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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF KERN**

15 LILIANA ANDERSON, on behalf of
16 herself and on behalf of all persons
17 similarly situated,

18 Plaintiff,

19 vs.

20 RAMM HOSPITALITY, INC., a
21 California Corporation; PRIME
22 HOSPITALITY SERVICES, LLC, a
23 California Limited Liability Company;
24 and DOES 1 through 50, inclusive,

25 Defendants.

Case No. BCV-21-101048

**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: December 12, 2023

Hearing Time: 8:30 a.m.

[Hearing scheduled by Order dated August 1,
2023]

Judge: Hon. David R. Zulfa
Div.: J

Date Filed: May 10, 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 1, 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 Liliana Anderson (“Plaintiff”) respectfully submits this
9 memorandum in support of the unopposed motion for final approval and the proposed entry of the Final
10 Approval Order and Judgment, submitted herewith. The settlement represents an excellent result for
11 the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice to
12 the members of the Class, to date there have been **no objections and no requests for exclusion**, which
13 means that currently the entire Class (100%) has elected to participate in the Settlement.³ Blumenthal
14 Decl. ¶4. This is a positive response from the Class evidencing their collective approval of the
15 settlement. As a result, Plaintiff respectfully submits that the class settlement should be finally
16 approved as fair, reasonable, and adequate for the same reasons that the Court granted preliminarily
17 approval of the settlement.

18 **II. THE SETTLEMENT BEFORE THE COURT**

19 Plaintiff and Defendants Ramm Hospitality, Inc. and Prime Hospitality Services, LLC
20 (“Defendants”) reached a full and final settlement of the above-captioned action, which is embodied
21 in the Agreement filed concurrently with the Court. As consideration for this Settlement, the Gross

22 _____
23 ¹ Capitalized terms are defined in the Agreement.

24 ² The “Class” is defined as “all individuals who are or previously were employed by Defendants in
25 California who were classified as hourly, non-exempt employees at any time during the Class Period.”
26 (Preliminary Approval Order at ¶6.) The “Class Period” is defined as “May 10, 2017 through February
4, 2023.” *Id.*

27 ³ The Response Deadline is November 20, 2023, which is after the filing of this motion. The final
28 results will be documented in the Declaration of the Administrator to be filed after November 20, 2023
and before the hearing.

1 Settlement Amount to be paid by Defendants is Four Hundred Seventy-Five Thousand Dollars
2 (\$475,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of
3 the following elements: (1) payment of the Individual Class Payments to the Participating Class
4 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
5 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5)
6 the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include
7 Defendants' share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in
8 with no reversion to Defendants. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b).

9 The following is a table of the key financial terms of the Settlement and the proposed
10 deductions:

11 **\$475,000** (Gross Settlement Amount)

- 12 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 13 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 14 - \$158,333 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 15 - \$10,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 16 - \$10,000 (Administration Expenses Payment - not to exceed amount)

17 **\$266, 667** (Net Settlement Amount)

18 Defendants shall pay the Gross Settlement Amount in three yearly installments ("Payments").
19 (Agreement at ¶ 4.3.) The distribution of Individual Class Payments to Participating Class Members
20 along with the other Court-approved distributions shall be made by the Administrator within fourteen
21 (14) days after Defendants fully fund the Gross Settlement Amount. (Agreement at ¶ 5.1.) Blumenthal
22 Decl. ¶3(c).

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

25 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
26 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
27 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
28 at \$475,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
that liability and class certification in this case were far from certain in light of the defenses asserted
by Defendants. Given the complexities of this case, the defenses asserted, the uncertainty of class
certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,

reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

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

In these cases, courts have repeatedly emphasized that there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the proposed settlement satisfies that standard and the presumption applies.

IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "The

1 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
2 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
3 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
4 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
5 experience and views of counsel, the presence of a governmental participant, and the reaction of the
6 class members to the proposed settlement.'” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
7 128 (2008) (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.
8 App. 4th 399, 408 (2010).

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

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

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

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

21 Over the course of more than two years of litigation, the Parties engaged in the investigation
22 of the claims, including the production of documents, class data, and other information, allowing for
23 the full and complete analysis of liabilities and defenses to the claims in this Action. The procedural
24 history and investigation performed was detailed at length in support of the motion for preliminary
25 approval. The Settlement was the product of an arms-length mediation and contentious negotiations
26 presided over by Jeffrey Krivis, Esq., a respected and experience mediator of wage and hour class
27 actions. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(h).

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

1 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
2 before an experienced and well-respected mediator. Defendants have expressly denied and continue
3 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
4 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
5 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to
6 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
7 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has
8 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

9 The Parties attended an arms-length mediation session with Jeffrey Krivis, Esq., a respected and
10 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
11 for the mediation, Defendants provided Class Counsel with necessary information for the members of
12 the Class, including payroll data and data concerning the composition of the Class. Plaintiff analyzed
13 the data with the assistance of damages expert, Berger Consulting, and prepared and submitted a
14 mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
15 agreed to this Settlement, which was memorialized in the form of a Memorandum of Understanding.
16 Blumenthal Decl. ¶7(b).

17 The fact that the settlement was negotiated with the assistance of an experienced mediator
18 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
19 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
20 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
21 litigation, with the assistance of a well-respected mediator with substantial experience in employment
22 litigation[, and] this factor supports approval of the settlement”).

23 From February 2023 to May 2023, the settlement agreement and exhibits thereto were finalized
24 and executed, and then presented by motion to this Court for preliminary approval. On August 1, 2023,
25 the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the
26 Class. Blumenthal Decl. ¶7(c).

27 3. Class Counsel is Experienced in Similar Litigation

28 Class Counsel in this matter has extensive class action experience and has represented thousands

1 of persons in class actions including employment litigation, wage and hour class actions, and complex
2 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
3 claims similar to this case and have been approved as experienced class counsel during contested
4 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
5 knowledgeable in this area of law. A list of class action cases managed and settled by the Class
6 Counsel in this action is provided to the Court as Exhibit #1 to the Blumenthal Decl. Class Counsel
7 have participated in every aspect of the settlement discussions and have concluded the settlement is fair,
8 adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

9 4. There Have Been No Objections and No Requests for Exclusion

10 The reaction of the Class unequivocally supports approval of the Settlement. On October 6,
11 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
12 each class member with the terms of the Settlement, including notice of the claims at issue and the
13 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
14 sought, how individual settlement awards would be calculated, and the specific, estimated payment
15 amount to that individual. See Declaration of Cassandra Polites ("Polites Decl."). In disseminating the
16 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
17 Approval Order. Significantly, there have been no objections and no requests for exclusion. The final
18 results will be documented in the forthcoming Polites Decl., which will be filed before the hearing on
19 this motion and after the November 20, 2023 Response Deadline. Blumenthal Decl. ¶4.

20 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
21 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
22 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
23 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
24 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
25 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
26 settlement should be considered when determining fairness of settlement). Here, where there are no
27 objections and no opt-outs, the approval of the class is evident.

1 5. The Strength of Plaintiff's Case

2 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
3 overtime wages for hours worked and at the correct rate, were not provided meal and rest periods or
4 premium payment in lieu thereof, were not timely paid earned wages, were not provided reimbursement
5 for required expenses, were not provided accurate itemized wage statements, were not paid all wages
6 at the time of termination. Blumenthal Decl. ¶5.

7 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
8 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
9 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
10 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
11 argued that all work time was properly recorded and paid for. Defendants argued that any rounding was
12 facially neutral and therefore lawful. *See See's Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889,
13 901(2012) (holding rounding policies are only lawful if they are consistently applied and, on average,
14 favor neither overpayment nor underpayment of wages); Defendants contend that its meal and rest
15 period policies fully complied with California law and Defendants did not fail to provide the
16 opportunity for legally required meal and rest breaks. As to expense reimbursement, Defendants
17 contended that it did not fail to provide reimbursement for necessary business expenses and that there
18 were no such expenses that had not already been reimbursed or that claimed expenses were incurred
19 voluntarily and/or for the convenience of employees and is therefore not required reimbursement.
20 Defendants could also argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
21 *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy*
22 *Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on liability, value, and class
23 certifiability as to the meal and rest period claims. Defendants maintain that based on its facially lawful
24 practices, it acted in good faith and without willfulness, which if accepted would negate the claims for
25 waiting time penalties and/or inaccurate wage statements. If successful, Defendants' defenses could
26 eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses
27 could be overcome, Defendants maintain their defenses have merit and therefore present a serious risk
28 to recovery by the Class. Blumenthal Decl. ¶8(a).

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

3 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
4 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
Associates were misclassified as exempt.

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

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

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

15 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
16 to obtain class certification and thereby not recover on behalf of any employees other than himself.
17 Defendants could argue that the individual experience of each putative class member varied with
18 respect to the claims. Defendants could also contest class certification by arguing injury and good faith
19 were case-by-case determinations that precluded class certification. Plaintiff is aware of other cases
20 where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App.
21 5th 885 (2019) (denying certification of rest break claims). Finally, even if class certification was
22 successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
23 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even
24 where the class has been certified. While other cases have approved class certification in wage and
25 hour claims, class certification in this action would have been hotly disputed and was by no means a
26 foregone conclusion. Blumenthal Decl. ¶8(b).

27 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
28

1 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
2 substantial defenses both to liability and to class certification. The maximum and average class
3 member allocations will be documented in the Polites Decl. Given the complexities of this case, the
4 defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable
5 and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

1 would have appealed, and the parties would have faced the expense and uncertainty of
2 litigating an appeal. "The expense and possible duration of the litigation should be
3 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.

4 *Id.* at *12.

5 7. The Amount Offered in Settlement

6 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
7 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
8 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
9 favorably to the value of the claims.

10 The calculations to compensate for the amount due to the Class Members at the time this
11 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
12 mediation. Class Counsel analyzed the data for putative class members and determined the potential
13 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
14 wages due to alleged rounding was \$23,375, the maximum value of the claim for unpaid wages due to
15 alleged off-the-clock work was \$101,502, the maximum potential damages for unpaid meal premiums
16 were estimated to be \$448,094 based upon a 42% violation rate and after deduction for meal premiums
17 paid by Defendants, the maximum potential rest period damages were estimated to be \$429,190 based
18 upon the same 42% violation rate, and the maximum potential damages for failure to provide expense
19 reimbursement were calculated to be \$137,680. In total, the damages for the Class were calculated to
20 have a maximum potential total value of \$1,139,840. In addition, Plaintiff calculated that the maximum
21 value of the potential waiting time penalties were \$359,747, and the maximum value of the potential
22 wage statement penalties were \$363,150.⁴ Defendants vigorously disputed Plaintiff's calculations and
23 exposure theories. Blumenthal Decl. ¶8(d).

24
25 ⁴ 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 premium wages for
28 meal or rest periods or other wages were owed given Defendants' position that Plaintiff and Class
Members 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.").

Consequently, the Gross Settlement Amount represents more than 41% of the potential maximum damages calculated above for the Class in this case, assuming these amounts could all be proven in full at trial.⁵ The above calculations, however, were based upon 19,607 workweeks, when in fact the actual workweeks turned out to be nearly half that amount. As such, the above calculations likely overstate the damages by 48%. The maximum calculations should then be adjusted in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

V. THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARD SHOULD BE APPROVED

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

Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (Cal. 1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary

⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the Motion for Preliminary Approval in the Decl. Nordrehaug at ¶ 33

⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval 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 does not bear the entire burden alone.” *Vincent*, 557 F.2d at 769.

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

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

18 Second, the results delivered by Class Counsel also support the requested percentage of the
19 fund. Class Counsel secured a \$475,000 settlement for the benefit of the Class and no Class Members
20 chose to object. The Settlement was possible only because Class Counsel was able to convince
21 Defendants that Plaintiff could potentially prevail on the contested issues regarding liability, maintain
22 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
23 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
24 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
25 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
26 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
27 **one-third of the common fund as attorneys' fees has been found to be appropriate.**”)

28 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is

1 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
2 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
3 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class
4 that Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

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

9 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$475,000 has been created.
10 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
11 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
12 well as a long battle with a corporate Defendants who had retained a premier and highly experienced
13 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
14 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
15 the risks and the delay in payment.** *See e.g. Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
16 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
17 Cir. 2016) (abuse of discretion not to apply risk multiplier).

18 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
19 the requested attorneys’ fee of one-third equal to \$158,333 is also established by reference to Class
20 Counsel’s lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
21 through November 14, 2023, **Class Counsel’s total lodestar is \$201,178.50**, with significant additional
22 fees still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12
23 and Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel’s
24 total lodestar with a “negative” multiplier of 0.79, and there will be additional lodestar incurred by
25 Class Counsel to complete the settlement process and manage the settlement distribution and reports.
26 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of positive multipliers approved in
27 other cases such as *Laffitte*.

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 \$20,000." Class Counsel requests reimbursement for
6 **incurred litigation expenses and costs in the amount of \$17,103.27 based upon counsel's billing**
7 **records.** The requested expense reimbursement is less than the not-to-exceed amount identified in the
8 Agreement and the difference will remain in the Net Settlement Amount for distribution to the Class.
9 These litigation expenses include the expenses incurred for filing fees, mediation expenses, expert fees
10 (Berger Consulting Group), attorney service charges (Knox, One Legal), CourtCall charges, and
11 research (LexisNexis) charges, all of which are costs normally billed to and paid by the client.⁷ The
12 details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and
13 4. These costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.)
14 Because these costs were reasonable and necessary to the successful prosecution of these claims, the
15 request is reasonable and should be granted.

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

17 Plaintiff respectfully submit that for her service as the class representative, Plaintiff should be
18 awarded the agreed service award of \$10,000, in accordance with the Agreement for his time, risk and
19 effort expended on behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).) Defendants
20 have agreed to this payment and there have been no objections to the requested service award. The
21 Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California in
22 similar cases, which further supports the request in this case. The Declaration of Plaintiff details the
23 involvement, stress and risks she undertook as a result of this Action and is attached as Exhibit #5 to
24 the Blumenthal Decl.

25
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 As the sole representative of the Class, Plaintiff performed her duty to the Class admirably and
2 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
3 responding to numerous requests, searching for documents, working with counsel, and reviewing the
4 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, the Plaintiff is
5 also providing a comprehensive release as part of the Settlement, far beyond the class release. Plaintiff
6 also assumed the serious risk that she might possibly be liable for costs and fees to Defendants, as well
7 as the reputational risk of being “blacklisted” by other future employers for having filed a class action
8 on behalf of fellow former employees. (Blumenthal Decl. at ¶15.) Without the Plaintiff’s participation,
9 cooperation and information, no other employees would be receiving any benefit.

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

18 **VI. CONCLUSION**

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

22 Respectfully submitted,

23 Dated: November 14, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

24 By: /s/ Kyle Nordrehaug
25 Kyle R. Nordrehaug, Esq.
26 Attorneys for Plaintiff
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