

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 Christine T. LeVu (State Bar #288271)

7 2255 Calle Clara

8 La Jolla, CA 92037

9 Telephone: (858)551-1223

10 Facsimile: (858) 551-1232

11 Website: www.bamlawca.com

12 Attorneys for Plaintiff

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN DIEGO**
16
17

18 ERIC JACOBS, an individual, on behalf
19 of himself and on behalf of all persons
20 similarly situated,

21 Plaintiff,

22 vs.

23 CAL-STATE AUTO PARTS, INC., a
24 California Corporation; and DOES 1
25 through 50, inclusive,

26 Defendants.

CASE NO.: 37-2021-00031418-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
AWARD**

Hearing Date: May 17, 2024

Hearing Time: 8:30 a.m.

[Hearing scheduled by Order dated October 19,
2023]

Judge: Hon. Robert Longstreth

Dept.: C-65

Action Filed: July 22, 2021

Trial Date: Not set

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 Eric Jacobs (“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 Plaintiff and Defendant Cal-State Auto Parts, Inc. (“Defendant”) reached a full and final
19 settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with
20 the Court. As consideration for this Settlement, the Gross Settlement Amount is Nine Hundred Sixty
21 Thousand Dollars (\$960,000) (the “Gross Settlement Amount”) to be paid by Defendant, as set forth
22 in the Agreement. (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists
23 of the following elements: (1) payment of the Individual Class Payments to the Participating Class
24 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)

25 _____
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals who were employed by Defendant in California and
28 classified as hourly, non-exempt employees at any time during the Class Period.” The “Class Period”
is defined as “July 22, 2017 to October 28, 2022” (Preliminary Approval Order at 3:5-8.)

1 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5)
2 the PAGA Penalties payment. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement
3 Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross
4 Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.) Blumenthal
5 Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and the proposed
6 deductions:

7 **\$960,000** (Gross Settlement Amount)

- 8 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 9 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$320,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 11 - \$20,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$15,790 (Administration Expenses Payment)

13 **\$574,210** (Net Settlement Amount)

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

16 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
17 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
18 is "fair, adequate, and reasonable". (Preliminary Approval Order at 2:13-16.) In sum, the Settlement
19 valued at \$960,000 is an excellent result for the Class. This result is particularly favorable in light of
20 the fact that liability and class certification in this case were far from certain in light of the defenses
21 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
22 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
23 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

26 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
27 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
28 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

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

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

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

16 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
17 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
18 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
19 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The
20 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
21 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
22 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
23 offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience
24 and views of counsel, the presence of a governmental participant, and the reaction of the class members
25 to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
26 (internal citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th
27 399, 408 (2010).

28 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.

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

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

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

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

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

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

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

28 The Parties attended an arms-length mediation session with Jeffrey Krivis, a respected and

1 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
2 for the mediation, Defendant provided Class Counsel with payroll and employment data and other
3 information regarding the Class Members, various internal documents, and other compensation and
4 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
5 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement
6 terms were negotiated and set forth in the Agreement now presented for this Court's approval.
7 Blumenthal Decl. ¶7(b).

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

14 From September 2022 to January 2023, the settlement agreement and exhibits thereto were
15 finalized and executed, and then presented by motion to this Court for preliminary approval. On
16 October 19, 2023, the Court issued its Order granting preliminary approved of the settlement as fair and
17 reasonable to the Class. Blumenthal Decl. ¶7(c).

18 3. Class Counsel is Experienced in Similar Litigation

19 Class Counsel in this matter has extensive class action experience and has represented thousands
20 of persons in class actions including employment litigation, wage and hour class actions, and complex
21 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
22 claims similar to this case and have been approved as experienced class counsel during contested
23 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
24 knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2. Class Counsel have participated in
25 every aspect of the settlement discussions and have concluded the settlement is fair, adequate and
26 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

28 The reaction of the Class unequivocally supports approval of the Settlement. On November 7,

2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each class member with the terms of the Settlement, including notice of the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award that were being sought, how individual settlement awards would be calculated, and the specific, estimated payment amount to that individual. See Declaration of Nicole Bench ("Bench Decl.") at ¶ 8, Exh. A. In disseminating the notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have been no objections and no requests for exclusion. Bench Decl. at ¶¶ 13-14. As such, the entire Class will participate in the Settlement and will be sent a settlement check. See Bench Decl. at ¶¶ 17-19; Blumenthal Decl. ¶4.

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

5. The Strength of Plaintiff's Case

The Action generally alleges that Plaintiff and other Class Members were not properly paid all minimum and overtime wages for hours worked, were not provided meal and rest periods, were not provided reimbursement for required expenses, were not provided accurate itemized wage statements, were not paid all wages at the time of termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and 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 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all

1 work time was paid for. Defendants contend that their meal and rest period policies fully complied with
2 California law and that Defendant's timekeeping system recorded meal periods, and was not required
3 to record rest periods. As to expenses reimbursement, Defendant contended that there was no failure
4 to pay for business expenses and any cell phone usage was merely convenient and voluntary such that
5 reimbursement was not legally required. Finally, Defendant could argue that the Supreme Court
6 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability,
7 value, and class certifiability as to the meal and rest period claims. Defendant also argues that based
8 on its facially lawful practices, Defendant acted in good faith and without willfulness, which if accepted
9 would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful,
10 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff
11 believes that these defenses could be overcome, Defendant maintains these defenses have merit and
12 therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

15 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
16 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
17 Associates were misclassified as exempt. In addition to the uncertainties raised by
18 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
19 Defendants notes that the question of an employer's duty to provide rest and meal
periods is an open one, signaling even less certainty for Plaintiffs. [...]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.

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

24 The potential complexity and possible duration of trial also weigh in favor of granting
25 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
26 uncertainty of outcome, and believe defendant would appeal in the event of adverse
27 judgment. A post-judgment appeal would require many years to resolve and delay
28 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.

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

3 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
4 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
5 of any employees other than himself. At the time of the mediation, Defendant forcefully opposed the
6 propriety of class certification, arguing that individual issues precluded class certification. Further, as
7 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
8 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class
9 has been certified. While other cases have approved class certification in wage and hour claims, class
10 certification in this action was hotly disputed and the maintenance of a certified class through trial was
11 by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

12 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
13 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
14 substantial defenses both to liability and to class certification. Currently, the maximum and average
15 class member allocation are \$2,261.25 and \$891.63, respectively. *See* Bench Decl. ¶ 19. Given the
16 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
17 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

25 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
26 this Action against Defendants through possible appeals which could take several years. Class Counsel
27 has also taken into account the uncertain outcome and risk of litigation, especially in complex class
28 actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of

1 proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
2 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
3 interest of the Class Members. Blumenthal Decl. ¶8(c).

4 Although Plaintiff and Class Counsel believe that the case has merit, which Defendant continues
5 to vigorously deny, they recognized the potential risks both sides would face if litigation of these
6 Actions continued. As the federal court held in *Glass*, where the parties faced uncertainties similar to
7 those in this litigation:

8 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
9 and likely duration of further litigation likewise favors the settlement. Regardless of how
10 this Court might have ruled on the merits of the legal issues, the losing party likely
11 would have appealed, and the parties would have faced the expense and uncertainty of
12 litigating an appeal. "The expense and possible duration of the litigation should be
13 considered in evaluating the reasonableness of [a] settlement." See *In re Mego Financial*
14 *Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further
15 litigation is substantial.

16 *Id.* at *12.

17 7. The Amount Offered in Settlement

18 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
19 to Plaintiff's claims. The Declaration of Nordrehaug submitted in support of preliminary approval
20 discussed the value of the class claims in detail. Based upon 644 Class Members who collectively
21 worked 69,832 Workweeks, the Gross Settlement Amount provides a value of \$1,490 per Class
22 Member and \$13.74 per Workweek and after deductions the Net Settlement Amount provides an
23 average recovery of \$891.63 per Class Member and a recovery of \$8.22 per Workweek. Decl.
24 Nordrehaug, ¶6.

25 The calculations to compensate for the amount due for the Class at the time of the mediation
26 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
27 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
28 wages for the employees. The maximum potential damages were calculated to be \$211,239 for the
alleged unpaid wages due to off the clock work, \$2,408,041 for alleged meal period damages based
upon a 54.6% potential violation rate observed in the shifts analyzed, \$882,190 for alleged rest period
damages based upon a 20% violation rate, \$77,685 for alleged unreimbursed business expenses for

1 personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage
2 valuation was calculated that Defendant was subject to a maximum damage claim in the amount of
3 \$3,579,155. As to potential penalties, Plaintiff calculated that potential waiting time penalties were
4 a maximum of \$1,125,927 and potential wage statement penalties were \$172,300. Defendant
5 vigorously disputed Plaintiff's calculations and exposure theories. Blumenthal Decl. ¶8(d).

6 Consequently, the Gross Settlement Amount of \$960,000 represents more than 26% of the
7 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.³
8 The above maximum calculations should then be adjusted in consideration for both the risk of class
9 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
10 settlement as compared to the potential value of claims in this case and the defenses asserted by
11 Defendant, this settlement is fair and reasonable.⁴ Clearly, the goal of this litigation has been met.
12 Blumenthal Decl. ¶8(d).

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

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

17 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
18 for the successful prosecution and resolution of this action. California state and federal courts have
19 recognized that an appropriate method for determining award of attorneys' fees is based on a percentage

20 ³ Because the PAGA claim is not a class claim and primarily is paid to the State of California, the
21 PAGA claim is not included in this discussion of the value of the class claims. The PAGA claim was
22 addressed in the Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶33.

23 ⁴ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
27 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
28 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
a class settlement which represented "roughly one-sixth of the potential recovery".) See also *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 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 maximum valuation).

1 of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91
2 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (Cal. 1977); *Boeing Co. v. Van*
3 *Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
4 The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to “spread
5 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear
6 the entire burden alone.” *Vincent*, 557 F.2d at 769.

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

16 First, the fee award representing one-third of the fund clearly falls within that range and is
17 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
18 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
19 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
20 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
21 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved
22 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

23 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
24 Here, Plaintiff and his counsel secured a \$960,000 settlement for the benefit of the Class. The
25 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiff could
26 potentially prevail on the contested issues regarding liability, maintain class certification, overcome
27 difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f).
28 In successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and

1 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
2 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
3 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the common fund**
4 **as attorneys' fees has been found to be appropriate.**”)

5 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
6 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
7 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
8 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
9 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

10 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
11 reward is the attendant risks inherent in the contingent litigation. For Class Counsel, the fees here were
12 wholly contingent in nature and the class case presented far more risk than the usual contingent fee case.
13 Among the risks was the cost inherent in class action litigation, as well as a long battle with a corporate
14 Defendant who had retained a premier and highly experienced defense firm. **Counsel retained on a**
15 **contingency fee basis, whether in private matters or in class action litigation, is entitled to a**
16 **premium above their hourly rate in order to compensate for both the risks and the delay in**
17 **payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts “must”
18 apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion
19 not to apply risk multiplier).

20 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
21 the requested attorneys’ fee of one-third equal to \$320,000 is also established by reference to Class
22 Counsel’s lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
23 through April 23, 2024, Class Counsel’s total lodestar is \$227,038.75, with significant additional fees
24 still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
25 Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel’s total
26 lodestar with a reasonable cross-check multiplier of 1.4, and there will be additional lodestar incurred
27 by Class Counsel to complete the settlement process and manage the settlement distribution and reports.
28 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases

1 such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁵

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 "a Class Counsel
6 Litigation Expense of no more than \$20,000". Class Counsel requests reimbursement for incurred
7 litigation expenses and costs in the amount of \$19,696.84 based upon counsel's billing records which
8 evidence total expenses of \$19,696.84. These litigation expenses include the expenses incurred for
9 filing fees, mediation expenses, expert fees (Berger Consulting), attorney service charges (Knox, One
10 Legal), and Lexis charges, all of which are costs normally billed to and paid by the client.⁶ The details
11 of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4.
12 These costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.)
13 Because these costs were reasonable and necessary to the successful prosecution of these claims, the
14 request is reasonable and should be granted.

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

16 Plaintiff respectfully submits that for his service as the class representative, Plaintiff should be
17 awarded the agreed service award of \$10,000, in accordance with the Agreement for his time, risk and
18 effort expended on behalf of the Class. (Agreement at ¶ 56(a).) Defendant has agreed to this payment
19 and there have been no objections to the requested service award. The Blumenthal Decl., at ¶14,

20 ⁵ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
21 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
22 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
23 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
24 *re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of
25 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 ⁶ 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 provides a long list of equivalent service awards approved in California in similar cases, which further
2 supports the request in this case. The Declaration of the Plaintiff is submitted in support of this request
3 and is attached as Exhibit #6 to the Blumenthal Decl and details the involvement, stress and risks he
4 undertook as a result of this Action.

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

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

22 **VI. CONCLUSION**

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

26 Dated: April 23, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Esq.
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION.....	-1-
II.	THE SETTLEMENT BEFORE THE COURT	-1-
III.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	-2-
IV.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.....	-3-
A.	The Settlement Satisfies the California Test for Fairness.....	-4-
1.	The Investigation and Analysis of Documents are Sufficient to Allow Counsel and the Court to Act Intelligently	-4-
2.	The Settlement was Reached Through Arm's Length Bargaining	-4-
3.	Class Counsel is Experienced in Similar Litigation	-5-
4.	There Are No Objections and No Requests for Exclusion	-5-
5.	The Strength of Plaintiff's Case	-6-
6.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	-8-
7.	The Amount Offered in Settlement.....	-9-
V.	THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARD SHOULD BE APPROVED	-10-
A.	The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund Method	-10-
B.	The Reimbursement of Litigation Expenses.....	-13-
C.	The Service Award Is Reasonable and Should be Approved	-13-
VI.	CONCLUSION.....	-14-

TABLE OF AUTHORITIES

Cases:	Page:
<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	-2-, -3-
<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652 (E.D. Cal. Jun 24, 2008)	-5-
<i>Barbosa v. Cargill Meat Solutions Corp.</i> , 297 F.R.D. 431 (E.D. Cal. 2013)	-12-
<i>Barcia v. Contain-A-Way, Inc.</i> , 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009)	-8-
<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245 (N.D. Cal. 2015)	-14-
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	-11-
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	-7-
<i>Browning v. Yahoo!, Inc.</i> , 2007 U.S. Dist. LEXIS 86266 (N.D. Cal. 2007)	-7-
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2009)	-3-
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	-13-
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	-3-
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9th Cir. 2000)	-9-, -10-
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	-8-
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	-11-
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330 (N.D. Cal. 2007) .	-5-, -9-, -10-
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	-6-
<i>Holman v. Experian Info. Solutions, Inc.</i> , 2014 U.S. Dist. LEXIS 173698	-14-

1	<i>Hopson v. Hanesbrands Inc.</i> ,	
2	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009)	-7-
3	<i>Huens v. Tatum</i> ,	
4	52 Cal. App. 4th 259 (1997)	-2-
5	<i>In re Austrian & German Bank Holocaust Litigation</i> ,	
6	80 F. Supp. 2d 164 (S.D.N.Y. 2000)	-6-
7	<i>In re Sutter Health Uninsured Pricing Cases</i> ,	
8	171 Cal.App.4th 495 (2009)	-13-
9	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
10	168 Cal. App. 4th 116 (2008)	-3-
11	<i>Laffitte v. Robert Half Int'l</i> ,	
12	1 Cal. 5th 480 (2016)	-11-, -13-
13	<i>Laskey v. Int'l Union</i> ,	
14	638 F.2d 954 (6th Cir. 1981)	-6-
15	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
16	2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008)	-8-
17	<i>Ma v. Covidien Holding, Inc.</i> ,	
18	2014 WL 2472316 (C.D. Cal. 2014)	-10-
19	<i>Mathein v. Pier 1 Imps.</i> ,	
20	2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018)	-14-
21	<i>Munoz v. BCI Coca-Cola Bottling Co. of L. A.</i> ,	
22	186 Cal. App. 4th 399 (2010)	-3-
23	<i>Officers for Justice v. Civil Service Com'n</i> ,	
24	688 F.2d 615 (9th Cir. 1982)	-3-
25	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
26	182 Cal.App.4th 278 (2010)	-13-
27	<i>Rutti v. Lojack Corp., Inc.</i> ,	
28	2012 WL 3151077 (C.D. Cal. 2012)	-13-
	<i>Serrano v. Priest</i> ,	
	20 Cal. 3d 25 (Cal. 1977)	-11-
	<i>Stanger v. China Elec. Motor, Inc.</i> ,	
	812 F.3d 734 (9th Cir. 2016)	-12-
	<i>Stetson v. Grissom</i> ,	
	821 F.3d 1157 (9th Cir. 2016)	-12-, -13-
	<i>Stoetzner v. U.S. Steel Corp.</i> ,	
	897 F.2d 115 (3d. Cir. 1990)	-6-

1	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
2	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	-10-
3	<i>Swedish Hospital v. Shalala</i> ,	
4	1 F.3d 1261 (D.C. Cir. 1993)	-12-
5	<i>Taylor v. Fedex Freight, Inc.</i> ,	
6	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	-13-
7	<i>Viceral v. Mistras Grp., Inc.</i> ,	
8	2016 WL 5907869 (N.D. Cal. 2016)	-10-
9	<i>Vincent v. Hughes Air West, Inc.</i> ,	
10	557 F.2d 759 (9th Cir. 1997)	-11-
11	<i>Vizcaino v. Microsoft Corp.</i> ,	
12	290 F.3d 1043 (9th Cir. 2002)	-13-
13	<i>Wershba v. Apple Computer</i> ,	
14	91 Cal. App. 4th 224 (2001)	-3-, -11-, -13-
15		
16	Secondary Sources:	
17	Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Award</i> , 7 J. Empirical Leg.	
18	Stud. 811, 833 (2010)	-11-
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		