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

14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 ANDREW KING, on behalf of himself,
16 and on behalf of all persons similarly
17 situated,

18 Plaintiff,

19 vs.

20 DAY MANAGEMENT CORPORATION
21 (DBA) DAY WIRELESS SYSTEMS, a
22 Corporation, and DOES 1 through 50,
23 inclusive,

24 Defendants..

Case No. 22STCV01620

**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: May 17, 2024

Hearing Time: 9:00 a.m.

[Hearing scheduled by Order dated December 8,
2023]

Judge: Hon. Maren E. Nelson

Dept: SS-17

Date Filed: January 14, 2022

Trial Date: Not set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement(collectively the “Agreement”), a true and correct copy
4 of which is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹
5 In accordance with the Preliminary Approval Order dated December 8, 2023 (“Preliminary Approval
6 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 Andrew King (“Plaintiff”) respectfully submits moves for final
9 approval, including attorneys’ fees, costs and the service award, 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 requests for exclusion**, which means that
13 the entire Class (100%) has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a
14 positive response from the Class evidencing their collective approval of the settlement. As a result,
15 Plaintiff respectfully submits 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 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant Day
19 Management Corporation (dba) Day Wireless Systems (“Defendant”) is Five Hundred Fifty Thousand
20 Dollars (\$550,000). (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross Settlement
21 Amount consists of the following elements: (i) all Individual Class Payments and Individual PAGA
22 Payments; (ii) the LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel
23 Litigation Expenses Payment; (iv) the Class Representative Service Payment; and (v) the
24 Administration Expenses Payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not

25 _____

26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals who were employed by Defendant in California and
28 classified as a non-exempt employee at any time during the Class Period.” The “Class Period” is
 defined as “January 14, 2018 through June 1, 2023.” (Preliminary Approval Order at 4:1-6.)

1 include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall
2 be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b). The following
3 is a table of the key financial terms of the Settlement and the proposed deductions:

4 **\$550,000** (Gross Settlement Amount)

- 5 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 6 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 7 - \$181,500 (Class Counsel Fees Payment - not to exceed one-third of the Gross Settlement Amount)
- 8 - \$5,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 9 - \$4,200 (Administration Expenses Payment)

10 **\$329,300** (Net Settlement Amount)

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

13 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
14 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
15 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ V(1).) In sum, the Settlement
16 valued at \$550,000 is an excellent result for the Class. This result is particularly favorable in light of
17 the fact that liability and class certification in this case were far from certain in light of the defenses
18 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
19 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
20 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

28 The court must decide whether the proposed settlement falls within the range of reasonable
settlements, taking into account that settlements are compromises between the parties reflecting
subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See*
Wershba v. Apple Computer, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be

1 judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs
2 prevailed at trial.”) In *Wershba*, the Court explained that “the merits of the underlying class claims are
3 not a basis for upsetting the settlement of a class action.” *Id.*; see also *7-Eleven, supra*, at 1150.

4 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
5 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
6 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
7 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
8 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
9 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*,
10 48 Cal. App. 4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the
11 proposed settlement satisfies that standard and the presumption applies.

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

13 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
14 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); see also *Officers for Justice v. Civil Service*
15 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
16 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The
17 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
18 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
19 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
20 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
21 experience and views of counsel, the presence of a governmental participant, and the reaction of the
22 class members to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
23 128 (2008) (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.
24 App. 4th 399, 408 (2010).

25 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
26 Due regard should be given to what is otherwise a private consensual agreement between the parties.
27 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
28 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,

1 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*
2 “Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing,
3 gross approximations and rough justice.' [Citation omitted.]” *Id.*

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

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

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

9 Over the course of more than a year of litigation, the Parties engaged in the investigation of the
10 claims, including the production of documents, class data, and other information, allowing for the full
11 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history
12 and investigation performed was detailed at length in support of the motion for preliminary approval.
13 The Settlement was the product of one arms-length mediation and contentious negotiations through an
14 all-day mediation presided over by Jeffrey Krivis, Esq. The details of the litigation are set forth in the
15 Blumenthal Decl. at ¶¶ 6(a)-6(g).

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

17 This settlement is the result of extensive and hard-fought litigation as well as negotiations
18 before a well-respected mediator. Defendant has expressly denied and continue to deny any
19 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
20 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
21 Claims of the Class in accordance with this Settlement, based upon the experience of Class Counsel
22 who has previously litigated similar claims against other employers. Blumenthal Decl. ¶7(a).

23 The Parties attended an arms-length mediation session with Jeffrey Krivis, Esq., a respected
24 mediator of wage and hour class actions, in order to reach this Settlement. In preparation for the
25 mediation, Defendant provided to Plaintiff and Class Counsel payroll and employment data and other
26 information regarding the Class Members, various internal documents, and other compensation and
27 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
28 Berger Consulting and prepared and submitted a mediation brief to the mediator. Following this all-day

1 mediation, the Parties agreed to this Settlement which was memorialized in the form of a Memorandum
2 of Understanding. Blumenthal Decl. ¶7(b).

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

9 From March 2023 to July 2023, the settlement agreement and exhibits thereto were finalized
10 and executed. On November 6, 2023, Plaintiff filed his Motion for Preliminary Approval of Class
11 Settlement. The Court issued a tentative ruling, which requested revisions to the Agreement. On
12 November 30, 2023, Class Counsel submitted a Supplemental Declaration which attached a revised
13 Agreement that addressed the Court’s concerns. On December 8, 2023, the Court issued its Order
14 granting preliminary approved of the settlement as fair and reasonable to the Class. Blumenthal Decl.
15 ¶7(c).

16 3. Class Counsel is Experienced in Similar Litigation

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

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

27 The reaction of the Class unequivocally supports approval of the Settlement. On January 8,
28 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided

1 each class member with the terms of the Settlement, including notice of the claims at issue and the
2 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
3 sought, how individual settlement awards would be calculated, and the specific, estimated payment
4 amount to that individual. See Declaration of Lesly Rubalcava ("Rubalcava Decl.") ¶ 7, Exh. A. In
5 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
6 its Preliminary Approval Order. Significantly, there have been no objections and no requests to opt-
7 out. Rubalcava Decl. ¶¶ 11-12. As such, the entire Class (100%) will participate in the Settlement and
8 will be sent a settlement check. See Rubalcava Decl. at ¶¶ 14-16; Blumenthal Decl. ¶4.

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

17 5. The Strength of Plaintiff's Case

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

25 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
26 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
27 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
28 maintains that its practices complied with all applicable wage and hour laws. Defendant maintains that

1 all Class Members' work time was properly recorded and compensated and that there was no
2 miscalculation of the regular rate. Defendant contends that its meal and rest period policies and
3 practices provide Class Members with meal and rest periods that satisfy the requirements of California
4 law. As to expense reimbursement, Defendant maintains that it did not fail to provide reimbursement
5 for necessary business expenses because, among other things, employees are not required to use their
6 personal cell phones to perform their work. Defendant maintains that the decisions in *Brinker v.*
7 *Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096,
8 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's
9 claims in terms of liability and value, and preclude his claim from proceeding on a class or
10 representative basis. Defendant also maintains that a good faith dispute and absence of willfulness
11 would negate the claims for waiting time penalties and/or failure to provide accurate itemized wage
12 statements. If successful, Defendant's defenses could eliminate or substantially reduce any recovery
13 to the Class. While Plaintiff believes that these defenses could be overcome, Defendant maintains its
14 defenses have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl.
15 ¶8(a).

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

18 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
19 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
20 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.

21 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
22 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
23 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
24 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

25 The potential complexity and possible duration of trial also weigh in favor of granting
26 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
27 uncertainty of outcome, and believe defendant would appeal in the event of adverse
28 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,

1 the actual recovery confers substantial benefits on the class that outweigh the potential
2 recovery through full adjudication.

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

5 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
6 to obtain class certification and thereby not recover on behalf of any employees other than himself.
7 Defendant argued that the individual experience of each putative class member varied with respect to
8 the claims, which would preclude the claims from proceeding on a class or representative basis. For
9 instance, Plaintiff's meal and rest period claims would require individualized inquiries into whether
10 each employee took a compliant meal or rest period on a given shift and, if not, why; and Plaintiff's
11 off-the-clock claims would require individualized inquiries into whether each employee ever performed
12 off-the-clock work and, if so, why. Plaintiff is aware of other cases where class certification of similar
13 claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification
14 of rest break claims). Finally, even if class certification was successful, as demonstrated by the
15 California Supreme Court decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014),
16 there are significant hurdles to overcome for a class-wide recovery even where a class has been
17 certified. While other cases have approved class certification of wage and hour claims, class
18 certification in this Action would have been hotly disputed and was by no means a foregone conclusion.
19 Blumenthal Decl. ¶8(b).

20 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
21 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
22 substantial defenses both to liability and to class certification. The maximum and average class
23 member allocation (in addition to their Individual PAGA Payment) are \$7,707.80 and \$4,276.62,
24 respectively. *See Rubalcava Decl. ¶16.* Given the complexities of this case, the defenses, along with
25 the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and
26 should be finally 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 Defendant would post a bond and appeal in the event of
4 an adverse judgment. A post-judgment appeal by Defendant would have required many more years to
5 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 Defendant
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 Defendant
18 continues 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
23 how 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
25 litigating an appeal. "The expense and possible duration of the litigation should be
26 considered in evaluating the reasonableness of[a] settlement." See *In re Mego Financial*
27 *Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further
28 litigation is substantial.

Id. at *12.

1 7. The Amount Offered in Settlement

2 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
3 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
4 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
5 favorably to the value of the claims. Based upon 77 Class Members who collectively worked 12,097
6 weeks, the Gross Settlement Amount provides a value of \$7,142 per Class Member and \$45 per work
7 week and the Net Settlement Amount provides an average recovery of \$4,276.62 per Class Member
8 and a recovery of \$27.22 per work week. The 25% allocation of the PAGA Penalties will be
9 distributed to the 63 Aggrieved Employees who worked 2,568 pay periods during the PAGA Period,
10 resulting in an average Individual PAGA Payment of \$20.16 per Aggrieved Employee and \$0.49 per
11 PAGA Pay Period. Blumenthal Decl. at ¶8(d).

12 The calculations to compensate for the amount due to the Class Members at the time the
13 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
14 mediation. Class Counsel analyzed the data for putative class members and determined the potential
15 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
16 wages due to the alleged miscalculation of the regular rate for overtime and sick pay was \$10,286, the
17 maximum value of the claim for unpaid wages due to alleged off-the-clock work for COVID checks
18 of 5 minutes for every shift after March 2020 was \$194,254, the maximum potential damages for
19 alleged meal period violations were estimated to be \$210,508 based upon a 13% violation rate, the
20 maximum potential damages for alleged rest period violations were estimated to be \$221,085 based
21 upon the same 13% violation rate, and the maximum potential damages for the alleged failure to
22 reimburse business expenses of \$5 in personal cell phone per month were calculated to be \$13,861.
23 In total, the damages for the Class were calculated to have a maximum potential total value of
24 \$649,994. In addition, Plaintiff calculated that the maximum value of the potential waiting time
25
26
27
28

1 penalties were \$294,699, and the maximum value of the potential wage statement penalties were
2 \$187,050.³ Blumenthal Decl. ¶8(d).

3 Consequently, the Gross Settlement Amount represents more than 84% of Plaintiff's calculation
4 of the potential maximum damages at issue for the Class in this case and more than 48% of the
5 combination of the maximum damages and maximum statutory penalties for the Class, assuming these
6 amounts could all be proven in full at trial.⁴ Given the amount of the Settlement as compared to the
7 potential value of the claims, the Settlement is most certainly fair and reasonable.⁵ Blumenthal Decl.
8 ¶8(d).

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

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

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

17 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
19 asserted by Defendant, including but not limited to, a good-faith dispute defense as to whether any
20 premium wages for meal or rest periods or other wages were owed given Defendant's position that
21 Plaintiff and Class Members 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.").

22 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33 filed in support of Plaintiff's Motion for Preliminary Approval.

24 ⁵ *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 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977; *Boeing*
2 *Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th
3 Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to
4 “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does
5 not bear the entire burden 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
11 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
12 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
13 fund created”). Under the percentage of the fund method, a court’s objective remains to “mimic the
14 market” 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. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
19 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
20 “[m]ost fee awards were between 25 percent and 35 percent”). Such similar awards by other Courts
21 are set forth in the Blumenthal Decl. ¶11.

22 Second, the results delivered by Class Counsel also support the requested percentage of the
23 fund. Here, Plaintiff and her counsel secured a \$550,000 settlement for the benefit of the Class and none
24 of the Class elected to opt out. Similarly, not one Class Member objected. The Settlement was possible
25 only because Class Counsel was able to convince Defendant that Plaintiff could potentially prevail on
26 the contested issues regarding liability, maintain class certification, overcome difficulties in proof as
27 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
9 that 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. As observed in *City of Detroit v. Grinnell Corp.*:

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

16 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$550,000 has been created.
17 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
18 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
19 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
20 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class**
21 **action litigation, is entitled to a premium above their hourly rate in order to compensate for both**
22 **the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
(9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
23 Cir. 2016) (abuse of discretion not to apply risk multiplier).

24 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
25 the requested attorneys’ fee of one-third equal to \$181,500 is also established by reference to Class
26 Counsel’s lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
27 **that through April 25, 2024, Class Counsel’s total lodestar is \$138,620.00**, with significant
28 additional fees still to be incurred to complete final approval and the settlement process. (Blumenthal

Decl. at ¶12 and Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel's total lodestar with a reasonable multiplier of 1.3, and there will be additional lodestar incurred by Class Counsel to complete the settlement process and manage the settlement distribution and reports. (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

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

B. The Reimbursement of Litigation Expenses

The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel Litigation Expenses Payment of not more than \$20,000." Class Counsel requests reimbursement for incurred litigation expenses and costs in the amount of \$17450.92, which is based upon Class Counsel's billing records which show Class Counsel incurred \$17450.92 in expenses. These litigation expenses include the expenses incurred for filing fees, mediation expenses, expert expenses (Berger Consulting), and attorney service charges (Knox, OneLegal), research charges (LexisNexis), electronic service charges (CaseAnywhere), and appearance fees, all of which are costs normally billed to and paid by the client.⁷ The details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4. These costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.) Because these costs were reasonable and necessary to the successful prosecution of these

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

⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging, 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 claims, the request is reasonable and should be granted.

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

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

10 As the representative of the Class, Plaintiff performed his duty to the Class admirably and
11 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
12 responding to numerous requests, searching for documents, working with counsel, and reviewing the
13 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, the Plaintiff is
14 also providing a comprehensive release as part of the Settlement, far beyond the class release. The
15 Declaration of Plaintiff details the involvement, stress and risks he undertook as a result of this Action.
16 Plaintiff also assumed the serious risk that she might possibly be liable for costs and fees to Defendant,
17 as well as the reputational risk of being “blacklisted” by other future employers for having filed a class
18 action on behalf of fellow former employees. (Blumenthal Decl. at ¶15.) Without the Plaintiff’s
19 participation, cooperation and information, no other employees would be receiving any benefit.
20 (Blumenthal Decl. at ¶¶ 15-16).

21 The payment of service awards to successful class representatives is appropriate and the amount
22 of \$10,000 is well within the currently awarded range for similar settlements. *See e.g. Mathein v. Pier*
23 *1 Imps.*, 2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018) (approving two
24 service awards of \$12,500 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
25 173698 (approving \$10,000 service award where class member recovery was \$375); *Bellinghausen v.*
26 *Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$10,000 award). Accordingly,
27 Class Counsel respectfully request approval of the requested Class Representative Service Payment in
28 accordance with the Agreement.

1 **VI. CONCLUSION**

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

5 Respectfully submitted,

6 Dated: April 25, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

7 By: /s/ Kyle Nordrehaug
8 Kyle R. Nordrehaug
9 Attorneys for Plaintiff