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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

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

Plaintiffs,

vs.

THE ALARIS GROUP, INC., a
Corporation; PARADIGM
MANAGEMENT SERVICES, LLC, a
Limited Liability Company, and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **C22-01125**
[Consolidated with Case No. C22-01425]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT AND AWARD OF
ATTORNEYS' FEES, COSTS AND CLASS
REPRESENTATIVE SERVICE PAYMENT**

Hearing Date: November 21, 2024
Hearing Time: 9:00 a.m.
[Hearing scheduled by Order dated August 2, 2024]

Judge: Hon. Charles S. Treat
Dept.: 12

Action Filed: June 1, 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 August 2, 2024 (“Preliminary Approval Order”),
6 the approved Class Notice was 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 Mark Bruno Kovacic (“Plaintiff”) respectfully submits this
9 memorandum in support of the unopposed motion for final approval and the proposed entry of the Final
10 Approval Order and Judgment, submitted herewith. The Settlement represents an excellent result for
11 the Class and avoids the delays, risks, and costs of further litigation. After disseminating the Class
12 Notice to the members of the Class, there were **no objections and no requests for exclusion**, which
13 means that the entire Class has elected to participate in the Settlement. 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 Settlement should be finally approved for the same reasons that
16 the Court preliminarily approved the Settlement as fair, reasonable, and adequate.

17 **II. THE SETTLEMENT BEFORE THE COURT**

18 Plaintiff and Defendants The Alaris Group, Inc. and Paradigm Management Services, LLC
19 (“Defendants”) reached a full and final settlement of the above-captioned action, which is embodied
20 in the Agreement filed concurrently with the Court. As consideration for this Settlement, the
21 non-reversionary Gross Settlement Amount of Seven Hundred Thirty Thousand Dollars (\$730,000).
22 (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following
23 elements: (a) Individual Class Payments, (b) Individual PAGA Payments (i.e., 25% of the PAGA
24

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who are or previously were employed by Defendants in
27 California who worked as Case Managers and who were classified as exempt basis at any time during
28 the Class Period.” The “Class Period” is defined as “June 1, 2018 to January 30, 2024.” (Preliminary
Approval Order at 3:13-16.)

1 Penalties allocated to the Aggrieved Employees), (c) the LWDA PAGA Payment (i.e., 75% of the
2 PAGA Penalties allocated to the LWDA), (d) Administration Expenses Payment (i.e., the costs of
3 administration of the settlement), (e) Class Counsel Fees Payment and Class Counsel Litigation
4 Expenses Payment (i.e., all attorneys' fees and costs), and, (f) Class Representative Service Payment
5 (also referred to as the "Service Award"). (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross
6 Settlement Amount does not include Defendant's share of payroll taxes, If any, due on the portion of
7 the Individual Class Payments allocated to wages. (Agreement at ¶ 1.22.) The Gross Settlement
8 Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(b).
9 The following is a table of the key financial terms of the Settlement and the proposed deductions:

10 **\$730,000** (Gross Settlement Amount)

- 11 - \$12,500 (Class Representative Service Payment - not to exceed amount)
- 12 - \$15,000 (Class Counsel Litigation Expenses Payment - requested amount)
- 13 - \$243,333 (Class Counsel Fees Payment - not to exceed 1/3 of Gross Settlement Amount)
- 14 - \$15,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 15 - \$5,750 (Administration Expenses Payment)

16 **\$438,217** (Net Settlement Amount)

17 The specific details and terms of the Settlement were discussed in the Motion for Preliminary Approval
18 and are 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 2:16-19. In sum, the Settlement
22 valued at \$730,000 is an excellent result for the Class. This result is particularly favorable in light of
23 the fact that liability and class certification in this case were far from certain in light of the defenses
24 asserted by Defendants. Given the complexities of this case, the defenses asserted, the uncertainty of
25 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
26 fair, 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*, 48
20 Cal.App.4th at 1801; *see also Officers for Justice v. Civil Service Com'n*, 688 F.2d 615, 625 (9th Cir.
21 1982). The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
22 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "The well-recognized factors that the
23 trial court should consider in evaluating the reasonableness of a class action settlement agreement
24 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
25 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
26 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
27 the presence of a governmental participant, and the reaction of the class members to the proposed
28 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 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 nearly two 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 arms-length and contentious negotiations through an all-day mediation presided over by Jeff Krivis, a respected and experience mediator of wage and hour class actions. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(h).

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. Defendants have expressly denied and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff 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. Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour employment class actions,

1 as Class Counsel has previously litigated and certified similar claims against other employers.
2 Blumenthal Decl. ¶7(a).

3 The Parties attended an arms-length mediation session with Jeff Krivis, a respected and
4 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
5 for the mediation, Defendants provided Class Counsel with payroll and employment data and other
6 information regarding the Class Members, various internal documents, and other compensation and
7 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
8 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement
9 terms were negotiated and set forth in the Agreement. 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 December 2023 to March 2024, the settlement agreement and exhibits thereto were
17 finalized and executed, and then presented by motion to this Court for preliminary approval. On August
18 2, 2024, the Court issued its Order granting preliminary approval of the Settlement as fair and
19 reasonable to the Class. Blumenthal Decl. ¶7(c).

20 3. Class Counsel is Experienced in Similar Litigation

21 Class Counsel in this matter has extensive class action experience and has represented thousands
22 of persons in class actions including employment litigation, wage and hour class actions, and complex
23 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
24 claims similar to this case and have been approved as experienced class counsel during contested
25 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
26 knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2. Class Counsel have participated in
27 every aspect of the settlement discussions and have concluded the Settlement is fair, adequate and
28 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

2 The reaction of the Class unequivocally supports approval of the Settlement. On August 9,
3 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
4 each class member with the terms of the Settlement, including notice of the claims at issue and the
5 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
6 sought, how individual settlement awards would be calculated, and the specific, estimated payment
7 amount to that individual. See Declaration of Nathalie Hernandez ("Hernandez Decl.") at ¶ 7, Exh. A.
8 In disseminating the Class Notice, the Administrator followed the notice procedures authorized by the
9 Court in its Preliminary Approval Order. Significantly, there have been no objections and no requests
10 for exclusion. Hernandez Decl. at ¶¶ 11-12. As such, the entire Class will participate in the Settlement
11 and will be sent a settlement check. See Hernandez Decl. at ¶¶ 13-14; Blumenthal Decl. ¶4.

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

20 5. The Strength of Plaintiff's Case

21 The Action alleges that Case Manager employees were misclassified as "exempt" under Labor
22 Code §515, and, thus, that Plaintiff and other Class Members were not properly paid all wages
23 (including minimum, regular, reporting time and overtime) for all hours worked, were not provided
24 meal and rest periods, were not timely paid all earned wages or vacation pay, were not provided
25 reimbursement for required expenses, were not paid all gratuities or faced improper deductions, were
26 not provided suitable seating, were not provided accurate itemized wage statements, were not paid all
27 wages at the time of termination. The Action seeks unpaid wages, penalties, attorney fees, litigation
28 costs, and any other equitable or legal relief allegedly due and owing to Plaintiff and the other Class

1 Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

2 Where both sides face significant uncertainty, the risks favor settlement. *Hanlon v. Chrysler*
3 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendants present
4 serious threats to the claims of the Plaintiff and other Class Members. The Action alleges that Case
5 Manager employees were misclassified as “exempt” under Labor Code ¶515. Therefore, Defendants’
6 primary defense was that the Class Members were properly classified as exempt under the
7 administrative exemption. Courts have been split on this issue with regard to other employers.
8 Defendants asserted that Defendants’ practices complied with all applicable Labor laws. Defendants
9 also contend that their meal and rest period policies fully complied with California law and Defendants
10 did not fail to provide the opportunity for legally required meal and rest breaks. Defendants contend
11 that there was no failure to pay for business expenses. Defendants further contend that any cell phone
12 usage was merely convenient and voluntary such that reimbursement was not legally required. Finally,
13 Defendants could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
14 (2012), weakened Plaintiff’s claims, on liability, value, and class certifiability as to the meal and rest
15 period claims. Defendants also argue that based on its facially lawful practices, Defendants acted in
16 good faith and did not willfully misclassify the Class Members as exempt as Plaintiff contends, which
17 could negate the claims for waiting time penalties and/or inaccurate wage statements altogether. If
18 successful, Defendants’ defenses could eliminate or substantially reduce any recovery to the Class.
19 While Plaintiff believes that these defenses could be overcome, Defendants maintain these defenses
20 have merit and therefore present a serious risk to 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. [...]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... Accordingly, plaintiffs argue, and the Court agrees, the
9 actual recovery confers substantial benefits on the class that outweigh the potential
10 recovery through full adjudication.

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

13 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
14 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
15 of any Class Members other than himself. At the time of the mediation, Defendants forcefully opposed
16 the propriety of class certification, arguing that individual issues precluded class certification. Class
17 Counsel has previously litigated class certification in a similar Case Manager misclassification case,
18 and the trial court denied class certification and this denial of class certification was upheld on appeal.
19 Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
20 *Assn.*, 59 Cal.4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even
21 where the class has been certified. Class certification in this Action was hotly disputed and the
22 maintenance of a certified class through trial was by no means a foregone conclusion. Blumenthal Decl.
23 ¶8(b).

24 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
25 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
26 substantial defenses both to liability and to class certification. The maximum and average Class
27 Member allocation are \$10,313.36 and \$4,340.76, respectively. *See Hernandez Decl.* ¶ 14. Given the
28 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

30 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation

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

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

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

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

25 *Id.* at *12.

26 7. The Amount Offered in Settlement

27 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
28 to Plaintiff's claims. The Declaration of Nordrehaug submitted in support of preliminary approval

1 discussed the value of the class claims in detail. Based upon 101 Class Members who collectively
2 worked 9,514 Workweeks, the Gross Settlement Amount provides an average value of \$7,227.72 per
3 Class Member and \$76.72 per Workweek and after deductions the Net Settlement Amount provides an
4 average recovery of \$4,340.76 per Class Member and a recovery of \$46.08 per Workweek. Blumenthal
5 Decl. ¶8(d).

6 The calculations to compensate for the amount due for the Class at the time of the mediation
7 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
8 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
9 wages for the Class. The maximum potential damages were calculated to be \$1,215,064 for the alleged
10 unpaid overtime wages, \$1,912,900 for alleged meal period damages based upon an assumed 100%
11 violation rate for shifts worked, \$2,409,983 for alleged rest period damages based upon the same 100%
12 violation rate, \$139,350 for alleged unreimbursed business expenses at \$50 per month. As a result, the
13 total damage valuation was calculated that Defendants were subject to a maximum damage claim in the
14 amount of \$5,677,297. As to potential penalties, Plaintiff calculated that potential waiting time
15 penalties were a maximum of \$475,000 and potential maximum wage statement penalties were
16 \$244,600.³ Defendants vigorously disputed Plaintiff's calculations and exposure theories. Blumenthal
17 Decl. ¶8(d).

18 Consequently, the Gross Settlement Amount of \$730,000 represents more than 12.8% of the
19 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
20 Notably, the 100% violation rate for meal and rest periods was assumed based upon the absence of
21

22 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
23 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
24 by Defendants, including, a good faith dispute defense as to whether any premium wages for meal or
25 rest periods or other wages were owed given Defendants' position that Plaintiff and Class Members
26 were properly classified and 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 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
28 Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The
PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

1 records, however, this certainly overstates the damages because as administrative workers, the Class
2 Members assuredly received some meal and rest breaks. Importantly, the recent decision that good faith
3 belief of compliance by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065
4 (2024), could completely negate the claims for waiting time and wage statement penalties, even if wages
5 were owed to the Class. The above maximum calculations should then be adjusted in consideration for
6 both the risk of class certification and the risk of establishing class-wide liability on all claims. Given
7 the amount of the settlement as compared to the potential value of claims in this case and the defenses
8 asserted by Defendants, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has
9 been met. Blumenthal Decl. ¶8(d).

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

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

13 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
14 for the successful prosecution and resolution of this action. California state and federal courts have
15 recognized that an appropriate method for determining award of attorneys' fees is based on a percentage
16 of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91
17 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (Cal. 1977); *Boeing Co. v. Van*
18 *Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
19 The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread
20 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear
21

22 ⁵ 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 the entire burden alone.” *Vincent*, 557 F.2d at 769.

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

11 First, the fee award representing one-third of the fund clearly falls within that range and is
12 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
13 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
14 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
15 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
16 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved
17 a one-third fee award. 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, Class Counsel secured a \$730,000 settlement for the benefit of the Class. The Settlement was
20 possible only because Class Counsel was able to convince Defendants that Plaintiff could potentially
21 prevail on the contested issues regarding liability, maintain class certification, overcome difficulties in
22 proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In
23 successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and
24 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
25 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
26 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the common fund**
27 **as attorneys' fees has been found to be appropriate.**”)

28 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is

1 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
2 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
3 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
4 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

15 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
16 the requested attorneys’ fee of one-third equal to \$243,333 is also established by reference to Class
17 Counsel’s lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
18 through October 25, 2024, Class Counsel’s total lodestar is \$207,656.25, with significant additional fees
19 still to be incurred to complete final approval and the settlement process. Blumenthal Decl. at ¶12 and
20 Exhibits #3 and 4. The requested fee award is therefore currently equivalent to Class Counsel’s total
21 lodestar with a reasonable multiplier of less than 1.2, and there will be additional lodestar incurred by
22 Class Counsel to complete the settlement process and manage the settlement distribution and reports.
23 Blumenthal Decl. at ¶12. Such a multiplier is below the range of multipliers approved in other cases
24 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

25
26 ⁶ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
27 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
28 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
Computer, 91 Cal. App. 4th 224, 255 (2001) ("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

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

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

4 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "a Class Counsel
5 Litigation Expense of no more than \$15,000". Class Counsel requests reimbursement for incurred
6 litigation expenses and costs in the amount of \$15,000 based upon counsel's billing records which
7 evidence total expenses of \$17,546.41. The requested expense reimbursement is less than actual
8 expenses incurred. These litigation expenses include the expenses incurred for filing fees, mediation
9 expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One Legal), Lexis
10 charges, and delivery expenses, all of which are costs normally billed to and paid by the client.⁷ The
11 details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and
12 4. These costs were reasonably incurred in the prosecution of the Action. Blumenthal Decl. at ¶13.
13 Because these costs were reasonable and necessary to the successful prosecution of these claims, the
14 request is reasonable and should be granted.

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

16 Plaintiff respectfully submits that for his service as the class representative, Plaintiff should be
17 awarded the agreed service award of \$12,500, in accordance with the Agreement for his time, risk and
18 effort expended on behalf of the Class. Agreement at ¶ 3.2(a). Defendants do not object to this payment
19 and there have been no objections to the requested service award by Class Members. The Blumenthal
20 Decl., at ¶14, provides a long list of equivalent service awards approved in California in similar cases,
21 which further supports the request in this case. The Declaration of the Plaintiff is submitted in support
22 of this request and is attached as Exhibit #6 to the Blumenthal Decl.

23 _____
24 2.52 as "fair and reasonable); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming
25 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).

26 ⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging,
28 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
mediation, exhibits, documents scanning, and visual equipment are typically recoverable." *Rutti v.*
Lojack Corp., Inc., 2012 WL 3151077, at *12 (C.D. Cal. 2012).

1 As the representative of the Class, Plaintiff performed his duty to the Class admirably and
2 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
3 responding to numerous requests, searching for documents, working with counsel, and reviewing the
4 settlement documentation. Blumenthal Decl. at ¶ 14. As set forth in the Agreement, the Plaintiff is also
5 providing a comprehensive release as part of the Settlement, far beyond the class release. The
6 Declaration of the Plaintiff details the involvement, stress and risks he undertook as a result of this
7 Action. Plaintiff also assumed the serious risk that he might possibly be liable for costs and fees to
8 Defendant, as well as the reputational risk that future employers may hold against him for having filed
9 a class action on behalf of fellow former employees. Blumenthal Decl. at ¶15. Without the Plaintiff's
10 participation, cooperation and information, no other employees would be receiving any benefit.
11 Blumenthal Decl. at ¶¶ 15-16.

12 The payment of service awards to successful class representatives is appropriate and the amount
13 of \$12,500 is well within the currently awarded range for similar settlements. *See e.g. Mathein v. Pier*
14 *1 Imps.*, 2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018) (approving two
15 service awards of \$12,500 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
16 173698 (approving \$10,000 service award where class member recovery was \$375); *Bellinghausen v.*
17 *Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$10,000 award). Accordingly,
18 Class Counsel respectfully request approval of the requested Class Representative Service Payment in
19 accordance with the Agreement.

20 **VI. CONCLUSION**

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

24 Dated: October 25, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Esq., Attorneys for Plaintiff