decl. ¶11. A total of 1,086 Notices were returned, 18  
25 with forwarding addresses and 1,068 without. *Id.* at ¶13. The Administrator performed a  
26 locator trace for each returned notice without a forwarding address, finding 604 updated  
27 addresses. *Id.* The Administrator remailed 623 Notices to the appropriate forwarding  
28 address or new addresses found. *Id.* at ¶14.

1           **Multiple Languages.** In addition to the notice in both English and Spanish, the  
2 Administrator provided telephone support in English and Spanish. Admin Decl. ¶5.

3           **A. Ongoing Support for Class Members**

4           Class Counsel and the Settlement Administrator have taken steps to ensure that  
5 each Class Member was fully informed of the settlement and his or her rights thereunder.

6           **Settlement Administrator Phone Support.** The Administrator established a  
7 toll-free telephone number that Class Members could use to access a live agent who was  
8 specially trained to answer questions regarding the settlement process. Admin Decl. ¶5.

9           **Settlement Website.** ILYM also established a website where Class Members  
10 could access the pleadings in this case, instructions for opting out or for objecting to the  
11 settlement, and information on hearing dates and deadlines. Admin Decl. ¶6.

12           **Support by Class Counsel.** In addition to the efforts of the Settlement  
13 Administrator, Class Counsel personally trained staff to assist Class Members who  
14 contact Class Counsel's office. Graves Decl. ¶52. Where appropriate, Class Counsel  
15 personally followed up on Class Member calls. *Id.*

16           **B. Class Member Response**

17           The Administrator sent the Notice approved by this Court to every single Class  
18 Member. Admin Decl. ¶12. The Notice contained detailed information regarding the  
19 settlement including the settlement amount, the claims being released, and all of the  
20 payments being requested, including the amount of attorney fees, costs, and service  
21 payments. Admin Decl. Exh. 1. The notice also provided an estimated payment amount  
22 for each individual and showed the number of pay periods on which the estimated  
23 payment was based. *Id.* Thus informed, the Class has accepted the settlement.

24           **1. Opt-Outs**

25           Only two Class Members – out of 19,854 – asked to be excluded from the  
26 settlement. Admin Decl. ¶16. That represents just .010% of the class. Courts embrace  
27 settlements even where a large number of class members asked to be excluded. *See, e.g.,*  
28 *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (when 1% of

1 31,000 class members opted out, “the fact that the overwhelming majority of the class  
2 willingly approved the offer and stayed in the class presents at least some objective  
3 positive commentary as to its fairness”). In this case, the opt-out rate (0.010%) is a  
4 fraction of the rate that the *Marshall* court so strongly approved. The lack of opt-outs  
5 strongly supports final approval.

## 6 **2. Objections**

7 There are no objections to the Settlement, timely or otherwise. Admin Decl. ¶17.  
8 The lack of any objection strongly supports approval. Objections are common in these  
9 types of settlements, and courts routinely approve settlements despite multiple objectors.  
10 In *Craft v. County of San Bernardino*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1,  
11 2008), a class action produced 13 timely objections representing .09% of the class. *Id.*  
12 at 23. The *Craft* court explained that 13 objectors constituted an excellent result:  
13 “This is a highly favorable reaction by the class to the settlement.” *Id.* The same holds  
14 true here, where there are no objections to the Settlement at all.

## 15 **3. Disputes**

16 The Notice provided each Class Member with the number of pay periods worked  
17 during the relevant time, used to calculate his or her Individual Settlement Amount.  
18 Admin Decl. Exh 1. Each Class Member had the opportunity to dispute those values.  
19 The Administrator did not receive any disputes from Class Members, timely or otherwise.  
20 Admin Decl. ¶18.

## 21 **C. Notice to the LWDA**

22 Because the Settlement resolves PAGA claims in addition to class claims,  
23 Plaintiffs are required to provide notice of the settlement to the California Labor and  
24 Workforce Development Agency. Labor Code §2699(l)(2). Plaintiffs provided notice of  
25 the Settlement along with the preliminary approval pleadings. Plaintiffs have submitted  
26 the final approval pleadings to the LWDA at the same time as this filing. Graves Decl.  
27 ¶82, Exh. 9. The LWDA has raised no objection to the settlement. *Id.*  
28

1 **VIII. FINAL APPROVAL AND PAYMENT**

2 Within 14 days after final approval is granted, Defendant will transfer the Gross  
3 Settlement Amount to the Administrator. Graves Decl. Exh. 2 at ¶4.3. Within 14 days of  
4 receipt of the Gross Settlement Amount, the Administrator will distribute: the individual  
5 payments to Class Members, PAGA payment to the LWDA, the Service Payments to  
6 Plaintiffs, Attorney Costs and Fee award to Counsel, and the administration costs to the  
7 Administrator. *Id.* Checks issued to Class Members will go stale after 180 days. *Id.* at  
8 ¶4.3.1.

9 **IX. FINAL ACCOUNTING AND JUDGMENT**

10 The process for disposing of any unused funds and the entry of the final judgment  
11 are governed by Code of Civil Procedure §384. After all checks issued have either been  
12 negotiated or gone stale, the Settlement Administrator will provide a final report  
13 describing the payments as required by Code Civ. Proc. §384(b), which shall be filed  
14 with the Court. Along with the final report, Plaintiffs will file a request that the Court  
15 order that any amount remaining in the Settlement Fund be split between Public Counsel  
16 and the Boys and Girls Club of Sonoma Valley. Graves Decl. Exh. 2 at ¶4.3.3. Both  
17 organizations meet the criteria described in Section 384(b) by operating child advocacy  
18 programs. Graves Decl. ¶80. None of the parties or their counsel have any relationship  
19 with either of the proposed *cy pres* recipients. Graves Decl. at ¶81. Plaintiffs will  
20 provide the Court with an Amended Judgment authorizing the *cy pres* distribution as  
21 required by Section 384(b). That Judgment will comply with the requirements of Cal.  
22 Rules of Court, Rule 3.769(h) and will provide for retention of the Court's jurisdiction to  
23 enforce the terms of the judgment.

24 **X. THIS COURT SHOULD GRANT FINAL APPROVAL**

25 This Court has granted preliminary approval, ruling that “[t]he Settlement is fair,  
26 adequate, and reasonable to Settlement Class Members.” June 28, 2023 Order Granting  
27 Preliminary Approval ¶15. The Notice to Class Members has been distributed in  
28 accordance with the Court's Order, and there has been no objection to the settlement or

1 this Court’s existing rulings. This is sufficient to support final approval. A more detailed  
2 review of the facts and law validates both this Court’s preliminary ruling and the instant  
3 request for final approval:

4 **A. Courts Strongly Favor Class Action Settlements**

5 In the class action context, California courts recognize a “strong public policy  
6 favoring settlement.” *Aviation Data, Inc. v. American Express Travel Related Services*  
7 *Co., Inc.*, 152 Cal. App. 4th 1522, 1539 (2007). The policy of promoting class settlement  
8 is rooted in the core value of judicial efficiency: “Offers to settle, like arbitration, are to  
9 be favored, as they encourage the amicable and quick settlement of suits outside the  
10 judicial system.” *Id.* “Public policy generally favors the compromise of complex class  
11 action litigation.” *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006).

12 Mindful of the general preference for negotiated settlements of class actions,  
13 courts restrict their inquiry to a broad determination that the settlement is “fair, adequate,  
14 and reasonable.” *Dunk v. Ford Motor Company*, 48 Cal. App. 4th 1794, 1801 (1996)  
15 (quoting *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir. 1982)  
16 *cert. denied*, 459 U.S. 1217 (1983)). Courts do not “reach any ultimate conclusions on  
17 the contested issues of fact and law which underlie the merits of the dispute, for it is the  
18 very uncertainty of outcome in litigation and avoidance of wasteful and expensive  
19 litigation that induce consensual settlements.” *7-Eleven Owners for Fair Franchising v.*  
20 *Southland Corp.*, 85 Cal. App. 4th 1135, 1145 (2000). “Due regard . . . should be given  
21 to what is otherwise a private consensual agreement between the parties.” *Id.*

22 **B. The Instant Settlement is Fair, Adequate, and Reasonable**

23 Courts presume the absence of fraud or collusion in a settlement unless evidence  
24 to the contrary is offered, and there is a presumption that the negotiations were conducted  
25 in good faith. *Reed v. United Teachers Los Angeles*, 208 Cal. App. 4th 322, 337 (2012).  
26 In addition to the general presumption that negotiations were procedurally valid, a  
27 presumption of substantive fairness exists where: 1) the settlement is reached through  
28 arm’s length bargaining; 2) investigation and discovery are sufficient to allow counsel

1 and the court to act intelligently; 3) counsel is experienced in similar litigation and  
2 endorses the settlement; and 4) the percentage of objectors is small. *Dunk*, 48 Cal. App.  
3 4th at 1802. This Settlement meets all of the criteria.

#### 4 **1. The Settlement Was Reached Through Arm's Length Negotiations**

5 This Settlement came after nearly five years of discovery, analysis, and vigorous  
6 motion practice. This includes two separate full-day mediations for which counsel  
7 energetically prepared. The parties reached agreement only after extended follow-up by  
8 the mediator following the second mediation. Graves Decl. ¶¶30-31.

#### 9 **2. Sufficient Discovery and Investigation Has Been Completed**

10 The stage of the proceedings and the amount of discovery completed is an  
11 important factor in determining the fairness, reasonableness, and adequacy of a  
12 settlement. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996) (presumption  
13 of fairness exists where, among other things, investigation and discovery are sufficient to  
14 allow counsel and the court to act intelligently).

15 Here, discovery included form interrogatories, three sets of requests for admission,  
16 six sets of special interrogatories, and five sets of requests for production of documents.  
17 Graves Decl. ¶14. There was also a deposition of Defendant's Person Most Qualified  
18 corporate witness, five informal discovery conferences, and two motions to compel. *Id.*  
19 at ¶¶15-16. As discussed in more detail in Section II of Plaintiffs' Preliminary Approval  
20 brief, Plaintiffs engaged in a vigorous analysis of the data prior to each mediation, each  
21 time reviewing, refining, and updating the analysis.

22 Plaintiffs analyzed every single work record received. Graves Decl. ¶17. The  
23 analysis included multiple calculations of potential violations and the recovery to the  
24 Class under different legal theories and possible rulings. *Id.* at ¶20. The analysis  
25 included detailed calculations identifying both the potential value of all claims at issue  
26 and the values specific to each Class Member. *Id.* Counsel also performed an exacting  
27 analysis of all time and wage data in order to value the case for mediation. *Id.* at ¶21.

1 In addition to reviewing the massive amounts of data and documents, Class  
2 Counsel also communicated with a number of employees who actually perform the jobs  
3 at issue in this case. Graves Decl. ¶¶10, 21. Direct communications with witnesses who  
4 performed the jobs at issue provided a real-world crosscheck to validate the data and  
5 information exchanges that support the valuation of this case.

6 Given the tremendous amount of information that Plaintiffs and Class Counsel  
7 obtained here, the parties and the Court are more than sufficiently apprised of the  
8 strengths and weaknesses in the case in order to “allow counsel and the court to act  
9 intelligently.” *See Dunk*, 48 Cal. App. 4th at 1802; *7-Eleven Owners*, 85 Cal. App. 4th  
10 at 1152; *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 53 413 (2008).

### 11 **3. Class Counsel is Experienced and Endorses the Settlement**

12 While the recommendations of counsel are not conclusive, the Court can properly  
13 take them into account, particularly where, as here, they have been involved in litigation  
14 for some period of time, appear to be competent, have experience with this type of  
15 litigation, and have obtained substantial data from the opposing party. The view of the  
16 attorney actively conducting the litigation is “entitled to significant weight.”

17 *Fisher Bros. v. Cambridge-Lee Industries, Inc.*, 630 F. Supp. 482, 488 (E.D. Pa. 1985).

18 Here, Class Counsel has extensive experience in class actions and employment  
19 litigation, specifically in wage and hour class actions. After graduating with honors from  
20 University of Michigan School of Law, Class Counsel practiced at Paul Hastings from  
21 1999 until 2004. Graves Decl. at ¶3. Since leaving Paul Hastings, Class Counsel has  
22 served as lead counsel in more than a dozen successful wage and hour class actions. *Id.* at  
23 ¶6. With more than twenty years of class action experience and a practice devoted  
24 exclusively to employment litigation, Counsel for Collins strongly endorses the instant  
25 settlement. *Id.* at ¶79. The attorneys representing the other Plaintiffs in the coordinated  
26 proceedings have extensive experience as well. Hawkins Decl. ¶22, Starr Decl. ¶5, Rose  
27 Decl. ¶17-21. All of the Plaintiffs’ counsel strongly support the settlement. Graves Decl.  
28 ¶79-81; Hawkins Decl. ¶21, Starr Decl. ¶2, Rose Decl. ¶15.

1 Plaintiffs also support the settlement. Plaintiffs have been deeply involved in  
2 every aspect of this case and, having given this matter extensive attention and  
3 consideration, approve of the settlement in the strongest possible terms. Collins Decl. ¶8;  
4 Frank Decl. ¶10; Gonzalez Decl. ¶¶14-15.<sup>4</sup>

#### 5 **4. There Are No Objections to Settlement**

6 In class action settlements, courts generally expect to see a number of objections  
7 and will approve the settlement so long as the objectors constitute a relatively small  
8 percentage of the entire class. *Dunk*, 48 Cal. App. 4th at 1802. This settlement is  
9 unusual in that there has not been a single objection to the Settlement from any of the  
10 Class Members. Admin Decl. ¶17. This is testament to the fairness of the settlement.

#### 11 **C. The Settlement Delivers Exceptional Value for the Class**

12 Because of the strong policy favoring class action settlements, courts do not weigh  
13 the actual merits of the case in determining the fairness of the settlement. *7-Eleven*  
14 *Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1145 (2000).  
15 Nonetheless, it is worth noting that this Settlement delivers a truly exceptional value.  
16 Class Counsel conducted an exhaustive analysis of potential penalty and wage liability  
17 using Defendant's own records. *See* Section IV, *supra*. The gross recovery of  
18 \$4,500,000 represents 8.3% of all unpaid wages, overtime premium, meal break  
19 premiums, and reimbursements at issue in this matter. Graves Decl. ¶48. This is an  
20 excellent outcome. *See also Custom LED, LLC v. eBay, Inc.*, 2014 WL 2916871, at \*4  
21 (N.D. Cal. Jun. 24, 2014) ("[C]ourts have held that a recovery of only 3% of the  
22 maximum potential recovery is fair and reasonable when the plaintiffs face a real  
23 possibility of recovering nothing absent the settlement").

24 Even after payment of all requested expenses, the amounts being paid to individual  
25 Class Members are substantial. Class Counsel's careful management of expenses means  
26 that every class member will receive more than the estimated value indicated in the

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27 <sup>4</sup> The Plaintiffs' declarations filed herewith are the same declaration previously filed in support  
28 of the Motion for Preliminary Approval.

1 indicated in the Notice. Long-term class members will receive more than \$854. Admin  
2 Decl. ¶20. These are meaningful amounts.

3 **XI. CONCLUSION**

4 This Court has already found that the settlement is presumptively acceptable  
5 subject only to objection by the Class Members, of which there are none. The Class  
6 Members have received a detailed notice setting forth all the elements of the settlement,  
7 including the amounts of the requested attorney fees, service payments, and expenses.  
8 There have been no objections to the Settlement, and just two Class Members out of  
9 nearly 20,000 have asked to opt out. The recovery of \$4.5 million for a class of just over  
10 19,800 people is objectively extraordinary. In light of the foregoing facts, this Court  
11 should grant final approval of the Settlement.

12  
13 DATED: September 27, 2023

THE GRAVES FIRM

14  
15 By: 

16 ALLEN GRAVES

Attorney for Plaintiff Ethan Collins

17  
18 DATED: September 27, 2023

JAMES HAWKINS, APLC

19  
20 By: /s/ Gregory Mauro

21 GREGORY MAURO

Attorney for Plaintiff  
22 Maurice Frank

23  
24 DATED: September 27, 2023

FRONTIER LAW CENTER

25  
26 By: Adam Rose

ADAM ROSE

Attorney for Plaintiff  
27 Robert Anthony Gonzalez  
28

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 122 N. Baldwin Ave., Main Floor, Sierra Madre, CA 91024.

On September 27, 2023, I served the following document(s) described as:

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

on the interested parties by transmitting a true and correct copy thereof addressed as follows:

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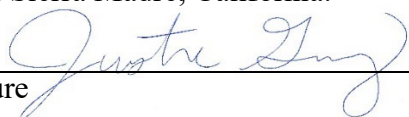
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☒ **VIA EMAIL:** I personally sent such document(s) via email to the known email address of the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on September 27, 2023 at Sierra Madre, California.

Justine Gray  
\_\_\_\_\_  
Type or Print Name

  
\_\_\_\_\_  
Signature