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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ALFREDO SILVA and GEORGE
ROSENBERG, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

WOODWARD HRT, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **21STCV42692**

**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 15, 2023

Hearing Time: 9:00 a.m.

[Hearing scheduled by Order dated July 18, 2023]

Judge: Hon. Maren Nelson

Dept.: 17

Action Filed: November 19, 2021

Trial Date: Not set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action Settlement Agreement (the “Agreement”), a true and correct copy of which is attached as
4 Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In accordance with the
5 Preliminary Approval Order dated July 18, 2023 (“Preliminary Approval Order”), the approved Class
6 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. Plaintiffs George Rosenberg and Alfredo Silva (“Plaintiffs”) respectfully
9 submits this memorandum in support of the unopposed motion for final approval and the proposed entry
10 of the Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent
11 result for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the
12 notice to the members of the Class, there were **no objections and only three requests for exclusion**,
13 which means that almost the entire Class has elected to participate in the Settlement. Blumenthal Decl.
14 ¶4. This is a positive response from the Class evidencing their collective approval of the settlement.
15 As a result, Plaintiffs respectfully submit that the class settlement should be finally approved for the
16 same reasons that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 The following is a table of the key financial terms of the Settlement and the proposed
19 deductions:

20 **\$2,650,000** (Gross Settlement Amount)
21 - \$20,000 (Plaintiffs’ proposed service awards not to exceed \$10,000 each)
22 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
23 - \$883,333 (Class Counsel Fees Payment - not to exceed amount)
24 - \$100,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
25 - \$30,000 (Settlement Administration Expenses - not to exceed amount)
26 **\$1,591,667** (Net Settlement Amount)

27 ¹ Capitalized terms are defined in the Agreement.

28 ² The “Class” is defined as “all individuals who are or previously were employed by Defendant in California who were classified as hourly, non-exempt employees during the Class Period.” The “Class Period” is defined as “October 21, 2016 to July 1, 2022” (Preliminary Approval Order at 3:18-22.)

1 Plaintiffs and Defendant Woodward HRT, Inc. ("Defendant") reached a full and final settlement
2 of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court.
3 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is Two
4 Million Six Hundred Fifty Thousand Dollars (\$2,650,000). (Agreement at ¶ I(20).) Under the
5 Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the
6 Settlement Shares to the Participating Class Members; (2) Class Counsel Fees Payment and Class
7 Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) the Class
8 Representative Service Payments to Plaintiffs; and (5) the PAGA Payment. (Agreement at ¶ I(20).)
9 Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include Defendant's share of payroll
10 taxes. (Agreement at ¶ III(55).) The Gross Settlement Amount shall be all-in with no reversion to
11 Defendant. (Agreement at ¶ III(55).) Blumenthal Decl. ¶3(b).

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

14 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
15 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
16 is "fair, adequate, and reasonable". (Preliminary Approval Order at 27:1-2.) In sum, the Settlement
17 valued at \$2,650,000 is an excellent result for the Class. This result is particularly favorable in light
18 of the fact that liability and class certification in this case were far from certain in light of the defenses
19 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
20 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
21 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

22 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL** 23 **OF CLASS ACTION SETTLEMENTS**

24 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
25 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
26 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
27 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
28 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

17 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
18 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
19 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
20 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The
21 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
22 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
23 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
24 offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience
25 and views of counsel, the presence of a governmental participant, and the reaction of the class members
26 to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
27 (internal citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th
28

1 399, 408 (2010).

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

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

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

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

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

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

22 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
23 before an experienced and well-respected mediator. Defendant has expressly denied and continue to
24 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
25 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
26 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to
27 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
28 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has

1 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

2 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
3 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
4 for the mediation, Defendant provided Class Counsel with necessary information for the members of
5 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiffs
6 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
7 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
8 agreed to this Settlement. Blumenthal Decl. ¶7(b).

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

15 From May 2022 to June 2023, the settlement agreement and exhibits thereto were finalized and
16 executed, and then presented by motion to this Court for preliminary approval. Supplemental briefing
17 was provided at the request of the Court. On July 18, 2023, the Court issued its Order granting
18 preliminary approved of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

19 3. Class Counsel is Experienced in Similar Litigation

20 Class Counsel in this matter has extensive class action experience and has represented thousands
21 of persons in class actions including employment litigation, wage and hour class actions, and complex
22 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
23 claims similar to this case and have been approved as experienced class counsel during contested
24 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
25 knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2; Declaration of Preston Lim at ¶¶ 3-10;
26 Declaration of Lloyd Lee at ¶¶ 3-12. Class Counsel have participated in every aspect of the settlement
27 discussions and have concluded the settlement is fair, adequate and reasonable and in the best interests
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1 of the Class. Blumenthal Decl. ¶ 3(j).

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

3 The reaction of the Class unequivocally supports approval of the Settlement. On August 28,
4 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
5 each class member with the terms of the Settlement, including notice of the claims at issue and the
6 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
7 sought, how individual settlement awards would be calculated, and the specific, estimated payment
8 amount to that individual. See Declaration of Nick Casto ("Casto Decl.") at ¶ 7, Exh. A. In
9 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
10 its Preliminary Approval Order. Significantly, there have been no objections and only (3) requests for
11 exclusion. Casto Decl. at ¶¶ 11-12. As such, nearly the entire Class will participate in the Settlement
12 and will be sent a settlement check. See Casto Decl. at ¶¶ 13-14; Blumenthal Decl. ¶4.

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

21 5. The Strength of Plaintiffs' Case

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

1 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
3 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
4 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
5 argued that all work time was paid for and that the CBA preempted claims for overtime under Labor
6 Code § 514. Defendant contends that their meal and rest period policies fully complied with California
7 law and that Defendant's timekeeping system recorded meal periods, and was not required to record rest
8 periods. As to expenses reimbursement, Defendant contended that there was no failure to pay for
9 business expenses and any cell phone usage was merely convenient and voluntary such that
10 reimbursement was not legally required. Finally, Defendant could argue that the Supreme Court
11 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability,
12 value, and class certifiability as to the meal and rest period claims. Defendant also argues that based
13 on its facially lawful practices, it acted in good faith and without willfulness, which if accepted would
14 negate the claims for waiting time penalties and/or inaccurate wage statements. If successful,
15 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs
16 believe that these defenses could be overcome, Defendant maintains these defenses have merit and
17 therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

20 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
21 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
22 Associates were misclassified as exempt. In addition to the uncertainties raised by
23 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
24 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. [...T]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.

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

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.

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

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

17 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
18 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
19 substantial defenses both to liability and to class certification. Currently, the maximum and average
20 class member allocation are \$2,837.11 and \$1,341.47, respectively. *See* Castro Decl. ¶ 14. Given the
21 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
22 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

17 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
18 and likely duration of further litigation likewise favors the settlement. Regardless of how
19 this Court might have ruled on the merits of the legal issues, the losing party likely
20 would have appealed, and the parties would have faced the expense and uncertainty of
21 litigating an appeal. "The expense and possible duration of the litigation should be
22 considered in evaluating the reasonableness of [a] settlement." See *In re Mego Financial
23 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 Defendant's defenses
28 to Plaintiffs' claims. The Declaration of Nordrehaug and Supplemental Declaration of Nordrehaug
submitted in support of preliminary approval discussed the value of the class claims in detail.

The calculations to compensate for the amount due for the Class at the time of the mediation
were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at

1 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
2 wages for the employees. The maximum potential damages were calculated to be \$3,118,571 for the
3 alleged off-the-clock, \$14,899,970 for alleged meal period damages based upon a 57.7% potential
4 violation rate observed in the 31,213 shifts analyzed, \$2,979,994 for alleged rest period damages based
5 one violation per work week, \$201,345 for alleged unreimbursed business expenses for personal cell
6 phone at \$5 per month. The claims for overtime damages and sick pay were given nominal value
7 because of CBA preemption under Labor Code § 514. As a result, the total damage valuation was
8 therefore calculated that Defendant was subject to a maximum damage claim in the amount of
9 \$21,199,880. As to potential penalties, Plaintiffs calculated that wage statement penalties were a
10 maximum of \$2,668,000 and potential waiting time penalties were a maximum of \$2,074,856.
11 Defendant vigorously disputed Plaintiffs' calculations and exposure theories. Blumenthal Decl. ¶8(d).

12 Consequently, the Gross Settlement Amount of \$2,650,000 represents more than 12% of the
13 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated,³
14 The above maximum calculations should then be adjusted in consideration for both the risk of class
15 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
16 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
17 reasonable.⁴ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

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

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

21 ³ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included
22 the PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
23 Motion for Preliminary Approval in the Decl. Nordrehaug at ¶ 33.

24 ⁴ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 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 **Method**

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

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

20 First, the fee award representing one-third of the fund clearly falls within that range and is
21 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
22 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market
23 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
24 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
25 "[m]ost fee awards were between 25 percent and 35 percent"). In *Laffitte*, the Court expressly approved
26 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

27 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
28

1 Here, Plaintiffs and their counsel secured a \$2,650,000 settlement for the benefit of the Class. The
2 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
3 could potentially prevail on the contested issues regarding liability, maintain class certification,
4 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
5 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
6 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
7 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
8 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
9 **common fund as attorneys' fees has been found to be appropriate.**”)

10 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
11 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
12 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
13 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
14 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

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

21 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$2,650,000 has been created.
22 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
23 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
24 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
25 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class**
26 **action litigation, is entitled to a premium above their hourly rate in order to compensate for both**
27 **the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
28 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
Cir. 2016) (abuse of discretion not to apply risk multiplier).

1 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
2 the requested attorneys' fee of one-third equal to \$883,333 is also established by reference to Class
3 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
4 through October 23, 2023, Class Counsel's total lodestar is \$433,436.75, with significant additional fees
5 still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
6 Exhibits #3 and 4 (lodestar of \$335,118.75); Declaration of Preston Lim at ¶14 (lodestar of \$53,768);
7 Declaration of Lloyd Lee at ¶16 (lodestar of \$44,550).) The requested fee award is therefore currently
8 equivalent to Class Counsel's total lodestar with a multiplier of 2, and there will be additional lodestar
9 incurred by Class Counsel to complete the settlement process and manage the settlement distribution
10 and reports. (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved
11 in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁵

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

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

15 The Agreement provides at paragraph 56(b), that Class Counsel may seek a "Class Counsel Fees
16 Payment and an amount not more than \$25,000". Class Counsel requests reimbursement for incurred
17 litigation expenses and costs in the amount of \$25,000 based upon counsel's billing records which
18 evidence total expenses of \$26,365.44. The requested expense reimbursement is less than actual
19 expenses incurred. These litigation expenses include the expenses incurred for filing fees, mediation
20 expenses, expert fees (Berger Consulting Group and Employment Research), attorney service charges
21 (Knox, One Legal), Caseanywhere charges, Lexis charges, and delivery expenses, all of which are costs

22
23 ⁵ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
24 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
25 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
26 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
27 *re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of
28 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).

1 normally billed to and paid by the client.⁶ The details of the litigation expenses incurred are set forth
2 the Blumenthal Decl. at ¶13 and Exhibits #3 and 4 (expenses of \$15,382.45); Declaration of Preston
3 Lim at ¶11 (expenses of \$10,881.74); Declaration of Lloyd Lee at ¶13 (expenses of \$101.25). These
4 costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.) Because
5 these costs were reasonable and necessary to the successful prosecution of these claims, the request is
6 reasonable and should be granted.

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

8 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
9 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
10 risk and effort expended on behalf of the Class. (Agreement at ¶ 56(a).) Defendant has agreed to this
11 payment and there have been no objections to the requested service award. The Blumenthal Decl., at
12 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
13 further supports the request in this case. The Declarations of the Plaintiffs are submitted in support of
14 this request and are attached as Exhibits #6 and 7 to the Blumenthal Decl.

15 As the representatives of the Class, Plaintiffs performed their duty to the Class admirably and
16 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,
17 responding to numerous requests, searching for documents, working with counsel, and reviewing the
18 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, the Plaintiffs are
19 also providing a comprehensive release as part of the Settlement, far beyond the class release. The
20 Declaration of the Plaintiffs detail the involvement, stress and risks they undertook as a result of this
21 Action. Plaintiffs also assumed the serious risk that she might possibly be liable for costs and fees to
22 Defendant, as well as the reputational risk of being “blacklisted” by other future employers for having
23 filed a class action on behalf of fellow former employees. (Blumenthal Decl. at ¶15.) Without the
24

25 ⁶ Nontaxable costs are properly awarded where authorized by the parties’ agreement. *Stetson*, 821
26 F.3d at 1165. Accordingly, “[e]xpenses such as reimbursement for travel, meals, lodging,
27 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
28 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 Plaintiffs' participation, cooperation and information, no other employees would be receiving any
2 benefit. (Blumenthal Decl. at ¶¶ 15-16).

3 The payment of service awards to successful class representatives is appropriate and the amount
4 of \$10,000 is well within the currently awarded range for similar settlements. *See e.g. Mathein v. Pier*
5 *1 Imps.*, 2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018) (approving two
6 service awards of \$12,500 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
7 173698 (approving \$10,000 service award where class member recovery was \$375); *Bellinghausen v.*
8 *Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$10,000 award). Accordingly,
9 Class Counsel respectfully request approval of the requested Class Representative Service Payment in
10 accordance with the Agreement.

11 **VI. CONCLUSION**

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

15
16 Dated: October 23, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
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19 Attorneys for Plaintiffs
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