

1 **SULLIVAN & YAECKEL LAW GROUP, APC**

Eric K. Yaeckel (State Bar #274608)

2 Ryan T. Kuhn (State Bar #324538)

Karoline D. Kitlowski (State Bar #347692)

3 2330 Third Avenue

San Diego, CA 92101

4 Telephone: (619) 702-6760

Facsimile: (619) 702-6761

5 **BLUMENTHAL NORDREHAUG BHOWMIK**

6 **DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

7 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

8 2255 Calle Clara

La Jolla, CA 92037

9 Telephone: (858)551-1223

Facsimile: (858) 551-1232

10 Email: norm@bamlawca.com

Website: www.bamlawca.com

11 Attorneys for Plaintiffs

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 DAMON COFFEY and BRANDIE
16 LUKOFNAK, individually, and on behalf
of other members of the public similarly
17 situated,

18 Plaintiffs,

19 vs.

20 SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP,
21 INC., a California Corporation; and
DOES 1 through 10, inclusive,

22 Defendants.

CASE NO.: **37-2020-00029409-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: May 24, 2024

Hearing Time: 9:00 a.m.

[Hearing scheduled by Order dated February 5,
2024]

Judge: Hon. Blaine K. Bowman
Dept.: C-74

Action Filed: August 21, 2020

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 Stipulation and Settlement of Class, Collective and Representative Action (the "Agreement"), a true
4 and correct copy of which is attached as Exhibit #2 to the Declaration of Norman Blumenthal
5 ("Blumenthal Decl.").¹ In accordance with the Preliminary Approval Order dated February 5, 2024
6 ("Preliminary 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. Plaintiffs Damon Coffey and Brandie Lukofnak ("Plaintiffs") respectfully
9 submit 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 Class Members, there no objections and a small amount of requests for exclusion, which
13 means that 99.9% of the Class has elected to participate in the Settlement. Blumenthal Decl. ¶4. This
14 is a positive response from the Class evidencing their collective approval of the settlement. As a result,
15 Plaintiffs respectfully submit that the class settlement should be finally approved for the same reasons
16 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 **\$9,970,000** (Gross Settlement Amount)

- 21 - \$20,000 (Plaintiffs' proposed service awards - not to exceed \$10,000 each)
- 22 - \$65,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 23 - \$3,323,333.33 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 24 - \$281,250 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 25 - \$100,000 (FLSA Subclass Allocation)
- 26 - \$159,000 (Administration Expenses Payment - not to exceed amount)

27 **\$6,021,416.67** (Net Settlement Amount)

28 ¹ Capitalized terms are defined in the Agreement.

² The "Class" is defined as "all non-exempt persons who were employed by Defendant in the State of California at any time during the Class Period (defined as July 8, 2020 through the earlier of preliminary approval or February 13, 2024)." (Preliminary Approval Order at ¶ 4(i)).

1 Plaintiffs and Defendant Southern California Permanente Medical Group (“Defendant”) reached
2 a full and final settlement of the above-captioned action, which is embodied in the Agreement filed
3 concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount to be
4 paid by Defendant is Nine Million Nine Hundred and Seventy Thousand Dollars (\$9,970,000.00).
5 (Agreement at ¶ 1.26.) Under the Settlement, the Gross Settlement Amount consists of the following
6 elements: Individual Class Payments, Individual FLSA Payments, Individual PAGA Payments, the
7 LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
8 Class Representative Service Payments, and the Administration Expenses Payment.(Agreement at ¶
9 1.26.) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement
10 at ¶ 3.1.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount shall be all-in with no reversion to
11 Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b).

12 The specific details of the Settlement were discussed in the Motion for Preliminary Approval
13 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 “appears to be proper, to fall within the range of reasonableness..., [and] to treat all Class Members
17 fairly”. (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued at \$9,970,000 is an
18 excellent result for the Class. This result is particularly favorable in light of the fact that liability and
19 class certification in this case were far from certain in light of the defenses asserted by Defendant.
20 Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along
21 with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and
22 adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

1 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

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

1 App. 4th 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 almost four 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
17 and investigation performed was detailed at length in support of the motion for preliminary approval.
18 The Settlement was the product of arms-length and contentious negotiations through an all-day
19 mediation presided over by David Rotman, Esq., a respected and experience mediator of wage and hour
20 class 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 continues 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 Declaration of Eric Yaeckel (“Yaeckel Decl.”) at ¶¶ 3-7.

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

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

16 In January of 2024, the Agreement and exhibits thereto were finalized and executed, and then
17 presented by motion to this Court for preliminary approval. On February 5, 2024, the Court issued its
18 Order granting preliminary approval of the settlement as fair and reasonable to the Class. Blumenthal
19 Decl. ¶7(c).

20 3. Class Counsel is Experienced in Similar Litigation

21 Class Counsel in this matter has extensive class action experience and has represented thousands
22 of persons in class actions including employment litigation and wage and hour actions. Class Counsel
23 has previously litigated wage and hour class actions involving employees and claims similar to this case
24 and have been approved as experienced class counsel during contested motions in state and federal
25 courts throughout California. As such, Class Counsel is experienced and knowledgeable in this area
26 of law. Blumenthal Decl. at ¶ 2; Yaeckel Decl. at ¶¶ 3-7. Class Counsel have participated in every
27 aspect of the settlement discussions and have concluded the settlement is fair, adequate and reasonable
28 and in the best interests of the Class. Blumenthal Decl. ¶ 3(j); Yaeckel Decl. at ¶8.

1 4. There Are No Objections and a Small Percentage of Exclusions

2 The reaction of the Class unequivocally supports approval of the Settlement. On March 12,
3 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
4 each class member with the terms of the Settlement, including notice of the claims at issue and the
5 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
6 sought, how individual settlement awards would be calculated, and the specific, estimated payment
7 amount to that individual. See Declaration of Sara Schwermer-Sween ("Sween Decl.") ¶¶ 9-12, Exh.
8 A. In disseminating the notice, the Administrator followed the notice procedures authorized by the
9 Court in its Preliminary Approval Order. Significantly, out of a Class of 59,072, there are no objections
10 objection and sixty (60) requests for exclusion (which only represents 0.1% of the Class). Sween Decl.
11 at ¶¶ 16-17. As such, 99.9% of the Class will participate in the Settlement and will be sent a settlement
12 check. 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."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
17 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
18 *Union*, 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
23 all regular and overtime wages for hours worked, were not provided meal and rest periods, were not
24 timely paid earned wages, were not provided reimbursement for required expenses, were not provided
25 accurate itemized wage statements, were not paid all wages at the time of termination. The Action
26 seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief
27 allegedly due and owing to Plaintiffs and the other Class Members by virtue of the foregoing claims.
28 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 properly recorded and paid for and that there was no unpaid wages.
6 Defendant argued that the shift tolerance feature of its timekeeping system is a non-worked grace
7 period, and not rounding, and that even if it was rounding, rounding of hours worked has been
8 recognized under California law. Defendant denied that any unpaid work occurred and contended that
9 Defendant had a strict written prohibition against off-the-clock work and a mandate that all time
10 worked must be recorded accurately. Defendant contends that its meal and rest period policies fully
11 complied with California law and Defendant did not fail to provide the opportunity for legally required
12 meal and rest breaks. As to expense reimbursement, Defendant contended that it did not fail to provide
13 reimbursement for necessary business expenses and that claimed that Defendant had a comprehensive
14 written policy for expense reimbursements. Defendant could argue that the decisions in *Brinker v.*
15 *Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096,
16 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's
17 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also
18 argues that based on its facially lawful practices, it acted in good faith and without willfulness, which
19 if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If
20 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
21 While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses
22 have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

25 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
26 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
27 Associates were misclassified as exempt. In addition to the uncertainties raised by
28 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
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. [...]the 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.

2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007 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 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

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

In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant 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 allocations are \$168.83 and \$85.89, respectively. Sween Decl. at ¶19. Given the

1 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
2 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

1 *Id.* at *12.

2 7. The Amount Offered in Settlement

3 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
4 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug and Declaration of Kuhn in support
5 of preliminary approval which discussed the value of the class claims in detail, the Gross Settlement
6 Amount compares favorably to the value of the claims. The calculations to compensate for the amount
7 due to the Class Members at the time this Settlement was negotiated were calculated by Plaintiffs'
8 expert, Berger Consulting, in advance of mediation. Class Counsel analyzed the data for putative class
9 members and determined the potential maximum damages for the class claims. For the Class, the value
10 of the claim for unpaid wages based on the alleged losses due to (1) the "grace" period policy, and (2)
11 alleged "transitional math errors" caused by the payroll system, the value of the claim for unpaid wages
12 due taking into account Defendant's defenses is approximately \$11,176,900. The value of the meal and
13 rest period claims is valued at approximately \$13,971,125.00 and the maximum potential damages for
14 failure to provide expense reimbursement were calculated to be \$438,400. In total, the damages for the
15 Class were calculated to have a maximum potential total value of \$25,586,425. In addition, Plaintiff
16 calculated that the value of the potential PAGA and waiting time penalties were \$35,824,113.30, and
17 the value of the potential wage statement penalties were \$6,300,000.³ Defendant vigorously disputed
18 Plaintiffs' calculations and exposure theories. Blumenthal Decl. ¶8(d).

19 Consequently, the Gross Settlement Amount represents 39% of the potential maximum damages
20 at issue for the Class in this case, assuming these amounts could all be proven in full at trial. The above
21 maximum calculations should then be adjusted in consideration for both the risk of class certification
22 and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as
23
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, separate defenses
27 asserted by Defendant, including, a good faith dispute defense as to whether any wages were owed
28 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 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁴
2 Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

3 **V. THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARDS SHOULD**
4 **BE APPROVED**

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

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

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

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 market” in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

2 First, the fee award representing one-third of the fund clearly falls within that range and is
3 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
4 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
5 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
6 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
7 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved
8 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

9 Second, the results delivered by Class Counsel also support the requested percentage of the
10 fund. Here, Plaintiffs and their counsel secured a \$9,970,000 settlement for the benefit of the Class.
11 The Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
12 could potentially prevail on the contested issues regarding liability, maintain class certification,
13 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
14 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
15 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
16 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
17 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
18 **common fund as attorneys' fees has been found to be appropriate.**”)

19 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
20 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
21 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
22 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class
23 that Class Counsel would be seeking a one-third fee award. Again, there were no objections.

24 Fourth, 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 \$9,970,000 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 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
11 the requested attorneys' fee of one-third equal to \$3,323,333.33 is also established by reference to Class
12 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
13 through May 2, 2024, Class Counsel's total lodestar is \$1,418,483.26, with additional fees still to be
14 incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and Exhibits
15 #3 and 4 [lodestar of \$355,033.26]; Yaeckel Decl. at ¶12 [lodestar of \$.1,063,450.00]) The requested
16 fee award is therefore currently equivalent to Class Counsel's total lodestar with a multiplier cross-
17 check of 2.3, and there will be additional lodestar incurred by Class Counsel to complete the settlement
18 process and manage the settlement distribution. (Blumenthal Decl. at ¶12.) Such a multiplier is within
19 the range of multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290
20 F.3d 1043, 1051 (9th Cir. 2002).⁵

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

23
24 ⁵ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
25 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
26 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
27 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
28 *re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of
2.52 as "fair and reasonable"); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming
multiplier of 2.53 as well within the approved range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S.
Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

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

2 The Agreement provides at paragraph 3.2.2, that Class Counsel may seek a “Class Counsel
3 Litigation Expenses Payment of not more than \$65,000.” Class Counsel requests reimbursement for
4 incurred litigation expenses and costs in the amount of \$58,065.06 based upon counsel’s billing records
5 which evidence total expenses of \$58,065.06. The requested expense reimbursement is equal to the
6 actual expenses incurred, with the difference to be retained in the Net Settlement Amount to be
7 distributed to the Class. These litigation expenses include the expenses incurred for filing fees,
8 mediation expenses, deposition expenses, travel expenses, expert fees (Berger Consulting Group),
9 attorney service charges (Knox, One Legal), docket downloading fees, research charges, all of which
10 are costs normally billed to and paid by the client.⁶ The details of the litigation expenses incurred are
11 set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4 [expenses of \$24,209]; Yaeckel Decl. at
12 ¶20 and Exhibit B [expenses of \$33,855.89]. These costs were reasonably incurred in the prosecution
13 of the Action. (Blumenthal Decl. at ¶13.) Because these costs were reasonable and necessary to the
14 successful prosecution of these claims, the request is reasonable and should be granted.

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

16 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
17 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
18 risk and effort expended on behalf of the Class. (Agreement at ¶ 3.2.1.) Defendant has agreed to this
19 payment and there have been no objections to the requested service awards. The Blumenthal Decl., at
20 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
21 further supports the request in this case. The Declarations of the Plaintiffs are submitted here in support
22 of this request.

23 As the representatives of the Class, Plaintiffs performed their duty to the Class admirably and
24 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,

25
26 ⁶ Nontaxable costs are properly awarded where authorized by the parties’ agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, “[e]xpenses such as reimbursement for travel, meals, lodging,
28 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
mediation, exhibits, documents scanning, and visual equipment are typically recoverable.” *Rutti v.*
Lojack Corp., Inc., 2012 WL 3151077, at *12 (C.D. Cal. 2012).

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

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

18 **VI. CONCLUSION**

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

22
23 Dated: May 2, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Esq.
Attorneys for Plaintiffs