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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

KENNETH NGUYEN, on behalf of
the State of California, as a private
attorney general, and as an individual,
on behalf of himself and on behalf of
all persons similarly situated,

Plaintiffs,

vs.

PORT PLASTICS, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **22CV394401**

[Consolidated with Case No. 22CV394403]

**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: September 25, 2024

Hearing Time: 1:30 p.m.

[Hearing scheduled by Order dated June 11, 2024]

Judge: Hon. Theodore C. Zayner

Dept.: 19

Action Filed: February 15, 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 June 11, 2024 (“Preliminary Approval Order”), the approved
6 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 Kenneth Nguyen (“Plaintiff”) respectfully submits this memorandum
9 in support of the unopposed motion for final approval and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class and
11 avoids the delays, risks, and costs of further litigation. After disseminating the notice to the members
12 of the Class, currently there have been **no objections and no requests for exclusion**, which means that
13 at this time the entire Class has elected to participate in the Settlement.³ Blumenthal Decl. ¶4. This is
14 a 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 Plaintiff and Defendant Port Plastics, Inc. (“Defendant”) reached a full and final settlement of the
19 above-captioned action, which is embodied in the Agreement filed concurrently with the Court. As
20 consideration for this Settlement, the Gross Settlement Amount is Three Hundred Fifty Thousand
21 Dollars (\$350,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount

22 _____
23 ¹ Capitalized terms are defined in the Agreement.

24 ² The “Class” is defined as “all individuals who are employed by or previously were employed by
25 Defendant Port Plastics, Inc. in California who were classified as non-exempt and/or hourly paid
26 employees and who worked at any time during the Class Period.” (Preliminary Approval Order, 3:12-
16.) The Class Period is February 15, 2018 through June 30, 2022. (Order dated July 17, 2024).

27 ³ The Response Deadline is September 9, 2024, which is a few days after the filing of this motion.
28 The final figures will be documented in the Declaration of Makenna Snow, to be filed after September
9, 2024, and before the hearing on this motion.

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

\$350,000 (Gross Settlement Amount)

- \$10,000 (Plaintiff's proposed service award not to exceed \$10,000 each)
- \$21,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$116,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$5,500 (Administration Expenses Payment - not to exceed amount)

\$181,834 (Net Settlement Amount)

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

The Settlement is fair, adequate and reasonable to the class and should be finally approved for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement is "fair, adequate, and reasonable". (Preliminary Approval Order at 27:1-2.) In sum, the Settlement valued at \$350,000 is an excellent result for the Class. This result is particularly favorable in light of the fact that liability and class certification in this case were far from certain in light of the defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL 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. v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

17 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
18 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
19 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
20 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The
21 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
22 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
23 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
24 offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience
25 and views of counsel, the presence of a governmental participant, and the reaction of the class members
26 to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
27 (internal citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th
28 399, 408 (2010).

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

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

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

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

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

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

21 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
22 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
23 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel
24 have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of
25 the Class in accordance with this Settlement. The release applicable to the Class is appropriately tethered
26 to allegations in the Action. Class Counsel are experienced and qualified to evaluate the class claims, the
27 defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly
28 experienced in wage and hour employment class actions, as Class Counsel has previously litigated and

1 certified similar claims against other employers. Blumenthal Decl. ¶7(a).

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

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

16 From May 2023 to November 2023, the settlement agreement and exhibits thereto were
17 negotiated, finalized and executed, and then presented by motion to this Court for preliminary approval.
18 Supplemental briefing was provided at the request of the Court. On June 11, 2024, the Court issued its
19 Order granting preliminary approval of the settlement as fair and reasonable to the Class. Blumenthal
20 Decl. ¶7(c).

21 3. Class Counsel is Experienced in Similar Litigation

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

1 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

3 The reaction of the Class unequivocally supports approval of the Settlement. On July 10, 2023,
4 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
5 class member with the terms of the Settlement, including notice of the claims at issue and the financial
6 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
7 how individual settlement awards would be calculated, and the specific, estimated payment amount to
8 that individual. See Declaration of Makenna Snow ("Snow Decl."). In disseminating the notice, the
9 Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order.
10 To date, there have been no objections and no requests for exclusion. The Response Deadline is
11 September 9, 2024, which is a few days after the filing of this motion, and therefore the final results will
12 be detailed in the Declaration of Makenna Snow (the Administrator) to be filed in after the Response
13 Deadline and in advance of the Final Approval Hearing. 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 Plaintiff's Case

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

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

20 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
21 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
22 Associates were misclassified as exempt. In addition to the uncertainties raised by
23 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
24 Defendants notes that the question of an employer's duty to provide rest and meal
periods is an open one, signaling even less certainty for Plaintiffs. [...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.

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

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

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

11 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable to obtain
12 a certified class and maintain the certified class through trial, and thereby not recover on behalf of any
13 employees other than himself. At the time of the mediation, Defendant forcefully opposed the propriety
14 of class certification, arguing that individual issues precluded class certification. Further, as
15 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
16 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class
17 has been certified. While other cases have approved class certification in wage and hour claims, class
18 certification in this action was hotly disputed and the maintenance of a certified class through trial was
19 by no means a foregone conclusion. 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 substantial
22 defenses both to liability and to class certification. The maximum and average class member allocations
23 will be detailed in the forthcoming Declaration of Makenna Snow. Given the complexities of this case,
24 the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable
25 and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

27 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
28 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event of
an adverse judgment. A post-judgment appeal by Defendant would have required many more years to
resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
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 Plaintiff and Class Counsel recognize the risks, expense and length of continuing to litigate and
3 trying this Action against Defendant and then litigating possible appeals which could take several years.
4 Class Counsel also have taken into account the uncertain outcome, the risk of litigation, especially in
5 complex actions such as this one. Class Counsel are also mindful of and recognize the inherent problems
6 of proof under, and alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions
7 and appeals would have been inevitable. Costs would have mounted and recovery would have been
8 delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class Counsel
9 believe that the Settlement confers substantial benefits upon the Class. Based upon their evaluation,
10 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
11 interest of the Class Members. Blumenthal Decl. ¶8(c).

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

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

24 *Id.* at *12.

25 7. The Amount Offered in Settlement

26 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses to
27 Plaintiff's claims. The Declaration of Nordrehaug and Supplemental Declaration of Nordrehaug
28 submitted in support of preliminary approval discussed the value of the class claims in detail.

The calculations to compensate for the amount due for the Class at the time of the mediation
were calculated by Class Counsel. As to the Class whose claims are at issue in this Action, Plaintiff
analyzed the data and determine the potential unpaid wages for the employees. The maximum potential

1 damages were calculated to be \$207,357 for the alleged unpaid wages due to off-the-clock work at 30
2 min per week, \$2,074,940 for alleged meal and rest period damages based upon an 80% potential
3 violation rate for shifts worked, \$13,137 for alleged unreimbursed business expenses for personal cell
4 phone usage at \$5 per month. As a result, the total damage valuation calculated by Class Counsel was
5 that Defendant was subject to a maximum damage claim in the amount of \$2,295,434. As to potential
6 penalties, Plaintiff calculated that potential waiting time penalties were a maximum of \$115,258, and
7 potential maximum wage statement penalties were \$192,000.⁴ Defendant vigorously disputed Plaintiff's
8 calculations and exposure theories. Blumenthal Decl. ¶8(d).

9 Consequently, the Gross Settlement Amount of \$350,000 represents more than 15% of the
10 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
11 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
12 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
13 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
14 calculations should then be adjusted in consideration for both the risk of class certification and the risk
15 of establishing class-wide liability on all claims. Given the amount of the settlement as compared to the
16 potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair and
17 reasonable.⁶ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

18
19 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
20 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
21 by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest
22 periods or other wages were owed given Defendant's position that Plaintiff and Class Members were
23 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
24 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
25 and when the wages were due.").

26 ⁵ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
27 Plaintiff did not included the PAGA claim in this discussion of the value of the class claims. The PAGA
28 claim was addressed in the Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶33.

⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
settlement where the settlement amount constituted approximately 25% of the estimated overtime
damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
(N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*

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

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

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

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

22 First, the fee award representing one-third of the fund clearly falls within that range and is
23 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
24 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market

25 _____
26 *Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
27 settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
28 Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
2 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
3 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved
4 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

5 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
6 Here, Plaintiffs and their counsel secured a \$350,000 settlement for the benefit of the Class. The
7 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiff could
8 potentially prevail on the contested issues regarding liability, maintain class certification, overcome
9 difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f).
10 In successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and
11 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
12 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
13 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the common fund**
14 **as attorneys' fees has been found to be appropriate.**”)

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

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

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

26 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$350,000 has been created.
27 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
28 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
well as a long battle with a corporate Defendant who had retained a premier and highly experienced

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

6 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
7 the requested attorneys' fee of one-third equal to \$116,666 is also established by reference to Class
8 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
9 through August 30, 2024, Class Counsel's total lodestar is \$162,457.50, with significant additional fees
10 still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
11 Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel's total
12 lodestar with a negative multiplier of 0.7, and there will be additional lodestar incurred by Class Counsel
13 to complete the settlement process and manage the settlement distribution and reports. (Blumenthal
14 Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases such as *Laffitte*
15 and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷

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

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

19 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "a Class Counsel
20 Litigation Expense of no more than \$21,000". Class Counsel requests reimbursement for incurred
21 litigation expenses and costs in the amount of \$12,638.21 based upon counsel's billing records which
22 evidence total expenses of \$12,638.21. These litigation expenses include the expenses incurred for filing
23

24 ⁷ 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 fees, mediation expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One
2 Legal), Lexis charges, and delivery expenses, all of which are costs normally billed to and paid by the
3 client.⁸ The details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and
4 Exhibits #3 and 4. These costs were reasonably incurred in the prosecution of the Action. Blumenthal
5 Decl. at ¶13. Because these costs were reasonable and necessary to the successful prosecution of these
6 claims, the request is reasonable and should be granted.

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

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

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

25
26 ⁸ 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 The payment of service awards to successful class representatives is appropriate and the amount
2 of \$10,000 is well within the currently awarded range for similar settlements. *See e.g. Mathein v. Pier*
3 *1 Imps.*, 2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018) (approving two
4 service awards of \$12,500 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
5 173698 (approving \$10,000 service award where class member recovery was \$375); *Bellinghausen v.*
6 *Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$10,000 award). Accordingly,
7 Class Counsel respectfully request approval of the requested Class Representative Service Payment in
8 accordance with the Agreement.

9 **VI. CONCLUSION**

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

13
14 Dated: August 29, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

15 By: /s/ Kyle Nordrehaug
16 Kyle R. Nordrehaug, Esq.
17 Attorneys for Plaintiffs
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