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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

GUILLERMO NUNEZ and ERIBERTO
AQUINO, on behalf of the State of
California, as private attorneys general,
and as individuals on behalf of themselves
and on behalf of others similarly situated,

Plaintiffs,

vs.

INTERSTATE MANAGEMENT
COMPANY, L.L.C., a Limited Liability
Company; INTERSTATE HOTELS AND
RESORTS, INC.; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: **37-2021-00023535-CU-OE-CTL**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT AND AWARD OF
ATTORNEYS' FEES, COSTS AND SERVICE
AWARDS**

Hearing Date: December 8, 2023
Hearing Time: 8:30 a.m.
[Hearing scheduled by Order dated August 9, 2023]

Judge: Hon. Keri Katz
Dept: 74

Action Filed: May 27, 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 August 9, 2023 (“Preliminary Approval
6 Order”), 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. Plaintiffs Guillermo Nunez and Eriberto Aquino (“Plaintiffs”) respectfully
9 submit this memorandum in support of the unopposed motion for final approval and the proposed entry
10 of the Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent
11 result for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the
12 notice to the members of the Class, there were **no objections and only two requests for exclusion**,
13 which means that almost the entire Class has elected to participate in the Settlement. Blumenthal Decl.
14 ¶4. This is a positive response from the Class evidencing their collective approval of the settlement.
15 As a result, Plaintiffs respectfully submit that the class settlement should be finally approved for the
16 same reasons that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

17 **II. THE SETTLEMENT BEFORE THE COURT**

18 The following is a table of the key financial terms of the Settlement and the proposed
19 deductions:

20 **\$2,920,000** (Gross Settlement Amount)
21 - \$20,000 (Plaintiffs’ proposed service award not to exceed \$10,000)
22 - \$40,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
23 - \$973,333.33 (Class Counsel Fees Payment - not to exceed amount)
24 - \$60,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
25 - \$47,000 (Administration Expenses Payment - not to exceed amount)
26 **\$1,779,666.67** (Net Settlement Amount)

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who are or previously were employed by Defendants
27 Interstate Management Company, LLC; and Interstate Hotels and Resorts, Inc. in California who
28 were classified as hourly, non-exempt employees during the Class Period.” The “Class Period” is
defined as “January 1, 2020 through January 31, 2023.” (Preliminary Approval Order at 3:11-14.)

1 Plaintiffs and Defendants Interstate Management Company, LLC and Interstate Hotels and
2 Resorts, Inc. ("Defendants") reached a full and final settlement of the above-captioned action, which
3 is embodied in the Agreement filed concurrently with the Court. As consideration for this Settlement,
4 the Gross Settlement Amount to be paid by Defendants is Two Million Nine Hundred Twenty
5 Thousand Dollars (\$2,920,000). (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross
6 Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments
7 to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation
8 Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service
9 Payments to Plaintiffs; and (5) the PAGA Penalties payment. (Agreement at ¶ 1.22.) Blumenthal Decl.
10 ¶3(a). The Gross Settlement Amount does not include Defendants' share of payroll taxes. (Agreement
11 at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement
12 at ¶ 3.1.) Blumenthal Decl. ¶3(b).

13 The specific details of the Settlement were discussed in the Motion for Preliminary Approval
14 and are set forth again in the Declaration of Blumenthal at ¶¶ 3(c)-3(i).

15 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
16 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
17 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
18 at \$2,920,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
19 that liability and class certification in this case were far from certain in light of the defenses asserted
20 by Defendants. Given the complexities of this case, the defenses asserted, the uncertainty of class
21 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
22 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

23 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL** 24 **OF CLASS ACTION SETTLEMENTS**

25 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
26 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
27 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
28 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are

1 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

2 The court must decide whether the proposed settlement falls within the range of reasonable
3 settlements, taking into account that settlements are compromises between the parties reflecting
4 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See*
5 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be
6 judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs
7 prevailed at trial.") In *Wershba*, the Court explained that "the merits of the underlying class claims are
8 not a basis for upsetting the settlement of a class action." *Id.*; *see also 7-Eleven, supra*, at 1150.

9 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
10 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
11 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
12 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
13 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
14 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th
15 at 1801. Here, the facts and circumstances compel the conclusion that the proposed settlement satisfies
16 that standard and the presumption applies.

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

18 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
19 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
20 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
21 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "The
22 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
23 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
24 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
25 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
26 experience and views of counsel, the presence of a governmental participant, and the reaction of the
27 class members to the proposed settlement.'" *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
28 128 (2008) (internal citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.

1 App. 4th 399, 408 (2010).

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

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

11 **A. The Settlement Satisfies the California Test for Fairness**

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

14 Over the course of more than two and a half years of litigation, the Parties engaged in the
15 investigation of the claims, including the production of documents, class data, and other information,
16 allowing for the full and complete analysis of liabilities and defenses to the claims in this Action. The
17 procedural history and investigation performed was detailed at length in support of the motion for
18 preliminary approval. The Settlement was the product of arms-length and contentious negotiations
19 through an all-day mediation presided over by Louis Marlin, Esq., a respected and experience mediator
20 of wage and hour class actions. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶
21 6(a)-6(h).

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

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

1 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has
2 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

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

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

16 From February 2023 to June 2023, the settlement agreement and exhibits thereto were finalized
17 and executed, and then presented by motion to this Court for preliminary approval. On August 9, 2023,
18 the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the
19 Class. Blumenthal Decl. ¶7(c).

20 3. Class Counsel is Experienced in Similar Litigation

21 Class Counsel in this matter has extensive class action experience and has represented thousands
22 of persons in class actions including employment litigation and wage and hour actions. Class Counsel
23 has previously litigated wage and hour class actions involving employees and claims similar to this case
24 and have been approved as experienced class counsel during contested motions in state and federal
25 courts throughout California. As such, Class Counsel is experienced and knowledgeable in this area
26 of law. Blumenthal Decl. at ¶ 2; Declaration of Armond Jackson at ¶¶8-10. Class Counsel have
27 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).

1 4. There Are No Objections and Only Two Requests for Exclusion

2 The reaction of the Class unequivocally supports approval of the Settlement. On September 25,
3 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
4 each class member with the terms of the Settlement, including notice of the claims at issue and the
5 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
6 sought, how individual settlement awards would be calculated, and the specific, estimated payment
7 amount to that individual. See Declaration of Nicole Bench ("Bench Decl."), Exh. A. In disseminating
8 the notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
9 Approval Order. Significantly, there have been no objections and only two requests for exclusion. As
10 such, nearly the entire Class will participate in the Settlement and will be sent a settlement check.
11 Because the response deadline is November 9, 2023, the final results will be documented in the
12 forthcoming Bench Decl. Blumenthal Decl. ¶4.

13 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
14 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
15 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
16 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
17 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
18 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
19 settlement should be considered when determining fairness of settlement). Here, where there are no
20 objections, the approval of the class is evident.

21 5. The Strength of Plaintiffs' Case

22 The Action generally alleges that Plaintiffs and other Class Members were not properly paid
23 all overtime wages for hours worked, were not provided meal and rest periods, were not timely paid
24 earned wages, were not provided reimbursement for required expenses, were not provided accurate
25 itemized wage statements, were not paid all wages at the time of termination. The Action seeks unpaid
26 wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and
27 owing to Plaintiffs and the other Class Members by virtue of the foregoing claims. Blumenthal Decl.
28 ¶5.

1 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
3 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
4 Defendants asserted that Defendants' practices complied with all applicable laws. Defendants argued
5 that all work time was paid for and that the regular rate was properly calculated. Defendants contended
6 that their meal and rest period policies fully complied with California law, that Defendants timekeeping
7 system recorded meal periods, and that all meal periods were provided. Defendants argued the
8 significant meal period premiums paid was evidence of their legally compliant practices. Further,
9 Defendants argued that Defendants were not required to record rest periods. As to expenses
10 reimbursement, Defendants maintained that employees were not required to use their cell phones and
11 any use of their cell phone was voluntary for their convenience and therefore not subject to Labor Code
12 §2802. Defendants argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
13 *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy*
14 *Shops Inc.*, 64 Cal. App.5th 85 (2021), weakened Plaintiffs' claims, on liability, value, and class
15 certifiability as to the meal and rest period claims. Defendants also argues that based on its facially
16 lawful practices, they acted in good faith and without willfulness, which if accepted would negate the
17 claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendants'
18 defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that
19 these defenses could be overcome, Defendants maintains these defenses have merit and therefore
20 present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

23 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
24 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
25 Associates were misclassified as exempt. In addition to the uncertainties raised by
26 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
27 Defendants notes that the question of an employer's duty to provide rest and meal
28 periods is an open one, signaling even less certainty for Plaintiffs. [...T]he gross
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.

2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007

1 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the strength of Plaintiff’s case, legal
2 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
3 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

4 The potential complexity and possible duration of trial also weigh in favor of granting
5 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
6 uncertainty of outcome, and believe defendant would appeal in the event of adverse
7 judgment. A post-judgment appeal would require many years to resolve and delay
8 payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
9 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees,
10 the actual recovery confers substantial benefits on the class that outweigh the potential
11 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 There was also a significant risk that, if the Actions were not settled, Plaintiffs would be unable
15 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
16 Defendants argued that the individual experience of each putative class member varied with respect to
17 the claims. Defendants could also contest class certification by arguing injury and good faith were case-
18 by-case determinations that precluded class certification. Plaintiffs are aware of other cases where class
19 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
20 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,
21 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
22 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the
23 class has been certified. While other cases have approved class certification in wage and hour claims,
24 class certification in this action would have been hotly disputed and was by no means a foregone
25 conclusion. Blumenthal Decl. ¶8(b).

26 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
27 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
28 substantial defenses both to liability and to class certification. Currently, the maximum and average
class member allocation will be set forth in the Bench Decl. Given the complexities of this case, the
defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable
and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

22 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
23 and likely duration of further litigation likewise favors the settlement. Regardless of
24 how this Court might have ruled on the merits of the legal issues, the losing party likely
25 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.

26 *Id.* at *12.

27 7. The Amount Offered in Settlement
28

1 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
2 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
3 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
4 favorably to the value of the claims. The calculations to compensate for the amount due to the Class
5 Members at the time this Settlement was negotiated were calculated by Plaintiffs' expert, Berger
6 Consulting, in advance of mediation. Class Counsel analyzed the data for putative class members and
7 determined the potential maximum damages for the class claims. For the Class, the maximum value
8 of the claim for unpaid wages due to off the clock work was potentially \$4,377,709, the maximum
9 value of the claim for unpaid wages due to an alleged miscalculation of the regular rate was \$31,224,
10 the maximum value of the claim for unpaid wages due to the maximum potential damages for unpaid
11 meal premiums were estimated to be \$306,630 based upon an alleged 11% violation rate and after
12 deducting the significant meal period premiums paid by Defendants, the maximum potential rest period
13 damages were estimated to be \$1,673,146 based upon the same alleged 100% violation rate, and the
14 maximum potential damages for failure to provide expense reimbursement were calculated to be
15 \$250,000. In total, the damages for the Class were calculated to have a maximum potential total value
16 of \$6,638,710. In addition, Plaintiffs calculated that the maximum value of the potential waiting time
17 penalties were between \$5,369,305 and \$17,744,738, depending on the predicate violation, and the
18 maximum value of the potential wage statement penalties were \$8,687,100.³ Defendants vigorously
19 disputed Plaintiffs' calculations and exposure theories. Blumenthal Decl. ¶8(d).

20 Consequently, the Gross Settlement Amount represents more than 43% of the potential
21 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
22 full.⁴ The above maximum calculations should then be adjusted in consideration for both the risk of

23 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
24 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
25 asserted by Defendants, including, a good faith dispute defense as to whether any wages were owed
26 given Defendants' position that Plaintiffs were properly compensated. *See Nordstrom Commission*
27 *Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and
28 employee have a good faith dispute as to whether and when the wages were due.").

⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not included the
PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the

1 class certification and the risk of establishing class-wide liability on all claims. Given the amount of
2 the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
3 reasonable.⁵ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

4 **V. THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARDS SHOULD**
5 **BE APPROVED**

6 **A. The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund**
7 **Method**

8 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
9 for the successful prosecution and resolution of this action.⁶ California state and federal courts have
10 recognized that an appropriate method for determining award of attorneys' fees is based on a
11 percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple*
12 *Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (Cal. 1977);
13 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759,
14 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the Class
15 and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary
16 does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

17 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
18 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
19 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*
20 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state

21 _____
22 Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶ 33.

23 ⁵ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
24 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
25 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
26 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
27 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
28 Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict 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 full verdict value).

⁶ The Plaintiffs have agreed to a fee split fifty percent (50%) to Blumenthal Nordrehaug Bhowmik
De Blouw LLP, and fifty percent (50%) to Jackson Law, APC. (Agreement at ¶ 3.2(b).)

1 courts in holding that when class action litigation establishes a monetary fund for the benefit of the
2 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
3 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
4 fund created”). Under the percentage of the fund method, a court’s objective remains to “mimic the
5 market” in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

6 First, the fee award representing one-third of the fund clearly falls within that range and is
7 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
8 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
9 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
10 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
11 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved
12 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

13 Second, the results delivered by Class Counsel also support the requested percentage of the
14 fund. Here, Plaintiffs and their counsel secured a \$2,920,000 settlement for the benefit of the Class.
15 The Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
16 could potentially prevail on the contested issues regarding liability, maintain class certification,
17 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
18 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
19 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
20 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
21 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
22 **common fund as attorneys' fees has been found to be appropriate.**”)

23 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
24 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
25 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
26 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class
27 that Class Counsel would be seeking a one-third fee award. Again, there were no objections.

28 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees

1 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

2 No one expects a lawyer whose compensation is contingent upon his success to charge, when
3 successful, as little as he would charge a client who had agreed to pay for his services,
4 regardless of success. Nor, particularly in complicated cases producing large recoveries, is it
5 just to make a fee depend solely on the reasonable amount of time expended.

6 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$2,920,000 has been created.
7 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
8 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
9 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
10 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
11 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
12 the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
13 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
14 Cir. 2016) (abuse of discretion not to apply risk multiplier).

15 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
16 the requested attorneys' fee of one-third equal to \$973,333.33 is also established by reference to Class
17 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
18 through November 9, 2023, Class Counsel's total lodestar is \$672,868, with significant additional fees
19 still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
20 Exhibits #3 and 4 (lodestar of \$299,070); Declaration of Armond Jackson at ¶15 and Exhibit C (lodestar
21 of \$373,798.00).) The requested fee award is therefore currently equivalent to Class Counsel's total
22 lodestar with a multiplier of less than 1.5, and there will be additional lodestar incurred by Class
23 Counsel to complete the settlement process and manage the settlement distribution. (Blumenthal Decl.
24 at ¶12.) Such a multiplier is below the range of multipliers approved in other cases such as *Laffitte* and
25 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷

26 ⁷ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
27 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
28 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
Computer, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
re Sutter Health Uninsured Pricing Cases, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of
2.52 as "fair and reasonable"); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming

1 For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the
2 common fund is fair and reasonable and should be approved.

3 **B. The Reimbursement of Litigation Expenses**

4 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
5 Litigation Expenses Payment of not more than \$40,000." Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$37,019.79 based upon counsel's billing records
7 which evidence total expenses of \$37,019.79. The requested expense reimbursement is less than actual
8 expenses incurred. These litigation expenses include the expenses incurred for filing fees, mediation
9 expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One Legal), Lexis
10 charges, the downloads of documents from the Court docket, and delivery expenses, all of which are
11 costs normally billed to and paid by the client.⁸ The details of the litigation expenses incurred are set
12 forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4 (expenses of \$17,677.59); Declaration of
13 Armond Jackson at ¶15 and Exhibit B (expenses of \$19,342.20). These costs were reasonably incurred
14 in the prosecution of the Action. (Blumenthal Decl. at ¶13.) Because these costs were reasonable and
15 necessary to the successful prosecution of these claims, the request is reasonable and should be granted.

16 **C. The Service Award Is Reasonable and Should be Approved**

17 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
18 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
19 risk and effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendant has agreed to this
20 payment and there have been no objections to the requested service awards. The Blumenthal Decl., at
21 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
22 further supports the request in this case. The Declarations of the Plaintiffs are submitted in support of

23 _____
24 multiplier of 2.53 as well within the approved range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S.
25 Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

26 ⁸ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging,
28 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
mediation, exhibits, documents scanning, and visual equipment are typically recoverable." *Rutti v.*
Lojack Corp., Inc., 2012 WL 3151077, at *12 (C.D. Cal. 2012).

1 this request and are attached as Exhibits #6 and 7 to the Blumenthal Decl.

2 As the representatives of the Class, Plaintiffs performed their duty to the Class admirably and
3 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,
4 responding to numerous requests, searching for documents, working with counsel, and reviewing the
5 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, the Plaintiffs
6 are also providing a comprehensive release as part of the Settlement, far beyond the class release. The
7 Declaration of the Plaintiffs detail the involvement, stress and risks they undertook as a result of this
8 Action. Plaintiffs also assumed the serious risk that she might possibly be liable for costs and fees to
9 Defendant, as well as the reputational risk of being “blacklisted” by other future employers for having
10 filed a class action on behalf of fellow former employees. (Blumenthal Decl. at ¶15.) Without the
11 Plaintiffs’ participation, cooperation and information, no other employees would be receiving any
12 benefit. (Blumenthal Decl. at ¶¶ 15-16).

13 The payment of service awards to successful class representatives is appropriate and the amount
14 of \$10,000 is well within the currently awarded range for similar settlements. *See e.g. Mathein v. Pier*
15 *1 Imps.*, 2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018) (approving two
16 service awards of \$12,500 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
17 173698 (approving \$10,000 service award where class member recovery was \$375); *Bellinghausen v.*
18 *Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$10,000 award). Accordingly,
19 Class Counsel respectfully request approval of the requested Class Representative Service Payment in
20 accordance with the Agreement.

21 **VI. CONCLUSION**

22 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness
23 established in California law and should therefore be finally approved as fair, reasonable and adequate
24 and requests entry of the Final Approval Order and Judgment, submitted herewith.

25 Dated: November 9, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

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