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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

FRANCIS COQUILLETTE, an
individual, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

v.

LOCATION SERVICES, LLC, a Limited
Liability Company; and DOES 1 through
50, inclusive,

Defendant.

CASE NO.: 37-2022-00019868-CU-OE-CTL

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

Hearing Date: January 17, 2025

Hearing Time: 1:30 p.m.

*[Hearing scheduled by Minute Order dated August
23, 2024]*

Judge: Hon. Katherine A. Bacal
Dept.: C-63

Action Filed: May 25, 2022

Trial Date: August 30, 2024

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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 Order dated August 23, 2024 (“Preliminary Approval Order”), the approved Class
6 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 Francis Coquillette (“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 notice to
12 the members of the Class, to date, there have been **no objections and no requests for exclusion**, which
13 means that currently the entire Class has elected to participate in the Settlement.³ Blumenthal Decl. ¶4.
14 This is a positive response from the Class evidencing their collective approval of the settlement. As
15 a result, Plaintiff respectfully submits that the class settlement should be finally approved for the same
16 reasons that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 Plaintiff and Defendant Location Services, LLC (“Defendant”) reached a full and final
19 settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with
20 the Court. As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
21 is Four Hundred Thousand Dollars (\$400,000.00). (Agreement at ¶ 1.22.) Under the Settlement, the
22

23 ¹ Capitalized terms are defined in the Agreement.

24 ² The “Class” is defined as “all individuals who are or previously were employed by Defendant in
25 California who were classified as hourly, non-exempt employees during the Class Period.” The “Class
26 Period” is defined as “October 21, 2016 to July 1, 2022” (Preliminary Approval Order at 3:18-22.)

27 ³ The Response Deadline is December 17, 2024. The final Administration figures are still being
28 prepared and will be documented in a forthcoming Declaration of Madely Nava to be filed in advance
of the hearing on this motion.

Gross Settlement Amount 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:

\$400,000 (Gross Settlement Amount)

- \$12,500 (Plaintiff's proposed service award not to exceed \$12,500 each)
- \$18,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$133,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$10,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$18,580 (Administration Expenses Payment - not to exceed amount)

\$207,587 (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. (Preliminary Approval Order at 1.) In sum, the Settlement valued at \$400,000 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. Given the complexities of this case, the defenses asserted, the risk 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
12 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
13 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th
14 at 1801. Here, the facts and circumstances compel the conclusion that the proposed settlement satisfies
15 that standard 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

1 399, 408 (2010).

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

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

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

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

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

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

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

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

2 The Parties attended an arms-length mediation session with Jeffrey Krivis, a respected 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 necessary information for the members of
5 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiff
6 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
7 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
8 agreed to this Settlement. Blumenthal Decl. ¶7(b).

9 The fact that the settlement was negotiated with the assistance of an experienced mediator
10 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
11 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
12 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
13 litigation, with the assistance of a well-respected mediator with substantial experience in employment
14 litigation[, and] this factor supports approval of the settlement”). From September 2023 to May 2024,
15 the settlement agreement and exhibits thereto were finalized and executed, and then presented by
16 motion to this Court for preliminary approval. On August 8, 2024, the Court issued its Order granting
17 preliminary approved of the settlement. Blumenthal Decl. ¶7(c).

18 3. Class Counsel is Experienced in Similar Litigation

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

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

28

1 The reaction of the Class unequivocally supports approval of the Settlement. On October 18,
2 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
3 each class member with the terms of the Settlement, including notice of the claims at issue and the
4 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
5 sought, how individual settlement awards would be calculated, and the specific, estimated payment
6 amount to that individual. See Declaration of Madely Nava. In disseminating the notice, the
7 Administrator followed the notice procedures authorized by the Court in its Preliminary Approval
8 Order. Significantly, there have been no objections and no requests for exclusion. As such, the entire
9 Class will participate in the Settlement and will be sent a settlement check. Blumenthal Decl. ¶4. The
10 final Administration figures will be set forth in forthcoming Declaration of Madely Nava to be filed in
11 advance of the hearing on this motion.

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

27 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
28

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 Plaintiff and the other Class Members. Defendant
3 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that
4 Class Members were paid for all time worked and that all work time was properly recorded. Defendant
5 maintained there was no miscalculation of the regular rate when paying wages to the Plaintiff and the
6 Class. Defendant contend that their meal and rest period policies fully complied with California law
7 and that Defendant did not fail to provide the opportunity for legally required meal and rest breaks.
8 Defendant contends that there was no failure to pay for business expenses and any cell phone usage was
9 merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendant
10 could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
11 weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period
12 claims. Defendant also argues that based on its facially lawful practices, Defendant acted in good faith
13 and without willfulness, which if accepted would negate the claims for waiting time penalties and/or
14 inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065
15 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and accurate
16 wage statement in compliance with the requirements of section 226, then it has not knowingly and
17 intentionally failed to comply with the wage statement law.") One of the most important considerations
18 is the Defendant's financial circumstances which could result in no recovery to the class and
19 necessitated the payment schedule for funding. If successful, Defendant's defenses could eliminate or
20 substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be
21 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
22 recovery by the Class. Blumenthal Decl. ¶8(a).

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

25 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
26 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
27 Associates were misclassified as exempt. In addition to the uncertainties raised by
28 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
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

1 settlement amount and the Class Members' expected net recovery, after fees and other
2 costs are deducted, appear to be a reasonable compromise, in light of the risks of
litigation.

3 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
4 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the strength of Plaintiff's case, legal
5 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
6 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

7 The potential complexity and possible duration of trial also weigh in favor of granting
8 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
9 uncertainty of outcome, and believe defendant would appeal in the event of adverse
10 judgment. A post-judgment appeal would require many years to resolve and delay
payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
11 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
12 recovery through full adjudication.

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

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

23 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
24 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
25 substantial defenses both to liability and to class certification. The maximum and average class member
26 allocations will be set forth in the forthcoming Declaration of Madely Nava. Given the complexities
27 of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is
28 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

26 *Id.* at *12.

27 7. The Amount Offered in Settlement

28 The Settlement in this case is fair, reasonable and adequate considering Defendant’s defenses

1 to Plaintiff's claims. The Declaration of Nordrehaug submitted in support of preliminary approval
2 discussed the value of the class claims in detail. Based upon 354 Class Members who worked an
3 estimated 19,074 work weeks, the Gross Settlement Amount provides an average value of \$1,129 per
4 Class Member and \$21 per workweek and after deductions the Net Settlement Amount provides an
5 average recovery of \$586.40 per Class Member and a recovery of \$10.88 per workweek. Blumenthal
6 Decl. at ¶8(d).

7 The calculations to compensate for the amount due for the Class at the time of the mediation
8 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
9 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
10 wages for the employees. The maximum potential damages were calculated to be \$1,555 for alleged
11 unpaid overtime premiums, \$464,766 for the alleged unpaid wages for off-the-clock work at one hour
12 per week, \$95,533 for the alleged unpaid wages due to miscalculation of the regular rate, \$4,444 for the
13 alleged unpaid sick pay due to the alleged miscalculation of the result rate, \$487,660 for alleged meal
14 period damages based upon a 32.9% potential violation rate for all shifts worked observed in the time
15 records, \$526,586 for alleged rest period damages based upon the same 32.9% potential violation rate
16 for shifts worked, \$22,370 for alleged unreimbursed cell-phone expenses at \$5 per month. As a result,
17 the total damage valuation was calculated that Defendant were subject to a maximum damage claim in
18 the amount of \$1,602,914. As to potential penalties, Plaintiff calculated that potential waiting time
19 penalties were a maximum of between \$613,808 and \$1,152,545, and potential maximum wage
20 statement penalties were \$125,000.⁴ Defendant vigorously disputed Plaintiff's calculations and
21 exposure theories. Blumenthal Decl. ¶8(d).

22 Consequently, the Gross Settlement Amount of \$400,000 represents more than 24% of the
23

24 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
25 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
26 by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest
27 periods or other wages were owed given Defendant's position that Plaintiff and Class Members were
28 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.").

1 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
2 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
3 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
4 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
5 calculations should then be realistically risk adjusted in consideration for both the risk of class
6 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
7 settlement as compared to the potential value of claims in this case and the defenses asserted by
8 Defendant, this settlement is fair and reasonable.⁶ Clearly, the goal of this litigation has been met.
9 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**
13 **Method**

14 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
15 for the successful prosecution and resolution of this action. California state and federal courts have
16 recognized that an appropriate method for determining award of attorneys' fees is based on a percentage
17 of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91
18 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (Cal. 1977); *Boeing Co. v. Van*
19 *Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
20 The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread

21 ⁵ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
22 Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The
23 PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

24 ⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
25 settlement where the settlement amount constituted approximately 25% of the estimated overtime
26 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
27 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
28 approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full 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 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear
2 the entire burden alone.” *Vincent*, 557 F.2d at 769.

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

12 First, the fee award representing one-third of the fund clearly falls within that range and is
13 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
14 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
15 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
16 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
17 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved
18 a on-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

19 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
20 Here, Plaintiff and their counsel secured a \$400,000 settlement for the benefit of the Class. The
21 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiff could
22 potentially prevail on the contested issues regarding liability, maintain class certification, overcome
23 difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f).
24 In successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and
25 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
26 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
27 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the common fund**
28

1 as attorneys' fees has been found to be appropriate.”)

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

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

17 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
18 the requested attorneys’ fee of one-third equal to \$133,333 is also established by reference to Class
19 Counsel’s lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
20 through December 20, 2024, Class Counsel’s total lodestar is \$170,048.75. (Blumenthal Decl. at ¶12
21 and Exhibits #3 and 4.) The requested fee award is therefore less than to Class Counsel’s current
22 lodestar, representing a negative multiplier of less than 0.8, and there will be additional lodestar incurred
23 by Class Counsel to complete the settlement process and manage the settlement distribution and reports.
24 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of positive multipliers approved in
25 other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷

26
27 ⁷ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
28 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
(2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*

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 \$18,000". Class Counsel requests reimbursement for incurred
6 litigation expenses and costs in the amount of \$17,218.46 based upon counsel's billing records which
7 evidence total expenses of \$17,218.46. These litigation expenses include the expenses incurred for
8 filing fees, mediation expenses, expert fees (Berger Consulting Group), and attorney service charges
9 (Knox, One Legal) and Lexis charges, all of which are costs normally billed to and paid by the client.⁸
10 The details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits
11 #3 and 4. These costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl.
12 at ¶13.) Because these costs were reasonable and necessary to the successful prosecution of these
13 claims, the request is reasonable and should be granted.

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

15 Plaintiff respectfully submits that for his service as the class representatives, Plaintiff should be
16 awarded the agreed service award of \$12,500, in accordance with the Agreement for his time, risk and
17 effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendant has agreed to this payment
18 and there have been no objections to the requested service award. The Blumenthal Decl., at ¶14,
19 provides a long list of equivalent service awards approved in California in similar cases, which further
20 supports the request in this case. The Declaration of the Plaintiff is submitted in support of this request
21

22 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
23 *re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of
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 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,
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 and is attached as Exhibit #6 to the Blumenthal Decl.

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

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

21 **VI. CONCLUSION**

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

25 Dated: December 20, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
26 By: /s/ Kyle Nordrehaug
27 Kyle R. Nordrehaug, Esq.
28 Attorneys for Plaintiff