

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Email: norm@bamlawca.com
Website: www.bamlawca.com

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

JUNO CHUA, on behalf of himself and
on behalf of all persons similarly situated,

Plaintiff,

vs.

BEECAN HEALTH LLC, a California
Limited Liability Company; SERRANO
POST ACUTE, LLC, a California Limited
Liability Company; CORONA POST
ACUTE, LLC, a California Limited
Liability Company; CALIFORNIA POST
ACUTE LLC, a California Limited
Liability Company; LA FUENTE CARE
POST ACUTE LLC, a California Limited
Liability Company; MONROVIA POST
ACUTE, LLC, a California Limited
Liability Company; ROYAL GARDENS
HEALTHCARE, LLC, a California
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **21STCV24458**

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

Hearing Date: March 5, 2024
Hearing Time: 10:00 a.m.
[Hearing scheduled by Order dated October 19,
2023]

Judge: Hon. Lawrence P. Riff
Dept: SS-7

Date Filed: July 1, 2021
Trial Date: Not set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the "Agreement"), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal ("Blumenthal Decl.").¹ In
5 accordance with the Preliminary Approval Order dated October 19, 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. Plaintiff Juno Chua ("Plaintiff") respectfully submits this memorandum
9 in support of the unopposed motion for final approval and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class
11 and avoids the delays, risks, and costs of further litigation. After disseminating the notice to the
12 members of the Class, there were **no objections and no requests for exclusion**, which means that the
13 entire Class has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a positive
14 response from the Class evidencing their collective approval of the settlement. As a result, Plaintiff
15 respectfully submits that the class settlement should be finally approved for the same reasons that the
16 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 **\$565,000** (Gross Settlement Amount)
21 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
22 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
23 - \$183,333 (Class Counsel Fees Payment - not to exceed one-third of the Gross
24 Settlement Amount)
25 - \$10,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
26 - \$25,500 (Administration Expenses Payment)
27 **\$311,167** (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 one or more
27 Defendants in California and who were classified as non-exempt employees during the Class Period."
28 The "Class Period" is defined as "March 5, 2020 through September 22, 2022" (Preliminary Approval
Order at 3:18-21.)

1 Plaintiff and Defendants Beecan Health LLC, California Post Acute LLC, Serrano Post Acute,
2 LLC, Corona Post Acute, LLC, La Fuente Care Post Acute LLC, Monrovia Post Acute LLC, and Royal
3 Gardens Healthcare, LLC ("Defendants") reached a full and final settlement of the above-captioned
4 action, which is embodied in the Agreement filed concurrently with the Court. Under the Settlement,
5 the Gross Settlement Amount is Five Hundred Sixty-Five Thousand Dollars (\$565,000). (Agreement
6 at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (i)
7 all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA Payment; (iii)
8 the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; (iv) the Class
9 Representative Service Payment; and (v) the Administration Expenses Payment. (Agreement at ¶ 1.22.)
10 The Gross Settlement Amount does not include Defendants' share of payroll taxes. (Agreement at ¶
11 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶
12 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 \$565,000 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 Defendant. 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 Jeffrey Krivis, 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. Plaintiff 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 Jeffrey Krivis, 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. Plaintiff 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 September of 2022 to June of 2023, the Agreement and exhibits thereto were finalized
17 and executed, and then presented by motion to this Court for preliminary approval. On July 31, 2023,
18 the Court continued the hearing on the motion for preliminary approval to provide the Parties with an
19 opportunity to address a few questions posed by the Court. On October 19, 2023, the Court issued its
20 Order granting preliminary approved of the settlement as fair and reasonable to the Class. Blumenthal
21 Decl. ¶7(c).

22 3. Class Counsel is Experienced in Similar Litigation

23 Class Counsel in this matter has extensive class action experience and has represented thousands
24 of persons in class actions including employment litigation and wage and hour actions. Class Counsel
25 has previously litigated wage and hour class actions involving employees and claims similar to this case
26 and have been approved as experienced class counsel during contested motions in state and federal
27 courts throughout California. As such, Class Counsel is experienced and knowledgeable in this area
28 of law. Blumenthal Decl. at ¶ 2. Class Counsel have participated in every aspect of the settlement

1 discussions and have concluded the settlement is fair, adequate and reasonable and in the best interests
2 of the Class. Blumenthal Decl. ¶ 3(j).

3 4. There Are No Objections and No Requests for Exclusion

4 The reaction of the Class unequivocally supports approval of the Settlement. On November 28,
5 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
6 each class member with the terms of the Settlement, including notice of the claims at issue and the
7 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
8 sought, how individual settlement awards would be calculated, and the specific, estimated payment
9 amount to that individual. See Declaration of Nicole Bench ("Bench Decl.") ¶¶ 7-8, Exh. A. In
10 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
11 its Preliminary Approval Order. Significantly, there have been no objections and no requests for
12 exclusion. Bench Decl. ¶¶12-14. As such, the entire Class will participate in the Settlement and will
13 be sent a settlement check. Blumenthal Decl. ¶4.

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

22 5. The Strength of Plaintiff's Case

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

¶5.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendants present serious threats to the claims of the Plaintiff and the other Class Members. Defendants maintain that its practices complied with all applicable wage and hour laws. Defendants maintain that all Class Members' work time was properly recorded and compensated and that there was no miscalculation of the regular rate. Defendants contend that its meal and rest period policies and practices provide Class Members with meal and rest periods that exceed the requirements of California law. As to expense reimbursement, Defendants maintains that it did not fail to provide reimbursement for necessary business expenses because, among other things, Defendants provides its employees with all necessary personal protective equipment, and employees are not required to use their personal cell phones to perform their work. Defendants maintain that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims in terms of liability and value, and preclude his claim from proceeding on a class or representative basis. Defendants also maintain that a good faith dispute and absence of willfulness would negate the claims for waiting time penalties and/or failure to provide accurate itemized wage statements. Defendants also argued that the existence of arbitration agreements with Class members would preclude a class-wide recovery at trial. Finally, one overarching concern was the ability to impose liability on Defendants as a whole, as opposed to a single entity with limited ability to pay. If successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

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

1 periods is an open one, signaling even less certainty for Plaintiffs. [...T]he gross
2 settlement amount and the Class Members' expected net recovery, after fees and other
costs are deducted, appear to be a reasonable compromise, in light of the risks of
litigation.

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

7 The potential complexity and possible duration of trial also weigh in favor of granting
8 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
9 uncertainty of outcome, and believe defendant would appeal in the event of adverse
10 judgment. A post-judgment appeal would require many years to resolve and delay
11 payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees,
the actual recovery confers substantial benefits on the class that outweigh the potential
recovery through full adjudication.

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

14 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
15 to obtain class certification and thereby not recover on behalf of any employees other than himself.
16 Defendants argued that the individual experience of each putative class member varied with respect to
17 the claims, which would preclude the claims from proceeding on a class or representative basis. For
18 instance, Plaintiff's meal and rest period claims would require individualized inquiries into whether
19 each employee took a compliant meal or rest period on a given shift and, if not, why; and Plaintiff's
20 off-the-clock claims would require individualized inquiries into whether each employee ever performed
21 off-the-clock work and, if so, why. Plaintiff is aware of other cases where class certification of similar
22 claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification
23 of rest break claims). Finally, even if class certification was successful, as demonstrated by the
24 California Supreme Court decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014),
25 there are significant hurdles to overcome for a class-wide recovery even where a class has been
26 certified. While other cases have approved class certification of wage and hour claims, class
27 certification in this Action would have been hotly disputed and was by no means a foregone conclusion.
28 Blumenthal Decl. ¶8(b).

1 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
2 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
3 substantial defenses both to liability and to class certification. Currently, the maximum and average
4 class member allocations are \$781.83 and \$180.81, respectively. Bench Decl. at ¶18. Given the
5 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
6 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

28 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,

1 and likely duration of further litigation likewise favors the settlement. Regardless of
2 how this Court might have ruled on the merits of the legal issues, the losing party likely
3 would have appealed, and the parties would have faced the expense and uncertainty of
4 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.

5 *Id.* at *12.

6 7. The Amount Offered in Settlement

7 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
8 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
9 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
10 favorably to the value of the claims. The calculations to compensate for the amount due to the Class
11 Members at the time this Settlement was negotiated were calculated by Plaintiff's expert, Berger
12 Consulting, in advance of mediation. Class Counsel analyzed the data for putative class members and
13 determined the potential maximum damages for the class claims. For the Class, the maximum value
14 of the claim for unpaid wages due to the alleged miscalculation of the regular rate for overtime pay was
15 \$289,807, the maximum value of the claim for unpaid wages due to alleged off-the-clock work of one
16 hour per week was \$1,823,219, the maximum potential damages for alleged meal period violations were
17 estimated to be \$1,887,678 based upon a 27% violation rate, the maximum potential damages for
18 alleged rest period violations were estimated to be \$1,887,678 based upon the same 27% violation rate,
19 and the maximum potential damages for the alleged failure to reimburse business expenses were
20 calculated to be \$42,355. In total, the damages for the Class were calculated to have a maximum
21 potential total value of \$5,920,737. In addition, Plaintiff calculated that the maximum value of the
22 potential waiting time penalties were \$5,502,233, and the maximum value of the potential wage
23 statement penalties were \$1,655,450.³ Defendants vigorously disputed Plaintiff's calculations and
24

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

1 exposure theories. Blumenthal Decl. ¶8(d).

2 Consequently, the Gross Settlement Amount represents more than 9.5% of Plaintiff's calculation
3 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
4 all be proven in full at trial.⁴ The above maximum calculations should then be adjusted in consideration
5 for both the risk of class certification and the risk of establishing class-wide liability on all claims.
6 Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is
7 most certainly fair and reasonable.⁵ Clearly, the goal of this litigation has been met. Blumenthal Decl.
8 ¶8(d).

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

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

13 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
14 for the successful prosecution and resolution of this action. California state and federal courts have
15 recognized that an appropriate method for determining award of attorneys' fees is based on a
16 percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple*
17 *Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (Cal. 1977);
18 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759,
19 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the Class
20 and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary
21 does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

22 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
24 Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶ 33.

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

1 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
2 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
3 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*
4 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state
5 courts in holding that when class action litigation establishes a monetary fund for the benefit of the
6 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
7 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
8 fund created"). Under the percentage of the fund method, a court's objective remains to "mimic the
9 market" in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

10 First, the fee award representing one-third of the fund clearly falls within that range and is
11 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
12 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market
13 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
14 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
15 "[m]ost fee awards were between 25 percent and 35 percent"). In *Laffitte*, the Court expressly approved
16 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

17 Second, the results delivered by Class Counsel also support the requested percentage of the
18 fund. Here, Plaintiff and his counsel secured a \$565,000 settlement for the benefit of the Class. The
19 Settlement was possible only because Class Counsel was able to convince Defendants that Plaintiff
20 could potentially prevail on the contested issues regarding liability, maintain class certification,
21 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
22 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
23 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
24 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
25 (E.D. Cal. 2013) ("**Like this case, where recovery is uncertain, an award of one-third of the**
26 **common fund as attorneys' fees has been found to be appropriate.**")

27 Third, "the response of the class members to attorneys' fee notice, though not decisive, is
28 relevant to the ... reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,

1 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's "approximation of the
2 market" for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class
3 that Class Counsel would be seeking a one-third fee award. Again, there were no objections.

4 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney's fees
5 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

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

10 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$565,000 has been created.
11 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
12 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
13 well as a long battle with a corporate Defendants who had retained a premier and highly experienced
14 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
15 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
16 the risks and the delay in payment.** *See e.g. Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
17 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
18 Cir. 2016) (abuse of discretion not to apply risk multiplier).

19 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
20 the requested attorneys' fee of one-third equal to \$183,333 is also established by reference to Class
21 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
22 through February 6, 2024, Class Counsel's total lodestar is \$194,411.25, with additional fees still to
23 be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
24 Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel's total
25 lodestar without a multiplier, and there will be additional lodestar incurred by Class Counsel to
26 complete the settlement process and manage the settlement distribution. (Blumenthal Decl. at ¶12.)
27 Such a negative multiplier is well below the range of positive multipliers approved in other cases such
28

1 as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

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

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

5 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
6 Litigation Expenses Payment of not more than \$20,000." Class Counsel requests reimbursement for
7 incurred litigation expenses and costs in the amount of \$18,623.13 based upon counsel's billing records
8 which evidence total expenses of \$18,623.13. The requested expense reimbursement is equal to the
9 actual expenses incurred, with the difference to be retained in the Net Settlement Amount to be
10 distributed to the Class. These litigation expenses include the expenses incurred for filing fees,
11 mediation expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One Legal,
12 CaseAnywhere, Online Legal Courier), court document downloading fees, Lexis research charges, all
13 of which are costs normally billed to and paid by the client.⁷ The details of the litigation expenses
14 incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4. These costs were reasonably
15 incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.) Because these costs were
16 reasonable and necessary to the successful prosecution of these claims, the request is reasonable and
17 should be granted.

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

19 Plaintiff respectfully submits that for his service as the class representative, Plaintiff should be

20
21 ⁶ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
22 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
23 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
24 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
25 *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
multiplier of 2.53 as well within the approved range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S.
Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

26 ⁷ 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 awarded the agreed service award of \$10,000, in accordance with the Agreement for his time, risk and
2 effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendants have agreed to this
3 payment and there have been no objections to the requested service award. The Blumenthal Decl., at
4 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
5 further supports the request in this case. The Declaration of the Plaintiff is submitted in support of this
6 request and is attached as Exhibits #6 to the Blumenthal Decl.

7 As the representative of the Class, Plaintiff performed his duty to the Class admirably and
8 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
9 responding to numerous requests, searching for documents, working with counsel, and reviewing the
10 settlement documentation. (Blumenthal Decl. at ¶ 14.) Plaintiff also assumed the serious risk that he
11 might possibly be liable for costs and fees to Defendants, as well as the reputational risk of being
12 “blacklisted” by other future employers for having filed a class action on behalf of fellow former
13 employees. (Blumenthal Decl. at ¶15.) Without the Plaintiff’s participation, cooperation and
14 information, no other employees would be receiving any benefit. (Blumenthal Decl. at ¶¶ 15-16).

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

23 **VI. CONCLUSION**

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

27 Dated: February 6, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Esq.
Attorneys for Plaintiff

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