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

BIANCA CURRY, on behalf of herself
and on behalf of all persons similarly
situated,

Plaintiff,

vs.

UNITED HEALTH CARE STAFFING,
INC., a California Corporation;
ON-CALL THERAPISTS, INC., a
California Corporation; DOES 1 through
50, inclusive,

Defendants.

Case No. CGC-21-597339

[Consolidated with Case No. CGC-22-598120]

**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: January 14, 2025

Hearing Time: 9:00 a.m.

[Hearing scheduled by Order dated August 20, 2024]

Judge: Hon. Curtis E. A. Karnow

Dept: 611

Action Filed: December 28, 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 First Amended Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct
4 copy of which is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal
5 Decl.”).¹ In accordance with the Preliminary Approval Order dated August 20, 2024 (“Preliminary
6 Approval 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 Bianca Curry ("Plaintiff") respectfully moves for final approval,
9 including attorneys’ fees, costs and the service award, and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class and
11 avoids the delays, risks, and costs of further litigation. After disseminating the notice to the 666
12 members of the Class, to date **there have been no objections and no requests for exclusion** from the
13 Class, which means that the entire Class (100%) has elected to participate in the Settlement.
14 Blumenthal Decl. ¶4. This is a positive response from the Class evidencing their collective approval of
15 the settlement. As a result, Plaintiff respectfully submits that the settlement should be finally approved
16 for the same reasons that the Court preliminarily approved the settlement as fair, reasonable, and
17 adequate.

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

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
20 United Health Care Staffing, Inc. and On-Call Therapists, Inc. (“Defendants”) is Seven Hundred
21 Thousand Dollars (\$700,000) (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross
22 Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments
23 to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation
24

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who were employed by Defendants in California and
27 classified as a non-exempt employee or alleged to have been misclassified as an independent contractor
28 at any time during the Class Period.” The “Class Period” is defined as “December 28, 2017 through
February 4, 2023. (Approval Order at ¶ 6.)

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

7 **\$700,000** (Gross Settlement Amount)

- 8 - \$7,500 (Plaintiff's proposed service award not to exceed \$7,500)
- 9 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$233,333 (Class Counsel Fees Payment - not to exceed amount)
- 11 - \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$15,000 (Administration Expenses Payment - not to exceed amount)

13 **\$409,167** (Net Settlement Amount)

14 The specific details of the Settlement were discussed in the Motion for Preliminary Approval and are
15 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, reasonable, and adequate." (Preliminary Approval Order at ¶ 4.) In sum, the Settlement valued
19 at \$700,000 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. Ford*
17 *Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service Com'n*, 688
18 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether the settlement
19 is fair. *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117 (2009). “The well-recognized
20 factors that the trial court should consider in evaluating the reasonableness of a class action settlement
21 agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
22 further litigation, the risk of maintaining class action status through trial, the amount offered in
23 settlement, the extent of discovery completed and the stage of the proceedings, the experience and views
24 of counsel, the presence of a governmental participant, and the reaction of the class members to the
25 proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008) (internal
26 citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th 399, 408
27 (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 agreement
3 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that
4 the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
5 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
6 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 more than a year of litigation, the Parties engaged in the investigation of the
13 claims, including the production of documents, class data, and other information, allowing for the full
14 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
15 investigation performed was detailed at length in support of the motion for preliminary approval. The
16 Settlement was the product of one arms-length mediation and contentious negotiations through an
17 all-day mediation presided over by Louis Marlin, Esq. The details of the litigation are set forth in the
18 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 Louis Marlin, Esq., a respected and
27 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
28 for the mediation, Defendants provided to Plaintiff and Class Counsel payroll and employment data and

1 other information regarding the Class Members, various internal documents, and other compensation
2 and employment-related materials. Class Counsel analyzed the data with the assistance of damages
3 expert Berger Consulting and prepared and submitted a mediation brief to the mediator. Following this
4 all-day mediation, the Parties agreed to this Settlement based upon a mediator's proposal. Blumenthal
5 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 at *15 (N.D. Cal. 2007) (where settlement was "negotiated
9 and approved by experienced counsel on both sides of the litigation, with the assistance of a
10 well-respected mediator" this factor supports approval of the settlement").

11 From December 2022 to April 2023, the original settlement agreement and exhibits thereto were
12 finalized and executed. The Court, however, denied Motion for Preliminary Approval, and required the
13 Parties to amend the original settlement agreement to address certain issues raised by the Court. The
14 Agreement was then finalized and executed in July 2024. On August 20, 2024, the Court granted the
15 Motion for Preliminary Approval, and entered the Order granting preliminary approval of the
16 settlement as fair and reasonable to the Class that same date. Blumenthal Decl. ¶7(c).

17 3. Class Counsel is Experienced in Similar Litigation

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

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

28 The reaction of the Class unequivocally supports approval of the Settlement. On October 1,

2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each class member with the terms of the Settlement, including notice of the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award that were being sought, how individual settlement awards would be calculated, and the specific, estimated payment amount to that individual. See Declaration of Nathalie Beltran ("Beltran Decl.") ¶ 7, Exh. A. In disseminating the notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have been no objections and no requests to opt-out. Beltran Decl. ¶¶ 11-12. As such, the entire Class (100%) will participate in the Settlement and will be sent a settlement check. See Beltran Decl. at ¶¶ 13-15; Blumenthal Decl. ¶4.

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

5. The Strength of Plaintiff's Case

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

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendants present serious threats to the claims of the Plaintiff and the other Class Members.

1 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
2 argued that all work time was properly recorded and paid for and that there was no underpayment of
3 overtime. As to rounding, Defendants argued that its rounding practices were lawful because they were
4 facially neutral. Defendants contended that its meal and rest period policies fully complied with
5 California law and that Defendants' timekeeping system recorded meal periods, paid for missed meal
6 periods, and was not required to record rest periods. As to expenses reimbursement, Defendants
7 contended that it did not fail to provide reimbursement for necessary business expenses and that there
8 were no such expenses that had not already been reimbursed or that claimed expenses were incurred
9 voluntarily and/or for the convenience of employees and is therefore not required reimbursement.
10 Defendants argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed*
11 *Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*,
12 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on liability, value, and class certifiability as to
13 the meal and rest period claims. Defendants also argues that based on its facially lawful practices, they
14 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
15 penalties and/or inaccurate wage statements. See e.g. *Naranjo*, 15 Cal. 5th at 1065 ("if an employer
16 reasonably and in good faith believed it was providing a complete and accurate wage statement in
17 compliance with the requirements of section 226, then it has not knowingly and intentionally failed to
18 comply with the wage statement law.") If successful, Defendants' defenses could eliminate or
19 substantially reduce any recovery to the Class. While Plaintiff believe that these defenses could be
20 overcome, Defendants maintains these defenses have merit and therefore present a serious risk to
21 recovery by the Class. Blumenthal Decl. ¶8(a).

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

24 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
25 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
26 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.

27 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007
28 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor

1 approval.”).

2 As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

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

26 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
27 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
28 substantial defenses both to liability and to class certification. The maximum and average class member
29 allocation (in addition to their Individual PAGA Payment) are \$7,927.13 and \$617.38, respectively. *See*
30 Beltran Decl. ¶14. Given the complexities of this case, the defenses, along with the uncertainties of
31 proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
32 approved. Blumenthal Decl. at ¶8(e)

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

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

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

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

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

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

1 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
2 favorably to the value of the claims. Based upon 666 Participating Class Members who collectively
3 worked 14,316 Workweeks, which were the estimated class figures at mediation, the Gross Settlement
4 Amount provides a value of \$1,051.05 per Class Member and \$48.89 per Workweek and after
5 deductions, the Net Settlement Amount provides an average recovery of \$614.36 per Class Member and
6 a recovery of \$28.58 per Workweek. 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 rounding was \$189,634, the maximum value of the claim for unpaid wages due to off the clock work
12 was potentially \$484,709, the maximum value of the unpaid overtime wages due to the alleged
13 underpayment was \$143,845, the maximum potential damages for unpaid meal premiums were
14 estimated to be \$1,286,700 based upon a 92% violation rate, the maximum potential rest period
15 damages were estimated to be \$1,404,815 based upon the same 92% violation rate, and the maximum
16 potential damages for failure to provide expense reimbursement were calculated to be \$23,190. In total,
17 the damages for the Class were calculated to have a maximum potential total value of \$3,523,893. In
18 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were
19 between \$592,261 and \$2,461,947, and the maximum value of the potential wage statement penalties
20 were \$271,150.³ Further explanation and detail of these valuations was set forth in the Declaration of
21 Kyle Nordrehaug filed in support of the motion for preliminary approval at ¶¶ 6(A)-6(K). Defendants
22 vigorously disputed Plaintiff's calculations and exposure theories. Blumenthal Decl. at ¶ 8(d).

23
24
25 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
26 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
27 by Defendants, including, a good faith dispute defense as to whether any premium wages for meal or
28 rest periods or other wages were owed given Defendants' position that Plaintiff 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 Consequently, the Gross Settlement Amount represents more than 19% 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 Importantly, the recent decision that good faith belief of compliance by the employer in
4 *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056, 1065 (2024), could completely negate the claims
5 for waiting time and wage statement penalties, even if wages were owed to the Class. The above
6 maximum calculations should then be adjusted in consideration for both the risk of class certification
7 and the risk of establishing class-wide liability on all claims. Blumenthal Decl. ¶8(d). Further detail
8 of these risks are set forth in the Declaration of Kyle Nordrehaug filed in support of the motion for
9 preliminary approval at ¶¶6(A)-6(K). Given the amount of the Settlement as compared to the potential
10 value of the claims, the Settlement is most certainly fair and reasonable.⁵ *Id.* Clearly, the goal of this
11 litigation has been met.

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

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

16 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
17 for the successful prosecution and resolution of this action. California state and federal courts have
18 recognized that an appropriate method for determining award of attorneys' fees is based on a percentage
19 of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91

20 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
21 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
22 Declaration of Kyle Nordrehaug at ¶ 33 filed in support of the motion for preliminary approval.

23 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
27 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
28 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

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

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

15 First, the fee award representing one-third of the fund clearly falls within that range and is
16 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
17 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
18 in legal services. In *Laffitte v. Robert Half Int’l*, 1 Cal.5th 480, 503 (2016), the California Supreme
19 Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third
20 (1/3) as a reasonable percentage in a contingent common fund class settlement. Such similar awards by
21 other Courts are set forth in the Blumenthal Decl. ¶11.

22 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
23 Here, Plaintiff and her counsel secured a \$700,000 settlement for the benefit of the Class and none of
24 the Class Members elected to opt out. Similarly, not one Class Member objected. The Settlement was
25 possible only because Class Counsel was able to convince Defendants that Plaintiff could potentially
26 prevail on the contested issues regarding liability, maintain class certification, overcome difficulties in
27 proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In successfully
28 navigating these hurdles Class Counsel displayed the necessary skills in both wage and hour and class

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

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

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

20 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
21 the requested attorneys’ fee of one-third equal to \$233,333 is also established by reference to Class
22 Counsel’s lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
23 **that through December 19, 2024, Class Counsel’s total lodestar is \$204,399.06, with significant**
24 **additional fees still to be incurred to complete final approval and the settlement process.**
25 Blumenthal Decl. at ¶12 and Exhibits #3 and #4. The requested fee award is therefore currently
26 equivalent to Class Counsel’s total lodestar with a reasonable multiplier of less than 1.2, and there will
27 be additional lodestar incurred by Class Counsel to complete the settlement process and manage the
28 settlement distribution and reports. Blumenthal Decl. at ¶12. Such lodestar cross-check is below the

1 range of multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d
2 1043, 1051 (9th Cir. 2002).⁶ For such reasons, Class Counsel's request for attorneys' fees in the amount
3 of one-third of the common fund is reasonable and should be approved.

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

5 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
6 Litigation Expenses Payment of not more than \$20,000." Class Counsel have incurred \$15,320 based
7 upon counsel's billing records, which is less than the "not to exceed" amount of \$20,000. Class Counsel
8 therefore requests reimbursement for litigation expenses in the amount of \$15,320. These litigation
9 expenses include the expenses incurred for filing fees, mediation expenses, expert expenses (Berger
10 Consulting), attorney service charges (OneLegal, Knox, File & Serve Xpress), and research charges
11 (LexisNexis), all of which are costs normally billed to and paid by the client.⁷ The details of the
12 expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and #4. Because these
13 expenses were reasonably incurred and necessary to the successful prosecution of these claims, the
14 request is reasonable and should be granted.

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

16 Plaintiff respectfully submits that for her service as the class representatives, Plaintiff should
17 be awarded the agreed service award of \$7,5000, in accordance with the Agreement for her time, risk
18 and effort expended on behalf of the Class as the class representatives. (Agreement at ¶ 3.2(a).)
19 Defendants have agreed to this payment and there have been no objections to the requested service
20 award. The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in

21
22 ⁶ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
23 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
24 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
25 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).

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, photocopying,
28 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 California in similar cases, which further supports the request in this case. Plaintiff's Declaration is
2 submitted herewith in support of this request.

3 As the sole representative of the Class, Plaintiff performed her duties to the Class admirably and
4 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
5 responding to numerous requests, searching for documents, working with counsel, and reviewing the
6 settlement documentation. Blumenthal Decl. at ¶ 14. As set forth in the Agreement, Plaintiff is also
7 providing a comprehensive release as part of the Settlement, far beyond the class release. Plaintiff's
8 Declaration details the involvement, stress and risks she undertook as a result of this Action. Plaintiff
9 also assumed the serious risk that she might possibly be liable for costs and fees to Defendants, as well
10 as the reputational risk of being "blacklisted" by other future employers for having filed a class action
11 on behalf of employees. Blumenthal Decl. at ¶ 15. Without the Plaintiff's participation, cooperation and
12 information, no other employees would be receiving any benefit. Blumenthal Decl. at ¶¶ 14-15.

13 The payment of service awards to successful class representatives is appropriate and the amount
14 is within the currently awarded range for similar settlements. *See, e.g., Andrews v. Plains All Am.*
15 *Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (service awards of \$15,000 each
16 are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal.
17 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist.
18 LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351);
19 *Louie, supra*, 2008 WL 4473183 at *7 (awarding \$25,000 service award to each of six plaintiffs in
20 overtime class action). Accordingly, Class Counsel respectfully requests approval of the Class
21 Representative Service Payment in accordance with the Agreement.

22 **VI. CONCLUSION**

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

26 Respectfully submitted,

27 Dated: December 17, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
28 By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Attorneys for Plaintiff