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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

PAOLA URIBE, MARIA SOTO,
KAREN HART, WILSON CHUNG, and
LISA BURTON, individuals, on behalf of
themselves, all persons similarly situated,
aggrieved employees, and the State of
California
Plaintiffs,
vs.

MONROE OPERATIONS, LLC, dba
NEWPORT HEALTHCARE and
NEWPORT ACADEMY and NEWPORT
INSTITUTE and CENTER FOR
FAMILIES, and DOES ONE through
TWENTY inclusive,
Defendants.

Case No. **56-2021-00561341-CU-OE-VTA**

**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: January 21, 2025
Hearing Time: 8:20 a.m.
*[Hearing scheduled by Orders dated July 1, 2024
and October 16, 2024]*
Judge: Hon. Mark S. Borrell
Dept.: 40

Action Filed: December 17, 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 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated July 1, 2024 (“Preliminary Approval Order”),
6 the approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiffs Paola Uribe, Maria Soto, Karen Hart, Wilson Chung, and Lisa
9 Burton (“Plaintiffs”) respectfully move for final approval, including attorneys’ fees, costs and the
10 service award, and the proposed entry of the Final Approval Order and Judgment, submitted herewith.
11 The settlement represents an excellent result for the Class and avoids the delays, risks, and costs of
12 further litigation. After disseminating the notice to the 377 members of the Class, to date there have
13 been **no objections** and no requests for exclusion from the Class, which means that currently the entire
14 Class (100%) has elected to participate in the Settlement.³ Blumenthal Decl. ¶4. This is a positive
15 response from the Class evidencing their collective approval of the settlement. As a result, Plaintiffs
16 respectfully submit that the settlement should be finally approved for the same reasons that the Court
17 preliminarily approved the settlement as fair, reasonable, and adequate.

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

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
20 Monroe Operations, LLC ("Defendant") is Two Million One Hundred Ninety-Five Thousand Dollars
21 (\$2,195,000) ("Gross Settlement Amount") is to be paid by Defendant, as set forth in the Agreement.
22 As explained in the Declaration of Kevin Lee, Defendant will pay the additional amount of \$46,881.81

24 ¹ Capitalized terms are defined in the Agreement.

25 ² The “Class” consists of “all individuals who were employed by Defendant in California and
26 classified as a non-exempt employee at any time during the Class Period.” The “Class Period” is defined
27 as “July 7, 2018 through January 7, 2024.” (Preliminary Approval Order at ¶ 6.)

28 ³ Because the extended Response Deadline is December 24, 2024, the final administration figures
are being compiled will be provided in a forthcoming Declaration of Kevin Lee.

1 to the PAGA Penalties as a result of the escalator provision. Under the Settlement, the Gross Settlement
2 Amount consists of the following elements: (1) payment of the Individual Class Payments to the
3 Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses
4 Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payments to the
5 Plaintiffs; and (5) the PAGA Penalties payment. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The
6 Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.)
7 The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.)
8 Blumenthal Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and the
9 proposed deductions:

10 **\$2,195,000** (Gross Settlement Amount)

- 11 - \$75,000 (Plaintiffs' proposed service awards not to exceed \$15,000 each)
- 12 - \$50,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 13 - \$731,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 14 - \$316,780.40 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 15 - \$20,000 (Administration Expenses Payment - not to exceed amount)

16 **\$1,001,553.60** (Net Settlement Amount)

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

19 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
20 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
21 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
22 at \$2,195,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
23 that liability and class certification in this case were far from certain in light of the defenses asserted
24 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
25 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
26 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

27 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
28 **OF CLASS ACTION SETTLEMENTS**

Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
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 v. Ford Motor Co.*,
16 48 Cal. App. 4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the
17 proposed settlement satisfies 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)

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

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

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

A. The Settlement Satisfies the California Test for Fairness

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

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

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

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

1 The Parties attended an arms-length mediation session with Brandon McKelvey, a respected and
2 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
3 for the mediation, Defendant provided Class Counsel with payroll, time and employment data, along
4 with and other information regarding the Class Members, various internal documents, and other
5 compensation and employment-related materials. Class Counsel analyzed the data with the assistance
6 of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator.
7 Following this all-day mediation, the Parties agreed to this Settlement. Blumenthal Decl. ¶7(b).

8 The fact that the settlement was negotiated with the assistance of an experienced mediator
9 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
10 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 at *15 (N.D. Cal. 2007) (where settlement was “negotiated
11 and approved by experienced counsel on both sides of the litigation, with the assistance of a
12 well-respected mediator” this factor supports approval of the settlement”). From February 2024 to May
13 2024, the settlement agreement and exhibits thereto were finalized and executed. On July 1, 2024, the
14 Court granted the Motion for Preliminary Approval, and entered the Order granting preliminary
15 approved of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶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 Blumenthal
23 Decl. at Exhibit #1, the Declaration of Daniel Gaines (“Gaines Decl.”) at ¶¶ 2-5, and the Declaration
24 of Stan Mallison (“Mallison Decl.”) at ¶¶ 18-20. Class Counsel have participated in every aspect of the
25 settlement discussions and have concluded the settlement is fair, adequate and reasonable and in the best
26 interests of the Class. Blumenthal Decl. ¶ 3(j).

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

28 The reaction of the Class unequivocally supports approval of the Settlement. On July 29, 2024,

1 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
2 class member with the terms of the Settlement, including notice of the claims at issue and the financial
3 terms of the settlement, including the attorneys' fees, costs, and service awards that were being sought,
4 how individual settlement awards would be calculated, and the specific, estimated payment amount to
5 that individual. See Declaration of Kevin Lee ["Lee Decl."], Exh. A. In disseminating the notice, the
6 Administrator followed the notice procedures authorized by the Court in its Preliminary Approval
7 Order. To date, there have been no objections and no requests to opt-out from the Settlement.⁴ The
8 Declaration of Kevin Lee will document the final administration results. 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."); *Stoetznerv v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d.
13 Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*,
14 638 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 Plaintiffs' Case

18 The Action generally alleges that Plaintiffs and other Class Members were not properly paid all
19 minimum and overtime wages for hours worked and at the correct rate, 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, and were not paid all wages at the time of
22 termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other
23 equitable or legal relief allegedly due and owing to Plaintiffs and the other Class Members by virtue of
24 the foregoing claims. Blumenthal Decl. ¶5.

25 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*

26
27 ⁴ Pursuant to the Order dated October 16, 2024, a corrective notice was mailed to the Class as a
28 result of a slight miscalculation by the Administrator. This corrective notice provided Class Members
additional time until December 24, 2024 to opt out or submit an objection.

1 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
2 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
3 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
4 argued that Class Members were paid for all time worked and that all work time was properly recorded.
5 Defendant maintained there was no miscalculation of the regular rate when paying wages to the
6 Plaintiffs and the Class. Defendant contends that its meal and rest period policies fully complied with
7 California law and Defendant did not fail to provide the opportunity for legally required meal and rest
8 breaks. Defendant could argue that its payment of significant meal period premiums is evidence of its
9 lawful practices. Defendant contend that there was no failure to pay for business expenses and any cell
10 phone usage was merely convenient and voluntary such that reimbursement was not legally required.
11 Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.
12 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal
13 and rest period claims. Defendant also argues that based on its facially lawful practices, Defendant
14 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
15 penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or
16 substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be
17 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
18 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... [...T]he gross
23 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.

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

28 The potential complexity and possible duration of trial also weigh in favor of granting

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

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

7 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
8 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
9 of any employees other than themselves. At the time of the mediation, Defendant forcefully opposed
10 the propriety of class certification, arguing that individual issues precluded class certification. Further,
11 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
12 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the
13 class has been certified. While other cases have approved class certification in wage and hour claims,
14 class certification in this action was hotly disputed and the maintenance of a certified class through trial
15 was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

16 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
17 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
18 substantial defenses both to liability and to class certification. The maximum and average Individual
19 Class Payments to Participating Class Members will be documented in the forthcoming Lee Decl.
20 Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal, the
21 proposed Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl.
22 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 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh

1 an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

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

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

15 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
16 and likely duration of further litigation likewise favors the settlement. Regardless of how
17 this Court might have ruled on the merits of the legal issues, the losing party likely
18 would have appealed, and the parties would have faced the expense and uncertainty of
19 litigating an appeal. "The expense and possible duration of the litigation should be
20 considered in evaluating the reasonableness of [a] settlement." See *In re Mego Financial
21 Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further
22 litigation is substantial.

23 *Id.* at *12.

24 7. The Amount Offered in Settlement

25 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
26 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
27 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
28 favorably to the value of the claims. Based upon 377 Class Members who worked an estimated 30,880
work weeks, the Gross Settlement Amount provides an average value of \$5,822 per Class Member and
\$71 per workweek and after deductions the Net Settlement Amount provides an average recovery of
\$2,668.57 per Class Member and a recovery of \$32.57 per workweek. . Blumenthal Decl. at ¶8(d).

1 The calculations to compensate for the amount due for the Class at the time of the mediation
2 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
3 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
4 wages for the employees. The maximum potential damages were calculated to be \$10,847 for alleged
5 unpaid overtime premium wages, \$918,840 for the alleged unpaid wages for off-the-clock work due to
6 at 1 hour per week, \$42,567 for the alleged unpaid wages due to miscalculation of the regular rate when
7 paying wages, \$36,383 for the alleged underpayment of meal period premiums and sick pay, \$1,269,229
8 for alleged meal period damages based upon a 53% potential violation rate for shifts worked and after
9 accounting for the meal premiums (\$715,725) actually paid by Defendant, \$1,539,064 for alleged rest
10 period damages based upon the same 53% potential violation rate for shifts worked, \$104,785 for
11 alleged unreimbursed business expenses at \$5 per month for personal cell phone usage. As a result, the
12 total damage valuation was calculated that Defendant was subject to a maximum damage claim in the
13 amount of \$3,921,715. As to potential penalties, Plaintiffs calculated that potential waiting time
14 penalties were a maximum of between \$1,009,192 and \$1,488,418, and potential maximum wage
15 statement penalties were \$1,073,188.⁵ Defendant vigorously disputed Plaintiffs' calculations and
16 exposure theories.

17 Consequently, the Gross Settlement Amount of \$2,195,000 represents more than 48% of the
18 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁶
19 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
20 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
21

22 ⁵ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
23 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
24 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
25 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class
26 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.").

27 ⁶ Because the PAGA claim is not a class claim and primarily is paid to the State of California, the
28 PAGA claim is not included in the value of the class claims. The PAGA claim was addressed in the
Declaration of Nordrehaug at ¶33 filed in support of the Motion for Preliminary Approval.

1 waiting time and wage statement penalties, even if wages were owed to the class. The above maximum
2 calculations should then be adjusted in consideration for both the risk of class certification and the risk
3 of establishing class-wide liability on all claims. Given the amount of the settlement as compared to
4 the potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair
5 and reasonable.⁷ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

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

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

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

19 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
20 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
21 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*

22 ⁷ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
25 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
26 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
27 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
28 a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state
2 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
3 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
4 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
5 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
6 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

7 First, the fee award representing one-third of the fund clearly falls within that range and is
8 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
9 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
10 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
11 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
12 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte v. Robert Half Int'l*, 1 Cal.
13 5th 480, 503 (2016), The California Supreme Court both (1) joined the majority of federal and state
14 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
15 members, the trial court in its equitable powers awards class counsel a fee out of that fund, and (2)
16 expressly approved of one-third as a reasonable percentage in a contingent common fund class
17 settlement. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

18 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
19 Here, Plaintiffs and their counsel secured a \$2,195,000 settlement for the benefit of the Class and very
20 few of the Class Members elected to opt out. Similarly, not one Class Member objected. The
21 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
22 could potentially prevail on the contested issues regarding liability, maintain class certification,
23 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
24 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
25 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
26 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
27 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
28 **common fund as attorneys' fees has been found to be appropriate.**”)

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

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

16 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
17 the requested attorneys' fee of one-third equal to \$731,666 is also established by reference to Class
18 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
19 through December 26, 2024, Class Counsel's total lodestar is \$458,899.25, with significant additional
20 fees still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12
21 and Exhibit #3 [lodestar of \$256,321.25]; Gaines Decl. at ¶33 [lodestar of \$52,905]; Mallison Decl.
22 _____ [lodestar of \$_____].) The requested fee award is therefore currently equivalent to Class
23 Counsel's total lodestar with a reasonable multiplier of less than 1.6, and there will be additional
24 lodestar incurred by Class Counsel to complete the settlement process and manage the settlement
25 distribution and reports. (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers
26 approved in other cases such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir.
27
28

2002).⁸ For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the common fund is 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 \$50,000." Class Counsel requests reimbursement for incurred litigation expenses and costs in the collective amount of \$27,484.92. Therefore, this requested amount of \$27,484.92 is equal to the amount actually incurred by Class Counsel. These litigation expenses include the expenses incurred for this matter, all of which are costs normally billed to and paid by the client.⁹ The details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 [expenses of \$19,934.85], the Gaines Decl. at ¶ 39 [expenses of \$4,953.71], and the Mallison Decl. at ¶49 [expenses of \$2,596.36]. 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 claims, the request is reasonable and should be granted.

C. The Service Award Is Reasonable and Should be Approved

Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should be awarded the agreed service award of \$15,000 each, in accordance with the Agreement for their time, risk and effort expended on behalf of the Class as the class representatives. (Agreement at ¶ 3.2(a).) Defendants have agreed to this payment and there have been no objections to the requested service awards. The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in

⁸ 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 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).

⁹ 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 California in similar cases, which further supports the request in this case. The Plaintiffs' Declarations
2 in support of these requests are attached as Exhibits #1 and 2 to the Declaration of Stan Mallinson and
3 as Exhibits #5, 6 and 7 to the Blumenthal Decl.

4 As the representatives of the Class, Plaintiffs performed their duties to the Class admirably and
5 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,
6 responding to numerous requests, searching for documents, working with counsel, and reviewing the
7 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, Plaintiffs are also
8 providing a comprehensive release as part of the Settlement, far beyond the class release. The Plaintiffs'
9 Declarations detail the involvement, stress and risks they undertook as a result of this Action. Plaintiffs
10 also assumed the serious risk that they might possibly be liable for costs and fees to Defendants, as well
11 as the reputational risk of being "blacklisted" by other future employers for having filed a class action
12 on behalf of employees. (Blumenthal Decl. at ¶ 15.) Without the Plaintiffs' participation, cooperation
13 and information, no other employees would be receiving any benefit. (Blumenthal Decl. at ¶¶ 15-16).

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

22 **VI. CONCLUSION**

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

26 Respectfully submitted,

27 Dated: December 26, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
28 By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Attorneys for Plaintiff