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

ANTHONY GUTIERREZ, as an
individual and on behalf of those
similarly situated,

Plaintiff,

vs.

OPTIONS FOR YOUTH-VICTOR
VALLEY, INC., a California
Corporation; OPTIONS FOR
YOUTH-ACTION, INC., a California
Corporation; OPTIONS FOR
YOUTH-CALIFORNIA, INC., a
California Corporation; OPTIONS
FOR YOUTH-DUARTE, INC., a
California Corporation; OPTIONS
FOR YOUTH-SAN BERNARDINO,
INC., a California Corporation;
OPTIONS FOR YOUTH-SAN
GABRIEL, INC., a California
Corporation; OPTIONS FOR
YOUTH-SAN JUAN, INC., a
California Corporation; and Does 1
through 50, Inclusive,

Defendants.

Case No. **CIVSB2132685**

**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: June 25, 2024
Hearing Time: 8:30 a.m.
[Hearing scheduled by Order dated January 18,
2024]

Judge: Hon. Jessica Morgan
Dept: 26

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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 January 18, 2024 (“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 Anthony Gutierrez (“Plaintiff”) respectfully submits moves for
9 final approval, including attorneys’ fees, costs and the service award, 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, there were **no objections and only one request for exclusion**, which means
13 that nearly the entire Class (99.91%) has elected to participate in the Settlement. Blumenthal Decl. ¶4.
14 This is a positive response from the Class evidencing their collective approval of the settlement. As
15 a result, Plaintiff respectfully submits that the class settlement should be finally approved for the same
16 reasons that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
19 Options For Youth-Victor Valley, Inc., Options For Youth-Acton, Inc., Options for Youth-California,
20 Inc., Options for Youth-Duarte, Inc., Options for Youth-San Bernardino, Inc., Options for Youth-San
21 Gabriel, Inc., and Options for Youth-San Juan, Inc. (“Defendants”) is Seven Hundred Fifty Thousand
22 Dollars (\$750,000). (Agreement at ¶¶ 1.25 and 3.1.) Under the Settlement, the Gross Settlement
23 Amount consists of the following elements: (1) payment of the Individual Class Payments to the
24 Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses

25
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals who were employed by Defendants in California and who
28 were classified as a non-exempt employee at any time during the Class Period.” The “Class Period”
is defined as “September 23, 2020 through July 7, 2023.” (Preliminary Approval Order at ¶ 7.)

1 Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payment to
2 Plaintiff; and (5) the PAGA Penalties. (Agreement at ¶ 1.25.) Blumenthal Decl. ¶3(a). The Gross
3 Settlement Amount does not include Defendants' share of payroll taxes. (Agreement at ¶ 3.1.) The
4 Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.)
5 Blumenthal Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and the
6 proposed deductions:

7 **\$750,000** (Gross Settlement Amount)

- 8 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 9 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$250,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 11 - \$50,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$20,000 (Administration Expenses Payment - not to exceed amount)

13 **\$395,000** (Net Settlement Amount)

14 The specific details of the Settlement were discussed in the Motion for Preliminary Approval
15 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 ¶ 5.) In sum, the Settlement valued
19 at \$750,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
20 that liability and class certification in this case were far from certain in light of the defenses asserted
21 by Defendants. Given the complexities of this case, the defenses asserted, the uncertainty of class
22 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
23 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 v. Ford Motor Co.*,
13 48 Cal. App. 4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the
14 proposed settlement satisfies 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 two years of litigation, the Parties engaged in the investigation of the claims,
13 including the production of documents, class data, and other information, allowing for the full and
14 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 one arms-length mediation and contentious negotiations through an
17 all-day mediation presided over by Hon. Carl J. West (Ret.). The details of the litigation are set forth
18 in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

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 before
21 an experienced and well-respected mediator. Defendants have expressly denied and continue to deny
22 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
23 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
24 Claims of the Class in accordance with this Settlement, based upon the experience of Class Counsel
25 who has previously litigated similar claims against other employers. Blumenthal Decl. ¶7(a).

26 The Parties attended an arms-length mediation session with Hon. Carl J. West (Ret.), a respected
27 jurist and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
28 preparation for the mediation, Defendants provided to Plaintiff and Class Counsel payroll and

1 employment data and other information regarding the Class Members, various internal documents, and
2 other compensation and employment-related materials. Class Counsel analyzed the data with the
3 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
4 mediator. Following this all-day mediation, along with additional post-mediation negotiations, the
5 Parties agreed to this Settlement based upon a mediator's proposal. Blumenthal Decl. ¶7(b).

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

12 From August 2023 to December 2023, the settlement agreement and exhibits thereto were
13 finalized and executed. On January 18, 2024, the Court issued its Order granting preliminary approval
14 of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

15 3. Class Counsel is Experienced in Similar Litigation

16 Class Counsel in this matter has extensive class action experience and has represented thousands
17 of persons in class actions including employment litigation, wage and hour class actions, and complex
18 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
19 claims similar to this case and have been approved as experienced class counsel during contested
20 motions in state and federal courts throughout California. The experience of counsel and class action
21 cases managed and settled by the Class Counsel in this action is provided to the Court in the Blumenthal
22 Decl. at Exhibit #1. Class Counsel have participated in every aspect of the settlement discussions and
23 have concluded the settlement is fair, adequate and reasonable and in the best interests of the Class.
24 Blumenthal Decl. ¶ 3(j).

25 4. There Are No Objections and Few Requests for Exclusion

26 The reaction of the Class unequivocally supports approval of the Settlement. On March 15,
27 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
28 each class member with the terms of the Settlement, including notice of the claims at issue and the

1 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
2 sought, how individual settlement awards would be calculated, and the specific, estimated payment
3 amount to that individual. See Declaration of Makenna Snow ("Snow Decl.") at ¶ 7, Exh. A. In
4 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
5 its Preliminary Approval Order. Significantly, there have been no objections and only one request to
6 opt-out. Snow Decl. at ¶¶11-12. As such, nearly the entire Class (99.91%) will participate in the
7 Settlement and will be sent a settlement check. Snow Decl. at ¶¶ 11-14; Blumenthal Decl. ¶4.

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

16 5. The Strength of Plaintiff's Case

17 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
18 overtime wages for hours worked and at the correct rate of pay, were not provided meal and rest periods
19 or premiums at the correct rate of pay in lieu thereof, were not timely paid earned wages, were not
20 provided reimbursement for required expenses, were not provided accurate itemized wage statements,
21 were not paid sick wages at the correct rate, and were not paid all wages at the time of termination. The
22 Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal
23 relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing
24 claims. Blumenthal Decl. ¶5.

25 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
26 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
27 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
28 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants

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

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

21 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
22 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
23 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.

24 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
25 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
26 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
27 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:
28

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

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

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

23 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
24 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
25 substantial defenses both to liability and to class certification. The maximum and average class member
26 allocation are \$1,248 and \$371, respectively. *See* Snow Decl. ¶16. Given the complexities of this case,
27 the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
28 reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

As demonstrated by the decision in *Duran*, the complexities and duration of further litigation cannot be overstated. There is little doubt that Defendants would post a bond and appeal in the event

1 of an adverse judgment. A post-judgment appeal by Defendants would have required many more years
2 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
3 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
4 an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

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

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

18 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
19 and likely duration of further litigation likewise favors the settlement. Regardless of how
20 this Court might have ruled on the merits of the legal issues, the losing party likely
21 would have appealed, and the parties would have faced the expense and uncertainty of
22 litigating an appeal. "The expense and possible duration of the litigation should be
23 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
24 litigation is substantial.

25 *Id.* at *12.

26 7. The Amount Offered in Settlement

27 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
28 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
which discussed the value of the class claims in detail, the Gross Settlement Amount compares
favorably to the value of the claims. Based upon 1,062 Class Members who collectively worked 23,091

1 Class Pay Periods, the Gross Settlement Amount provides a value of \$706 per Class Member and \$32
2 per Workweek and after deductions, the Net Settlement Amount provides an average recovery of
3 \$371.92 per Class Member and a recovery of \$17.10 per Workweek. The 25% allocation of the PAGA
4 Penalties will be distributed to the 1,063 Aggrieved Employees who worked 23,092 pay periods during
5 the PAGA Period, resulting in an average Individual PAGA Payment of \$11.75 per Aggrieved
6 Employee and \$0.54 per PAGA Pay Period. Blumenthal Decl. at ¶8(d).

7 The calculations to compensate for the amount due for the Class at the time of the mediation
8 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
9 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
10 wages for the employees. For the Class, the maximum value of the claim for unpaid wages due to
11 alleged rounding was \$30,560, the maximum value of the claim for unpaid wages due to the alleged
12 miscalculation of the regular rate was \$16,508, the maximum value of the claim for unpaid wages due
13 to alleged off-the-clock work was \$1,242,265, the maximum potential damages for unpaid meal
14 premiums were estimated to be \$47,806 based upon a 1.7% violation rate and after deduction for meal
15 premiums paid, the maximum potential rest period damages were estimated to be \$67,924 based upon
16 the same 1.7% violation rate, and the maximum potential damages for failure to provide expense
17 reimbursement were calculated to be \$53,020. In total, the damages for the Class were calculated to
18 have a maximum potential total value of \$1,467,084. In addition, Plaintiff calculated that the maximum
19 value of the potential waiting time penalties were between \$185,868 and \$3,170,374, depending on the
20 predicate unpaid wage violation, and the maximum value of the potential wage statement penalties were
21 \$1,925,550.³ Blumenthal Decl. ¶8(d).

22
23 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
24 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
25 by Defendants, including, a good faith dispute defense as to whether any premium wages for meal or
26 rest periods or other wages were owed given Defendants' position that Plaintiff and Class Members
27 were properly compensated. *See Naranjo v. Spectrum Sec. Servs., Inc.*, 2024 Cal. LEXIS 2438, at *3
28 (May 6, 2024) ("if an employer reasonably and in good faith believed it was providing a complete and
accurate wage statement in compliance with the requirements of section 226, then it has not knowingly
and intentionally failed to comply with the wage statement law."); *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 Consequently, the Gross Settlement Amount represents more than 51% of the potential
2 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
3 full at trial.⁴ The above maximum calculations should then be adjusted in consideration for both the
4 risk of class certification and the risk of establishing class-wide liability on all claims. Given the
5 amount of the settlement as compared to the potential value of claims in this case and the defenses
6 asserted by Defendants, this settlement is fair, adequate, and reasonable.⁵ Blumenthal Decl. ¶8(d).

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

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

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

20 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
21 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the
22 Declaration of Nordrehaug at ¶ 33 filed in support of Plaintiff's Motion for Preliminary Approval.

23 ⁵ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
24 approving settlement which represented "roughly one-sixth of the potential recovery"); *Glass v. UBS*
25 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a settlement where the settlement
26 amount constituted approximately 25% of the estimated overtime damages for the class);
27 *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015)
28 (granting final approval where "the proposed Total Settlement Amount represents approximately 10%
of what class might have been awarded had they succeeded at trial."). 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 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 class
6 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
7 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
8 created"). Under the percentage of the fund method, a court's objective remains to "mimic the market"
9 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"). Such similar awards by other Courts
16 are set forth in the Blumenthal Decl. ¶11.

17 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
18 Here, Plaintiff and her counsel secured a \$750,000 settlement for the benefit of the Class and not one
19 Class Member objected. The Settlement was possible only because Class Counsel was able to convince
20 Defendants that Plaintiff could potentially prevail on the contested issues regarding liability, maintain
21 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
22 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
23 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
24 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
25 F.R.D. 431, 449 (E.D. Cal. 2013) ("**Like this case, where recovery is uncertain, an award of**
26 **one-third of the 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 that
3 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, regardless
8 of success. Nor, particularly in complicated cases producing large recoveries, is it just to make
9 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 \$750,000 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 \$250,000 is also established by reference to Class
21 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence
22 that through May 29, 2024, Class Counsel's total lodestar is \$211,272.50**, with significant additional
23 fees still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12
24 and Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel's
25 total lodestar with a reasonable multiplier of less than 1.2, and there will be additional lodestar incurred
26 by Class Counsel to complete the settlement process and manage the settlement distribution and reports.
27
28

(Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

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

B. The Reimbursement of Litigation Expenses

The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel Litigation Expenses Payment of not more than \$25,000." Class Counsel requests reimbursement for incurred litigation expenses and costs in the amount of \$17,430.30. Class Counsel have incurred \$17,430.30 based upon counsel's billing records; therefore, this requested amount is less than the "not to exceed" amount of \$25,000. These litigation expenses include the expenses incurred for filing fees, mediation expenses, expert expenses (Berger Consulting), and attorney service charges (Knox, OneLegal, Turbo Court Filing), research charges (LexisNexis), and appearance fees (CourtCall), all of which are costs normally billed to and paid by the client.⁷ The details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4. These costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.) Because these costs were reasonable and necessary to the successful prosecution of these claims, the request is reasonable and should be granted.

⁶ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App. 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming 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).

⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging, 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 **C. The Service Award Is Reasonable and Should be Approved**

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

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

20 The payment of service awards to successful class representatives is appropriate and the amount
21 of \$10,000 is well within the currently awarded range for similar settlements. *See e.g. Mathein v. Pier*
22 *1 Imps.*, 2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018) (approving two
23 service awards of \$12,500 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
24 173698 (approving \$10,000 service award where class member recovery was \$375); *Bellinghausen v.*
25 *Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$10,000 award). Accordingly,
26 Class Counsel respectfully request approval of the requested Class Representative Service Payment in
27 accordance with the Agreement.
28

1 **VI. CONCLUSION**

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

5 Respectfully submitted,

6 Dated: May 29, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

7
8 By: /s/ Kyle Nordrehaug
9 Kyle R. Nordrehaug
Attorneys for Plaintiff