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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE**

KACEY MATTHEWS, an individual, on
behalf of herself and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

DEJON ENTERPRISES, INC., a
California Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **30-2021-01236088-CU-OE-CXC**

**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: July 26, 2024

Hearing Time: 9:00 a.m.

*[Hearing scheduled by Order dated February 26,
2024]*

Judge: Hon. William Claster

Dept.: CX101

Action Filed: December 14, 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 February 23, 2023 (“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 Kacey Matthews (“Plaintiff”) respectfully submits this
9 memorandum in support of the unopposed motion for final approval and the proposed entry of the Final
10 Approval Order and Judgment, submitted herewith. The settlement represents an excellent result for
11 the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice to
12 the members of the Class, there were **no objections and no valid requests for exclusion**, which means
13 that the entire Class has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a positive
14 response from the Class evidencing their collective approval of the settlement. As a result, Plaintiff
15 respectfully submits that the class settlement should be finally approved for the same reasons that the
16 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 **\$600,000** (Gross Settlement Amount)
21 - \$10,000 (Plaintiff’s proposed service award not to exceed \$10,000)
22 - \$15,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
23 - \$200,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
24 - \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
25 - \$15,100 (Administration Expenses Payment)
26 **\$344,900** (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 Dejon Enterprises, Inc. in California who were classified as hourly, non-exempt employees at any time during the Class Period. The “Class Period” is defined as “the period December 14, 2017 to December 11, 2022.” (Preliminary Approval Order at 3:13-17.)

1 Plaintiff and Defendant Dejon Enterprises, 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 is Six Hundred Thousand Dollars
4 (\$600,000) (the “Gross Settlement Amount”) to be paid by Defendant, as set forth in the Agreement.
5 The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will
6 be made in full and final settlement of the Released Class Claims in exchange for the payments to
7 Participating Class Members from the Net Settlement Amount, and includes (a) the costs of
8 administration of the settlement, (b) all attorneys’ fees and costs, (c) Class Representative Service
9 Payment, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved
10 Employees. (Agreement at ¶ 1.22.) (Blumenthal Decl. ¶ 3(a).) The Gross Settlement Amount does not
11 include the employer’s share of payroll taxes which will be separately paid by Defendant. (*Id.*) The
12 Settlement is all-in with no reversion to Defendant and no need to submit a claim form. (*Id.*)
13 (Blumenthal Decl. ¶3(b).)

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

16 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
17 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
18 is “fair, adequate, and reasonable”. (Preliminary Approval Order at 2:14-15.) In sum, the Settlement
19 valued at \$600,000 is an excellent result for the Class. This result is particularly favorable in light of
20 the fact that liability and class certification in this case were far from certain in light of the defenses
21 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
22 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
23 fair, 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.*

1 v. *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
2 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

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

1 (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th
2 399, 408 (2010).

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

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

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

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

15 Over the course of more than a year of litigation, the Parties engaged in the investigation of the
16 claims, including the production of documents, class data, and other information, allowing for the full
17 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
18 investigation performed was detailed at length in the motion for preliminary approval. The Settlement
19 was the product of arms-length and contentious negotiations through an all-day mediation presided over
20 by Louis Marlin, a respected and experience mediator of wage and hour 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 continue to
24 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff 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 defenses asserted, and the risks and benefits of trial and settlement, and
28

1 Class Counsel are particularly experienced in wage and hour employment class actions, as Class
2 Counsel has previously litigated and certified similar claims against other employers. Blumenthal Decl.
3 ¶7(a).

4 The Parties attended an arms-length mediation session with Louis Marlin, a respected and
5 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
6 for the mediation, Defendant provided Class Counsel with payroll and employment data and other
7 information regarding the Class Members, various internal documents, and other compensation and
8 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
9 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement
10 terms were negotiated and set forth in the Agreement now presented for this Court's approval.
11 Blumenthal Decl. ¶7(b).

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

18 From November 2022 to April 2023, the settlement agreement and exhibits thereto were
19 finalized and executed, and then presented by motion to this Court for preliminary approval.
20 Supplemental briefing and the Agreement with revisions were provided at the request of the Court. On
21 February 26, 2024, the Court issued its Order granting preliminary approved of the settlement as fair
22 and reasonable to the Class. Blumenthal Decl. ¶7(c).

23 3. Class Counsel is Experienced in Similar Litigation

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

1 knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2. Class Counsel have participated in
2 every aspect of the settlement discussions and have concluded the settlement is fair, adequate and
3 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

5 The reaction of the Class unequivocally supports approval of the Settlement. On April 11, 2024,
6 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
7 class member with the terms of the Settlement, including notice of the claims at issue and the financial
8 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
9 how individual settlement awards would be calculated, and the specific, estimated payment amount to
10 that individual. See Declaration of Makenna Snow ("Snow Decl.") at ¶ 7, Exh. A. In disseminating the
11 Class Notice, the Administrator followed the notice procedures authorized by the Court in its
12 Preliminary Approval Order. Significantly, there have been no objections and no valid requests for
13 exclusion. Snow Decl. at ¶¶ 11-12. As such, the entire Class will participate in the Settlement and will
14 be sent a settlement check. See Snow Decl. at ¶¶ 14-15; Blumenthal Decl. ¶4.

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

23 5. The Strength of Plaintiff's Case

24 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
25 minimum and overtime wages for hours worked, were not provided meal and rest periods, were not
26 timely paid earned wages, were not provided reimbursement for required expenses, were not provided
27 accurate itemized wage statements, and were not paid all wages at the time of termination. The Action
28 seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief

1 allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing claims.
2 Blumenthal Decl. ¶5.

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

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

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

26 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
27 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
28 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor

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, Plaintiff would be unable
9 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
10 of any other employees. At the time of the mediation, Defendant forcefully opposed the propriety of
11 class certification, arguing that individual issues precluded class certification. Further, as demonstrated
12 by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014),
13 there are significant hurdles to overcome for a class-wide recovery even where the class has been
14 certified. While other cases have approved class certification in wage and hour claims, class
15 certification in this action was hotly disputed and the maintenance of a certified class through trial was
16 by no means a 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 \$5,192.52 and \$693.96, respectively. *See* Snow Decl. ¶ 17. 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
28

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

13 Although Plaintiff 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 Plaintiff's 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, Plaintiff's damage expert. As to the Class whose claims are at

1 issue in this Action, Plaintiff 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 \$163,056 for the
3 alleged unpaid minimum and overtime wages due to off the clock work of donning and doffing based
4 upon 10 minutes per shift, \$174,530 for alleged meal period damages based upon a 18% potential
5 violation rate for shifts worked, \$251,335 for alleged rest period damages based time records showing
6 potential violations in 18,087 shifts, and \$22,572 for alleged unreimbursed business expenses for
7 personal cell phone usage at \$5 per month. As a result, the total damage valuation was calculated that
8 Defendant was subject to a maximum damage claim in the amount of \$611,492. As to potential
9 penalties, Plaintiff calculated that potential waiting time penalties were a maximum of \$741,679 and
10 potential wage statement penalties were \$415,050. Defendant vigorously disputed Plaintiff's
11 calculations and exposure theories. Blumenthal Decl. ¶8(d).

12 Consequently, the Gross Settlement Amount of \$600,000 is equivalent to the maximum
13 damages in this Action, and represents more than 33% of the maximum value of the combination of
14 alleged damages and penalties at issue in this case at the time this Settlement was negotiated.³ The
15 above maximum calculations should then be adjusted in consideration for both the risk of class
16 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
17 settlement as compared to the potential value of claims in this case and the defenses asserted by
18 Defendant, this settlement is fair and reasonable.⁴ Clearly, the goal of this litigation has been met.

19
20 ³ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
21 Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The
22 PAGA claim is addressed in the Declaration of Nordrehaug [ROA #130] at ¶33 submitted in support
of the Motion for Preliminary Approval.

23 ⁴ 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
approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
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.*
27 *Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
28 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%")

1 Blumenthal Decl. ¶8(d).

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

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

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

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

23 First, the fee award representing one-third of the fund clearly falls within that range and is
24 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
25 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market
26 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
27 _____
28 of maximum valuation).

1 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
2 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved
3 a one-third fee award as a reasonable percentage in a contingent common fund class settlement. Such
4 similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

5 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
6 Here, Plaintiff and their counsel secured a \$600,000 settlement for the benefit of the Class. The
7 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiff could
8 potentially prevail on the contested issues regarding liability, maintain class certification, overcome
9 difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f).
10 In successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and
11 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
12 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
13 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the common fund**
14 **as attorneys' fees has been found to be appropriate.**”)

15 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
16 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
17 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
18 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
19 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

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

26 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$600,000 has been created.
27 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
28 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
well as a long battle with a corporate Defendant who had retained a premier and highly experienced

1 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class**
2 **action litigation, is entitled to a premium above their hourly rate in order to compensate for both**
3 **the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
4 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
5 Cir. 2016) (abuse of discretion not to apply risk multiplier).

6 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
7 the requested attorneys' fee of one-third equal to \$200,000 is also established by reference to Class
8 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
9 through July 2, 2024, Class Counsel's total lodestar is \$219,901.25, with significant additional fees still
10 to be incurred to complete final approval and the settlement process. Blumenthal Decl. at ¶12 and
11 Exhibits #3 and 4. The requested fee award is therefore less than Class Counsel's total lodestar,
12 representing a "negative multiplier" of 0.9, and there will be additional lodestar incurred by Class
13 Counsel to complete the settlement process and manage the settlement distribution and reports.
14 Blumenthal Decl. at ¶12. Such a native multiplier is below the range of positive multipliers approved
15 in other cases such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁵

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

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

19 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek "a Class Counsel
20 Litigation Expenses Payment of not more than \$15,000". Class Counsel requests reimbursement for
21 incurred litigation expenses and costs in the amount of \$15,000 based upon counsel's billing records
22 which evidence total expenses of \$16,568.53. The requested expense reimbursement is less than actual

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 expenses incurred. These litigation expenses include the expenses incurred for filing fees, mediation
2 expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One Legal), and
3 Lexis charges, all of which are costs normally billed to and paid by the client.⁶ The details of the
4 litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4. These costs
5 were reasonably incurred in the prosecution of the Action. Blumenthal Decl. at ¶13. Because these
6 costs were reasonable and necessary to the successful prosecution of these claims, the request is
7 reasonable and should be granted.

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

9 Plaintiff respectfully submits that for her service as the sole class representative, Plaintiff should
10 be awarded the agreed service award of \$10,000, in accordance with the Agreement for her time, risk
11 and effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendant has agreed to this
12 payment and there have been no objections to the requested service award. The Blumenthal Decl., at
13 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
14 further supports the request in this case. The Declaration of the Plaintiff is submitted in support of this
15 request and is attached as Exhibit #6 to the Blumenthal Declaration.

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

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 Plaintiff's 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., Andrews v.*
5 *Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the
6 requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019
7 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award);
8 *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500
9 where average class member payment was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
10 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs
11 in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007)
12 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).

13 Accordingly, Class Counsel respectfully request approval of the requested Class Representative
14 Service Payment in accordance with the Agreement.

15 **VI. CONCLUSION**

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

19 Respectfully submitted,

20 Dated: July 2, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

21 By: /s/ Kyle Nordrehaug

22 Kyle R. Nordrehaug, Esq.
23 Attorneys for Plaintiff
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