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

SIERRA STEELE and ELIJAH
WILKINSON, on behalf of the State of
California, as private attorneys general,
and as individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiff,

vs.

LEGOLAND CALIFORNIA, LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **37-2021-00052868-CU-OE-CTL**

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

Hearing Date: November 17, 2023
Hearing Time: 10:30 a.m.
[Hearing scheduled by Order dated August 4, 2023]

Judge: Hon. Carolyn M. Caietti
Dept: 70

Action Filed: December 17, 2021
Trial Date: Not Set

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 Is Only One (1) Objection and Only Three (3) Requests for Exclusion	-5-
5.	The Strength of Plaintiffs' Case	-6-
6.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	-9-
7.	The Amount Offered in Settlement.....	-10-
V.	THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARD SHOULD BE APPROVED	-11-
A.	The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund Method	-11-
B.	The Reimbursement of Litigation Expenses.....	-14-
C.	The Service Award Is Reasonable and Should be Approved.....	-14-
VI.	CONCLUSION.....	-15-

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)	-15-
<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)	-8-
<i>Cacho v. Eurostar, Inc.</i> , 43 Cal. App. 5th 885 (2019)	-8-
<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>City of Detroit v. Grinnell Corp</i> , 495 F.2d 448 (2d Cir. 1974)	-12-
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	-3-, -4-
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9th Cir. 2000)	-9-, -11-
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	-8-, -9-
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	-12-
<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-

1	<i>Hanlon v. Chrysler Corp.</i> ,	
	150 F.3d 1011 (9th Cir. 1998)	-7-
2	<i>Holman v. Experian Info. Solutions, Inc.</i> ,	
3	2014 U.S. Dist. LEXIS 173698	-15-
4	<i>Huens v. Tatum</i> ,	
	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> ,	
	171 Cal.App.4th 495 (2009)	-13-
8	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
9	168 Cal. App. 4th 116 (2008)	-3-
10	<i>Laffitte v. Robert Half Int'l</i> ,	
	1 Cal. 5th 480 (2016)	-6-, -12-, -13-
11	<i>Laskey v. Int'l Union</i> ,	
12	638 F.2d 954 (6th Cir. 1981)	-6-
13	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
	2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008).	-8-
14	<i>Ma v. Covidien Holding, Inc.</i> ,	
15	2014 WL 2472316, (C.D. Cal. 2014)	-11-
16	<i>Mathein v. Pier 1 Imps.</i> ,	
	2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018)	-15-
17	<i>Munoz v. BCI Coca-Cola Bottling Co. of L. A.</i> ,	
18	186 Cal. App. 4th 399 (2010)	-3-
19	<i>Nordstrom Commission Cases</i> ,	
	186 Cal. App. 4th 576 (2010)	-10-
20	<i>Officers for Justice v. Civil Service Com'n</i> ,	
21	688 F.2d 615 (9th Cir. 1982)	-3-
22	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
	182 Cal.App.4th 278 (2010)	-13-
23	<i>Rutti v. Lojack Corp., Inc.</i> ,	
24	2012 WL 3151077 (C.D. Cal. 2012).	-14-
25	<i>Serrano v. Priest</i> ,	
	20 Cal. 3d 25 (Cal. 1977)	-11-
26	<i>Stanger v. China Elec. Motor, Inc.</i> ,	
27	812 F.3d 734 (9th Cir. 2016)	-13-
28	<i>Stetson v. Grissom</i> ,	

1	821 F.3d 1157 (9th Cir. 2016)	-13-, -14-
2	<i>Stoetzner v. U.S. Steel Corp.</i> ,	
	897 F.2d 115 (3d. Cir. 1990)	-6-
3	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
4	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	-11-
5	<i>Taylor v. Fedex Freight, Inc.</i> ,	
	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016).....	-13-
6	<i>Viceral v. Mistras Grp., Inc.</i> ,	
7	2016 WL 5907869 (N.D. Cal. 2016)	-11-
8	<i>Vincent v. Hughes Air West, Inc.</i> ,	
	557 F.2d 759 (9th Cir. 1997)	-11-
9	<i>Vizcaino v. Microsoft Corp.</i> ,	
10	290 F.3d 1043 (9th Cir. 2002)	-13-
11	<i>Wershba v. Apple Computer</i> ,	
	91 Cal. App. 4th 224 (2001)	-3-, -11-, -13-

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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”) with Defendant LEGOLAND
4 California, LLC (“Defendant”) , a true and correct copy of which is attached as Exhibit #2 to the
5 Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In accordance with the Preliminary
6 Approval Order dated August 4, 2023 (“Preliminary Approval Order”), the approved Class Notice has
7 been disseminated to the Class.²

8 The purpose of this hearing is to determine whether the proposed settlement of the litigation
9 should be finally approved. Plaintiffs Sierra Steele and Elijah Wilkinson (“Plaintiffs”) respectfully
10 submit this memorandum in support of the unopposed motion for final approval and the proposed entry
11 of the Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent
12 result for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the
13 Class Notice to the members of the Class, there was only one objection and three Requests for
14 Exclusion, which means that nearly the entire Class has elected to participate in the Settlement.
15 Blumenthal Decl. ¶4. This is a positive response from the Class evidencing their collective approval
16 of the settlement. Plaintiffs respectfully submit that the class settlement should be finally approved for
17 the same reasons that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

19 The following is a table of the key financial terms of the Settlement and the proposed
20

21 ¹ Capitalized terms are defined in the Agreement.

22 ² The “Class” is defined as “all individuals employed by Defendant in the State of California in a
23 non-exempt position during the Class Period.” However, if any individual employed by Defendant in
24 a non-exempt position during the Class Period signed a severance agreement during the Class Period
25 and was not subsequently rehired by Defendant, those Class Members shall be excluded from the Class
26 and the class action aspects of the Settlement. Moreover, if any individual employed by Defendant in
27 a non-exempt position during the Class Period signed a severance agreement during the Class Period
28 but was subsequently rehired by Defendant, they shall be included in the Class but shall only be entitled
to participate in the class action aspects of the Settlement with respect to the post-severance agreement
time period(s) for which they were employed by Defendant during the Class Period.” (Agreement,
1.5.). The “Class Period” is December 17, 2017 through and including February 12, 2023.
(Preliminary Approval Order at 3:21-24.)

deductions:

\$6,000,000 (Gross Settlement Amount)

- \$20,000 (Plaintiffs' proposed Class Representative Service Payment
not to exceed \$10,000 each)

- \$40,000 (Class Counsel Litigation Costs - not to exceed amount)

- \$2,000,000 (Class Counsel Fees - not to exceed 1/3 of Gross Settlement Amount)

- \$200,000 (PAGA Settlement Amount - 75% to LWDA / 25% to Affected Employees)

- \$60,000 (Administration Expenses - not to exceed amount)

\$3,680,000 (Net Settlement Amount)

Plaintiffs and Defendant reached a full and final settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is Six Million Dollars (\$6,000,000). (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees and Class Counsel Litigation Costs; (3) Administration Expenses; (4) the Class Representative Service Payments to Plaintiffs; and (5) the PAGA Settlement Amount. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.5.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.5.) Blumenthal Decl. ¶3(b).

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

The Settlement is fair, adequate and reasonable to the Class and should be finally approved for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the Settlement is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 2.) In sum, the Settlement valued at \$6,000,000 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 Defendant. 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,

1 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
2 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
3 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
4 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

21 The Court must determine whether the Settlement is fair, adequate, and reasonable. *Dunk v.*
22 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
23 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
24 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "The
25 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
26 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
27 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
28 offered in settlement, the extent of discovery completed and the stage of the proceedings, the

1 experience and views of counsel, the presence of a governmental participant, and the reaction of the
2 class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
3 128 (2008) (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.
4 App. 4th 399, 408 (2010).

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

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

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

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

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

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

25 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
26 before an experienced and well-respected mediator. Defendant has expressly denied and continue to
27 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
28 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released

1 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to
2 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
3 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has
4 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

5 The Parties attended two arms-length mediation sessions with David Rotman, a respected and
6 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
7 for the mediations, Defendant provided Class Counsel with necessary information for the members of
8 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiffs
9 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
10 a mediation brief and damage valuation to the Mediator. At the conclusion of the second all-day
11 mediation, the Parties agreed to the principal terms of this Settlement, which they subsequently
12 memorialized in the Agreement. Blumenthal Decl. ¶7(b).

13 The fact that the Settlement was negotiated with the assistance of an experienced mediator
14 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
15 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
16 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
17 litigation, with the assistance of a well-respected mediator with substantial experience in employment
18 litigation[, and] this factor supports approval of the settlement”).

19 From December 2022 to February 2023, the Parties finalized the Agreement and exhibits
20 thereto, and then presented by motion to this Court for preliminary approval. On August 4, 2023, the
21 Court issued its Order granting preliminary approved of the Settlement as fair and reasonable to the
22 Class. Blumenthal Decl. ¶7(c).

23 3. Class Counsel is Experienced in Similar Litigation

24 Class Counsel in this matter has extensive class action experience and has represented thousands
25 of persons in class actions including employment litigation, wage and hour class actions, and complex
26 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
27 claims similar to this case and have been approved as experienced class counsel during contested
28 motions in state and federal courts throughout California. As such, Class Counsel is experienced and

1 knowledgeable in this area of law. A list of class action cases managed and settled by the Class
2 Counsel in this action is provided to the Court as Exhibit #1 to the Blumenthal Decl. Class Counsel
3 have participated in every aspect of the settlement discussions and have concluded the Settlement is
4 fair, adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

5 4. There Is Only One (1) Objection and Only Three (3) Requests for Exclusion

6 The reaction of the Class unequivocally supports approval of the Settlement. On August 10,
7 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
8 each Class Member with the terms of the Settlement, including notice of the claims at issue and the
9 financial terms of the Settlement, including the attorneys' fees, costs, and service awards that were
10 being sought, how individual settlement awards would be calculated, and the specific, estimated
11 payment amount to that individual. See Declaration of Cassandra Polites ("Polites Decl.") ¶ 7, Exh. A.
12 In disseminating the Class Notice, the Administrator followed the notice procedures authorized by the
13 Court in its Preliminary Approval Order. Significantly, there has been only (1) objection and only three
14 (3) Requests for Exclusion. Polites Decl. ¶¶ 11, 12. As such, nearly the entire Class will participate in
15 the Settlement and will be sent a settlement check. See Polites Decl. at ¶¶ 13, 14; Blumenthal Decl. ¶4.

16 Out of 8,170 Class Members, only one objection was received and is attached as Exhibit B to
17 the Polites Decl. This objection relates not to settlement approval, but rather objects to the requested
18 attorneys' fees of one-third of the Gross Settlement Amount. This objection acknowledges that a one-
19 third fee award is in the typical range for class action fees, and otherwise, its conclusory statements are
20 without merit. As discussed below, the requested fee award is supported by all relevant factors and is
21 reasonable under *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016). Class Counsel achieved an
22 extraordinary result in obtaining this \$6 million settlement, and contrary to the objection's argument,
23 there is nothing typical or uncomplicated in reaching such a result.

24 The scarcity of objectors strongly supports the fairness, reasonableness and adequacy of the
25 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
26 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
27 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
28 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*

1 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
2 settlement should be considered when determining fairness of settlement).

3 5. The Strength of Plaintiffs' Case

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

10 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
12 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
13 Defendant asserted that Defendant's practices complied with all applicable labor laws. Defendant
14 argued that all work time was properly paid for and that the work time recording practices were lawful.
15 Defendant contended that its meal and rest period policies fully complied with California law and that
16 Defendant's timekeeping system recorded meal periods, paid for missed meal periods, and was not
17 required to record rest periods. Defendant established that it paid significant premiums for any alleged
18 meal or rest period violation. As to expense reimbursement, Defendant contended that it did not fail
19 to provide reimbursement for necessary business expenses and that claimed expenses were voluntary
20 and convenient and therefore reimbursement was not required. Defendant could argue that the Supreme
21 Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on
22 liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that
23 based on its facially lawful practices, Defendant acted in good faith and without willfulness, which if
24 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If
25 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
26 While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses
27 have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

28 As one federal decision explained in approving the settlement of a similar wage and hour class

1 action, such risks weigh in favor of settlement approval:

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

10 *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009); *see also Louie v.*
11 *Kaiser Foundation Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008); *see also*
12 *Browning v. Yahoo!, Inc.*, 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the
13 strength of Plaintiffs’ case, legal uncertainties at the time of settlement - particularly those which go
14 to fundamental legal issues - favor approval.”). .

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

27 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
28 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
substantial defenses both to liability and to class certification. Currently, the maximum and average
class member allocation are \$3,009.26 and \$450.10, respectively. *See Polites Decl.* ¶15. Given the
complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed

1 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

23 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
24 and likely duration of further litigation likewise favors the settlement. Regardless of
25 how this Court might have ruled on the merits of the legal issues, the losing party likely
26 would have appealed, and the parties would have faced the expense and uncertainty of
27 litigating an appeal. "The expense and possible duration of the litigation should be
28 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.

Id. at *12.

1 7. The Amount Offered in Settlement

2 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
3 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
4 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
5 favorably to the value of the claims.

6 The calculations to compensate for the amount due to the Class Members at the time this
7 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
8 mediation. For the individuals whose claims are at issue in this Action, Plaintiffs analyzed the data for
9 putative class members and determined the potential maximum damages for the class claims. For the
10 Class, Plaintiffs evaluated that the claim for unpaid wages due to the miscalculation of the regular rate
11 was potentially \$74,007; the allege unpaid wages due to *Ferra* miscalculation as to sick pay and meal
12 period premiums was \$124,267; the maximum potential meal period damages, after deducting meal
13 premiums paid by Defendant, were estimated to be \$292,382; the maximum potential rest period
14 damages, after deducting rest period premiums paid by Defendant, were estimated to be \$4,821,899;
15 the maximum potential damages for unpaid wages and off the clock work were estimated to be
16 \$2,713,389; and the maximum potential damages for failure to provide expense reimbursement were
17 calculated to be \$1,020,595. In total, the damages for the Class were calculated to have a maximum
18 potential total value of \$9,046,538. In addition, Plaintiffs calculated that the maximum value of the
19 potential waiting time penalties were between \$2,260,980 and \$17,417,414, depending on the predicate
20 violation, and the maximum value of the potential wage statement penalties were between \$3,782,550
21 and \$9,406,050, depending on the predicate violation.³ Defendant vigorously disputed Plaintiffs'
22 calculations and exposure theories. Blumenthal Decl. ¶8(d).

23 Consequently, the Gross Settlement Amount represents more than 66% of the value of the

24
25 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
26 226, at mediation Plaintiffs recognized that these claims were subject to additional defenses asserted
27 by Defendant, including, but not limited to, a good faith dispute defense as to whether any premium
28 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs
were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010)
("There is no willful failure to pay wages if the employer and employee have a good faith dispute as
to whether and when the wages were due.").

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

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

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

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

19 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
20 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
21 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*

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

25 ⁵ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
26 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
27 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
28 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state
2 courts in holding that when class action litigation establishes a monetary fund for the benefit of the
3 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
4 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
5 fund created”). Under the percentage of the fund method, a court’s objective remains to “mimic the
6 market” in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

14 Second, the results delivered by Class Counsel also support the requested percentage of the
15 fund. Here, Plaintiffs and their counsel secured a \$6,000,000 settlement for the benefit of the Class.
16 The Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
17 could potentially prevail on the contested issues regarding liability, maintain class certification,
18 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
19 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
20 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
21 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
22 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the
23 common fund as attorneys' fees has been found to be appropriate.**”)

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

26 No one expects a lawyer whose compensation is contingent upon his success to charge, when
27 successful, as little as he would charge a client who had agreed to pay for his services,
28 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.

1 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$6,000,000 has been created.
2 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
3 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
4 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
5 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class**
6 **action litigation, is entitled to a premium above their hourly rate in order to compensate for both**
7 **the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
8 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
9 Cir. 2016) (abuse of discretion not to apply risk multiplier).

10 Fourth, the requested fee award is supported by the lodestar cross-check. The reasonableness
11 of the requested attorneys' fees of one-third of the Gross Settlement Amount is also established by
12 reference to Class Counsel's lodestar in this matter. The contemporaneous billing records for Class
13 Counsel evidence that through October 25, 2023, Class Counsel's total lodestar is \$511,760.00, with
14 significant additional fees still to be incurred to complete final approval and the settlement process.
15 (Blumenthal Decl. at ¶12 and Exhibits #3 and 4.) The requested fee award is therefore currently
16 equivalent to Class Counsel's total lodestar with a reasonable multiplier of 3.9, and there will be
17 additional lodestar incurred by Class Counsel to complete the settlement process and manage the
18 settlement distribution and reports. (Blumenthal Decl. at ¶12.) Such a multiplier is within the range
19 of multipliers approved in other cases such as *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th
20 Cir. 2002).⁶

21
22 ⁶ See *Vizcaino supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182
23 Cal.App.4th 278 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied);
24 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or
25 even higher."); *In re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009)
26 (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66
27 (2008) (affirming multiplier of 2.53 as well within the approved range of 2 to 4); *Taylor v. Fedex*
28 *Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier). Indeed, multipliers
in the range of 5x to 10x are not uncommon. See e.g. *Craft v. County of San Bernardino* 624 F.Supp.2d
1113, 1123 (C.D. Cal. 2008) (5.2 multiplier); *Stevens v. SEI Investments Company* 2020 WL 996418,
at *13 (E.D. Pa., Feb. 28, 2020) (holding that "multiples ranging from 1 to 8 are often used in common
fund cases" and awarding fees equivalent to a multiplier of 6.16); *Weiss v. Mercedes-Benz of N. Am.,*
Inc., 899 F. Supp. 1297, 1304 (D.N.J. 1995) (9.3 multiplier),

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

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

4 The Agreement provides at paragraph 3.5(b), that Class Counsel may seek a "Class Counsel
5 Litigation Costs of not more than Forty Thousand Dollars and Zero Cents (\$40,000.00)." Class
6 Counsel requests reimbursement for incurred litigation expenses and costs in the amount of \$40,000
7 based upon counsel's billing records which evidence that Class Counsel incurred litigation expenses
8 in the total amount of \$40,895.57. The requested expense reimbursement is less than actual amount of
9 litigation expenses incurred. These litigation expenses include the expenses incurred for filing fees,
10 mediation expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One
11 Legal), and Lexis charges, all of which are costs normally billed to and paid by the client.⁷ The details
12 of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4.
13 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 Class Representative Service Payments Are Reasonable and Should be
17 Approved**

18 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
19 be awarded the agreed Class Representative Service Payments of \$10,000 each, in accordance with the
20 Agreement for their time, risk and effort expended on behalf of the Class. (Agreement at ¶ 3.5(a).)
21 Defendant has agreed to these payments and there have been no objections to the requested Class
22 Representative Service Payments. The Blumenthal Decl., at ¶14, provides a long list of equivalent
23 service awards approved in California in similar cases, which further supports the request in this case.
24 The Declarations of the Plaintiffs are submitted in support of this request and are attached as Exhibit

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 #5 and 6 to the Blumenthal Decl.

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

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

21 **VI. CONCLUSION**

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

25 Dated: October 25, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

26 By: /s/ Kyle Nordrehaug
27 Kyle R. Nordrehaug, Esq.
28 Attorneys for Plaintiffs