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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LOLA MARCUM and JOSE G.
IRIZARRY, on behalf of the State of
California as private attorneys general, and
as individuals, on behalf of themselves and
on behalf of all persons
similarly situated,

Plaintiffs,

vs.

HUNTSMAN ADVANCED
MATERIALS AMERICAS LLC, a
Limited Liability Company; HUNTSMAN
INTERNATIONAL LLC, a Limited
Liability Company; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: **22STCV03845**

**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: August 2, 2024

Hearing Time: 10:30 a.m.

*[Hearing scheduled by Order dated February 2,
2024]*

Judge: Hon. Stuart M. Rice
Dept.: SS-1

Action Filed: January 31, 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 (the “Agreement”), a true and correct copy of which is
4 attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In accordance
5 with the Preliminary Approval Order dated February 2, 2024 (“Preliminary Approval Order”), the
6 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 Lola Marcum and Jose G. Irizarry (“Plaintiffs”) respectfully submit
9 this memorandum in support of the unopposed motion for final approval and the proposed entry of the
10 Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent result
11 for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice
12 to the members of the Class, there were **no objections and no requests for exclusion**, which means that
13 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, Plaintiffs
15 respectfully submit 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 deductions:

19 **\$480,000** (Gross Settlement Amount)

- 20 - \$20,000 (Plaintiffs’ proposed service award not to exceed \$10,000 each)
21 - \$21,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
22 - \$160,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
23 - \$7,500 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
24 - \$8,750 (Administration Expenses Payment - not to exceed amount)

25 **\$262,750** (Net Settlement Amount)

26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals who were employed by Defendants Huntsman International
28 LLC and Huntsman Advanced Materials Americas LLC in California and classified as non-exempt
employee at any time during the Class Period.” The “Class Period” is January 31, 2018 and continuing
through February 17, 2023. (Preliminary Approval Order at 3:16-20.)

1 Plaintiffs and Defendants Huntsman International LLC and Huntsman Advanced Materials
2 Americas LLC (“Defendants”) reached a full and final settlement of the above-captioned action, which
3 is embodied in the Agreement filed concurrently with the Court. As consideration for this Settlement,
4 the Gross Settlement Amount is Four Hundred Eighty Thousand Dollars (\$480,000) to be paid by
5 Defendants, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending
6 in the Action between the Parties and will be made in full and final settlement of the released claims. The
7 Gross Settlement Amount includes all payments of Individual Class Payments to the Participating Class
8 Members, the Administration Expenses Payment to the Administrator, the Class Counsel Fees Payment
9 and Class Counsel Litigation Expenses Payment to Class Counsel, the Class Representative Service
10 Payments to Plaintiffs, and the PAGA Penalties payment to the California Labor and Workforce
11 Development Agency (the “LWDA”) and the Aggrieved Employees. The Gross Settlement Amount
12 does not include the employer’s share of payroll taxes which will be separately paid by Defendants. The
13 Settlement is all-in with no reversion to Defendants and no need for Class Members to submit claim
14 forms. Blumenthal Decl. ¶3(b).

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

17 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
18 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
19 is “fair, adequate, and reasonable”. (Preliminary Approval Order at 2:18-22.) In sum, the Settlement
20 valued at \$480,000 is an excellent result for the Class. This result is particularly favorable in light of the
21 fact that liability and class certification in this case were far from certain in light of the defenses asserted
22 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
23 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
24 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

25 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
26 **OF CLASS ACTION SETTLEMENTS**

27 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
28 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly

1 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
2 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
3 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

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

1 to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
2 (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th
3 399, 408 (2010).

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

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

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

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

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

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

24 This Settlement is the result of extensive and hard-fought litigation as well as negotiations before
25 an experienced and well-respected mediator. Defendants have expressly denied and continue to deny
26 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
27 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
28 Claims in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate the

1 class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel
2 are particularly experienced in wage and hour employment class actions, as Class Counsel has previously
3 litigated and certified similar claims against other employers. Blumenthal Decl. ¶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 the Settlement. In preparation
6 for the mediation, Defendants provided Class Counsel with necessary information, including data for the
7 Class. Plaintiffs analyzed the data with the assistance of a damages expert, Berger Consulting, and
8 prepared and submitted a mediation brief and damage valuation to the Mediator. Following the all-day
9 mediation, the Parties agreed to the Settlement, which was memorialized in the form of a Memorandum
10 of Understanding. The final terms of the Settlement were negotiated and set forth in the Agreement.
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 December 2022 to August 2023, the settlement agreement and exhibits thereto were
19 drafted, finalized and executed, and the Agreement was then presented by motion to this Court for
20 preliminary approval. On February 2, 2024, the Court issued its Order granting preliminary approved
21 of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

22 3. Class Counsel is Experienced in Similar Litigation

23 Class Counsel in this matter has extensive class action experience and has represented thousands
24 of persons in class actions including employment litigation, wage and hour class actions, and complex
25 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
26 claims similar to this case and have been approved as experienced class counsel during contested motions
27 in state and federal courts throughout California. As such, Class Counsel is experienced and
28 knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2; Declaration of Eve Howe at ¶¶ 3-7.

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

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

4 The reaction of the Class unequivocally supports approval of the Settlement. On February 26,
5 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
6 each class member with the terms of the Settlement, including notice of the claims at issue and the
7 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
8 sought, how individual settlement awards would be calculated, and the specific, estimated payment
9 amount to that individual. See Declaration of Nicole Bench ("Bench Decl.") at ¶ 8, Exh. A. In
10 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
11 its Preliminary Approval Order. Significantly, there have been no objections and no requests for
12 exclusion. Bench Decl. at ¶¶ 12-13. As such, the entire Class will participate in the Settlement and will
13 be sent a settlement check. See Bench Decl. at ¶¶ 16-18; Blumenthal Decl. ¶4.

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

22 5. The Strength of Plaintiffs' Case

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

1 Decl. ¶5.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
4 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
5 Defendants maintain that their practices complied with all applicable wage and hour laws. Defendants
6 maintain that all Class Members' work time was properly recorded and compensated and that there was
7 no miscalculation of the regular rate. Defendants contend that its meal and rest period policies and
8 practices provide Class Members with meal and rest periods and that the payment of significant meal
9 premiums is evidence of Defendants' legal compliant practices. As to expense reimbursement,
10 Defendants maintains that it did not fail to provide reimbursement for necessary business expenses
11 because, among other things, employees are not required to use their personal cell phones to perform
12 their work. Defendants could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004
13 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's*
14 *Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value,
15 and preclude his claim from proceeding on a class or representative basis. Defendants also maintain that
16 a good faith dispute and absence of willfulness would negate the claims for waiting time penalties and/or
17 failure to provide accurate itemized wage statements. If successful, Defendants' defenses could eliminate
18 or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be
19 overcome, Defendants maintain these defenses have merit and therefore present a serious risk to
20 recovery by the Class. Blumenthal Decl. ¶8(a).

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

23 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
24 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
25 Associates were misclassified as exempt. In addition to the uncertainties raised by
26 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
27 Defendants notes that the question of an employer's duty to provide rest and meal
28 periods is an open one, signaling even less certainty for Plaintiffs. [...T]he gross
settlement amount and the Class Members' expected net recovery, after fees and other
costs are deducted, appear to be a reasonable compromise, in light of the risks of
litigation.

2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007

1 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the strength of Plaintiff’s case, legal
2 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
3 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

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

27 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
28 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
allocation are \$4,948.48 and \$2,565.53, respectively. *See Bench Decl. ¶ 18.* Given the complexities of
this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,

1 reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

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 to
3 Plaintiffs' claims. The Declaration of Kyle Nordrehaug submitted in support of preliminary approval
4 discussed the value of the class claims in detail.

5 The calculations to compensate for the amount due to the Class Members at the time the
6 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
7 mediation. Class Counsel analyzed the data for putative class members and determined the potential
8 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid wages
9 due to the alleged miscalculation of the regular rate applicable to overtime pay and meal premiums was
10 \$10,117, the maximum value of the claim for unpaid wages due to alleged off-the-clock work for
11 COVID checks was \$86,799, the maximum potential damages for alleged meal period violations were
12 estimated to be only \$296 based upon a 2% violation rate observed in the time records and after
13 deduction of meal premiums paid covering nearly all violations in the records, the maximum potential
14 damages for alleged rest period violations were estimated to be \$1,458,658 based upon an alleged 100%
15 violation rate, and the maximum potential damages for the alleged failure to reimburse business expenses
16 were calculated to be \$102,150 based upon \$30 per month. In total, the damages for the Class were
17 calculated to have a maximum potential total value of \$1,658,019. In addition, Plaintiff calculated that
18 the maximum value of the potential waiting time penalties were \$225,372, and the maximum value of
19 the potential wage statement penalties were \$174,700. Defendant vigorously disputed Plaintiffs'
20 calculations and exposure theories. Blumenthal Decl. ¶8(d).

21 Consequently, the Gross Settlement Amount represents more than 28% of Plaintiffs' calculation
22 of the potential maximum damages at issue for the Class in this case, assuming these amounts could all
23 be proven in full at trial.³ Importantly, the highest valued claim was the rest period claim which was
24 valued at a 100% violation rate, however, class members certainly received some rest periods so this
25 valuation is likely overstated. The maximum calculations should then be realistically risk rated in
26

27 ³ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
28 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
Declaration of Nordrehaug at ¶33 submitted in support of the Motion for Preliminary Approval.

1 consideration for both the risk of class certification and the risk of establishing class-wide liability on all
2 claims. Given the amount of the Settlement as compared to the potential value of the claims, the
3 Settlement is most certainly fair and reasonable.⁴ Clearly, the goal of this litigation has been met.
4 Blumenthal Decl. ¶8(d).

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

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

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

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

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 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
2 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
3 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

11 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
12 Here, Plaintiffs and their counsel secured a \$480,000 settlement for the benefit of the Class. The
13 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs could
14 potentially prevail on the contested issues regarding liability, maintain class certification, overcome
15 difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f).
16 In successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and
17 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
18 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
19 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the common fund**
20 **as attorneys' fees has been found to be appropriate.**”)

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

26 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
27 reward is the attendant risks inherent in the litigation. For Class Counsel, the fees here were wholly
28 contingent in nature and the case presented far more risk than the usual contingent fee case. Among the

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

8 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
9 the requested attorneys' fee of one-third equal to \$160,000 is also established by reference to Class
10 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
11 through July 11, 2024, Class Counsel's total lodestar is \$297,185, with significant additional fees still
12 to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
13 Exhibits #3 and 4 [lodestar of \$249,685]; Declaration of Eve Howe at ¶ 8 [lodestar of \$47,500].) The
14 requested fee award is therefore less than Class Counsel's total lodestar, representing a "negative
15 multiplier" of 0.6. (Blumenthal Decl. at ¶12.) Such a negative multiplier is far below the range of
16 positive multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d
17 1043, 1051 (9th Cir. 2002).⁵ For such reasons, Class Counsel's request for attorneys' fees in the amount
18 of one-third of the common fund is fair and reasonable and should be approved.

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

20 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "a Class Counsel
21 Litigation Expense of no more than \$21,000". Class Counsel requests reimbursement for incurred
22 litigation expenses and costs in the amount of \$20,607.34 These litigation expenses include the expenses

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 incurred for filing fees, mediation expenses, expert fees (Berger Consulting Group), attorney service
2 charges (One Legal), Case Anywhere charges, Lexis charges, and delivery expenses, all of which are
3 costs normally billed to and paid by the client.⁶ The details of the litigation expenses incurred are set
4 forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4 (expenses of \$17,376.30); Declaration of Eve
5 Howe at ¶17 and Exhibit 1 (expenses of \$3,231.04). These costs were reasonably incurred in the
6 prosecution of the Action. Blumenthal Decl. at ¶13. Because these costs were reasonable and necessary
7 to the successful prosecution of these claims, the request is reasonable and should be granted.

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

9 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
10 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
11 risk and effort expended on behalf of the Class. (Agreement at ¶ 56(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 Declarations of the Plaintiffs are submitted in support of
15 this request and are attached as Exhibits #6 and 7 to the Blumenthal Decl.

16 As the representatives of the Class, Plaintiffs performed their duty to the Class admirably and
17 without exception. Plaintiffs 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, the Plaintiffs are
20 also providing a comprehensive release as part of the Settlement, far beyond the class release. The
21 Declaration of the Plaintiffs detail the involvement, stress and risks they undertook as a result of this
22 Action. Plaintiffs also assumed the serious risk that they 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, photocopying,
28 long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits,
documents scanning, and visual equipment are typically recoverable.” *Rutti v. Lojack Corp., Inc.*, 2012
WL 3151077, at *12 (C.D. Cal. 2012).

1 Plaintiffs' participation, cooperation and information, no other employees would be receiving any benefit.
2 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. Plains*
5 *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.*, 2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018)
9 (approving two service awards of \$12,500 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S.
10 Dist. LEXIS 173698 (approving \$10,000 service award where class member recovery was \$375);
11 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$10,000
12 award). Accordingly, Class Counsel respectfully request approval of the requested Class Representative
13 Service Payment in accordance with the Agreement.

14 **VI. CONCLUSION**

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

18
19 Dated: July 11, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Esq.

Attorneys for Plaintiffs