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

GLORIA GUINILING, an individual, on
behalf of herself, on behalf of all persons
similarly situated,

Plaintiff,

vs.

ESCONDIDO MEDICAL INVESTORS
LIMITED PARTNERSHIP LIFE CARE
CENTER OF ESCONDIDO, a Limited
Partnership; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00019520-CU-OE-CTL

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

Hearing Date: January 12, 2024

Hearing Time: 9:00 a.m.

*[Hearing scheduled by Order dated August 18,
2023]*

Judge: Hon. Matthew C. Braner

Dept.: 60

Action Filed: May 23, 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
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 18, 2023 (“Preliminary Approval
6 Order”), the approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiff Gloria Guiniling (“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, there have been **no objections and no requests for exclusion**, which means
13 that currently the entire Class (100%) has elected to participate in the Settlement. 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 as fair,
16 reasonable, and adequate for the same reasons that the Court granted preliminarily approval of the
17 settlement.

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

19 Plaintiff and Defendant Escondido Medical Investors Limited Partnership Life Care Center of
20 Escondido (“Defendant”) reached a full and final settlement of the above-captioned action, which is
21 embodied in the Agreement filed concurrently with the Court. As consideration for this Settlement,
22 the Gross Settlement Amount to be paid by Defendant is Eight Hundred Fifty Thousand Dollars
23 (\$850,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of
24 the following elements: (1) payment of the Individual Class Payments to the Participating Class
25

26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals who were employed by Defendant in California and
28 classified as a non-exempt employee at any time during the Class Period.” (Preliminary Approval Order
at ¶5.) The “Class Period” is defined as “May 23, 2018 through August 16, 2022.” *Id.*

1 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
2 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5)
3 the PAGA Penalties payment. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement
4 Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross
5 Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Blumenthal
6 Decl. ¶3(b).

7 The following is a table of the key financial terms of the Settlement and the proposed
8 deductions:

9 **\$850,000** (Gross Settlement Amount)

- 10 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 11 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 12 - \$283,333 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 13 - \$50,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 14 - \$12,000 (Administration Expenses Payment - not to exceed amount)

15 **\$469,667** (Net Settlement Amount)

16 Within fifteen (15) days of the Effective Date, Defendant shall deposit the Gross Settlement
17 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
18 to Participating Class Members along with the other Court-approved distributions shall be made by the
19 Administrator within fourteen (14) days after Defendant fully funds the Gross Settlement Amount.
20 (Agreement at ¶ 5.1.) Blumenthal Decl. ¶3(c).

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

23 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
24 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
25 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
26 at \$850,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
27 that liability and class certification in this case were far from certain in light of the defenses asserted
28 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).

///

1 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
2 **OF CLASS ACTION SETTLEMENTS**

3 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
4 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
5 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
6 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
7 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

15 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
16 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
17 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
18 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
19 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
20 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*,
21 48 Cal. App. 4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the
22 proposed settlement satisfies that standard and the presumption applies.

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

24 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
25 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
26 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
27 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "The
28 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class

1 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
2 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
3 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
4 experience and views of counsel, the presence of a governmental participant, and the reaction of the
5 class members to the proposed settlement.'” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
6 128 (2008) (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.
7 App. 4th 399, 408 (2010).

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

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

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

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

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

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

28 This Settlement is the result of extensive and hard-fought litigation as well as negotiations

1 before an experienced and well-respected mediator. Defendant has expressly denied and continue to
2 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
3 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
4 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to
5 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
6 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has
7 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

8 The Parties attended an arms-length mediation session with Tripper Ortman, Esq., a respected
9 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
10 preparation for the mediation, Defendant provided Class Counsel with necessary information for the
11 members of the Class, including payroll data and data concerning the composition of the Class.
12 Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and
13 submitted a mediation brief and damage valuation to the Mediator. Following this all-day mediation,
14 the Parties agreed to this Settlement, which was memorialized in the form of a Memorandum of
15 Understanding. Blumenthal Decl. ¶7(b).

16 The fact that the settlement was negotiated with the assistance of an experienced mediator
17 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
18 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
19 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
20 litigation, with the assistance of a well-respected mediator with substantial experience in employment
21 litigation[, and] this factor supports approval of the settlement”).

22 From April 2023 to July 2023, the settlement agreement and exhibits thereto were finalized and
23 executed, and then presented by motion to this Court for preliminary approval. On August 18, 2023,
24 the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the
25 Class. Blumenthal Decl. ¶7(c).

26 3. Class Counsel is Experienced in Similar Litigation

27 Class Counsel in this matter has extensive class action experience and has represented thousands
28 of persons in class actions including employment litigation, wage and hour class actions, and complex

1 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
2 claims similar to this case and have been approved as experienced class counsel during contested
3 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
4 knowledgeable in this area of law. A list of class action cases managed and settled by the Class
5 Counsel in this action is provided to the Court as Exhibit #1 to the Blumenthal Decl. Class Counsel
6 have participated in every aspect of the settlement discussions and have concluded the settlement is fair,
7 adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

8 4. There Have Been No Objections and No Requests for Exclusion

9 The reaction of the Class unequivocally supports approval of the Settlement. On September 19,
10 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
11 each class member with the terms of the Settlement, including notice of the claims at issue and the
12 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
13 sought, how individual settlement awards would be calculated, and the specific, estimated payment
14 amount to that individual. See Declaration of Nick Castro ("Castro Decl."). In disseminating the notice,
15 the Administrator followed the notice procedures authorized by the Court in its Preliminary Approval
16 Order. Significantly, there have been no objections and no requests for exclusion. Castro Decl. ¶¶11-
17 12. As such, the entire Class will participate in the Settlement and will be sent a settlement check. *See*
18 Castro Decl. at ¶¶ 13-14; Blumenthal Decl. ¶4.

19 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
20 Settlement. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
21 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
22 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
23 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
24 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
25 settlement should be considered when determining fairness of settlement). Here, where there are no
26 objections and no opt-outs, the approval of the class is evident.

27 5. The Strength of Plaintiff's Case

28 The Action generally alleges that Plaintiff and other Class Members were not properly paid all

1 overtime wages for hours worked and at the correct rate, were not provided meal and rest periods or
2 premium payment in lieu thereof, were not paid accrued used sick pay at the correct rate, were not
3 timely paid earned wages, were not provided reimbursement for required expenses, were not provided
4 accurate itemized wage statements, were not paid all wages at the time of termination. Blumenthal
5 Decl. ¶5.

6 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
7 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant
8 present serious threats to the claims of the Plaintiff and the other Class Members. Defendant asserted
9 that Defendant's practices complied with all applicable Labor laws. Defendant argued that all work
10 time was properly recorded and paid for and that there was no unpaid wages. Defendant contends that
11 its meal and rest period policies fully complied with California law and Defendant did not fail to
12 provide the opportunity for legally required meal and rest breaks. As to expense reimbursement,
13 Defendant contended that it did not fail to provide reimbursement for necessary business expenses and
14 that claimed cellphone expenses were incurred voluntarily and/or for the convenience of employees and
15 is therefore not required reimbursement. Defendant argued that the decisions in *Brinker v. Superior*
16 *Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003),
17 and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on
18 liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that
19 based on its facially lawful practices, it acted in good faith and without willfulness, which if accepted
20 would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful,
21 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff
22 believes that these defenses could be overcome, Defendant maintains these defenses have merit and
23 therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

26 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
27 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
28 Associates were misclassified as exempt.

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

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

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

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

14 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
15 to obtain class certification and thereby not recover on behalf of any employees other than herself.
16 Defendant argued that the individual experience of each putative class member varied with respect to
17 the claims. Defendant could also contest class certification by arguing injury and good faith were case-
18 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
19 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
20 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,
21 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
22 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the
23 class has been certified. While other cases have approved class certification in wage and hour claims,
24 class certification in this action would have been hotly disputed and was by no means a foregone
25 conclusion. Blumenthal Decl. ¶8(b).

26 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
27 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
28 substantial defenses both to liability and to class certification. The maximum and average class
29 member allocation (including their Individual PAGA Payment) are \$4,258.99 and \$1,157.54,
30 respectively. See Castro Decl. ¶ 14. Given the complexities of this case, the defenses, along with the
31 uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should

1 be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

23 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
24 and likely duration of further litigation likewise favors the settlement. Regardless of
25 how this Court might have ruled on the merits of the legal issues, the losing party likely
26 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." See *In re Mego Financial
Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further
litigation is substantial.

27 *Id.* at *12.
28

1 7. The Amount Offered in Settlement

2 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
3 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
4 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
5 favorably to the value of the claims. Based upon 407 Class Members who collectively worked 24,557
6 work weeks, the Gross Settlement Amount provides a value of \$2,088 per Class Member and \$34 per
7 Workweek and after deductions, the Net Settlement Amount provides an average recovery of \$1,157.54
8 per Class Member and \$19.18 per work week.

9 The calculations to compensate for the amount due to the Class Members at the time this
10 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
11 mediation. Class Counsel analyzed the data for putative class members and determined the potential
12 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid sick
13 pay based due to the regular rate calculation was \$5,551, the maximum value of the claim for unpaid
14 wages due to alleged off-the-clock work at 1 hour per week was \$858,951, the maximum potential meal
15 period damages were estimated to be \$2,333,260 based upon a potential 87% violation rate observed
16 in the time records, the maximum potential rest period damages were estimated to be \$2,556,521 based
17 upon the same 87% violation rate for all shifts, and the maximum potential damages for failure to
18 provide expense reimbursement were calculated to be \$30,696. In total, the damages for the Class were
19 calculated to have a maximum potential total value of \$5,784,978. In addition, Plaintiff calculated that
20 the maximum value of the potential waiting time penalties were \$2,179,009, and the maximum value
21 of the potential wage statement penalties were \$283,600.³ Blumenthal Decl. ¶8(d).

22 Consequently, the Gross Settlement Amount represents more than 14% of the potential
23 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in

24
25 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
26 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
27 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
28 meal or rest periods or other wages were owed given Defendant's position that Plaintiff and Class
Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
(2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
dispute as to whether and when the wages were due.").

1 full at trial.⁴ The above maximum calculations should then be adjusted in consideration for both the
2 risk of class certification and the risk of establishing class-wide liability on all claims. Given the
3 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
4 certainly fair and reasonable.⁵ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

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

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

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

17 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
18 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
19 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*
20 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state

21
22 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the
Declaration of Nordrehaug at ¶ 33 filed in support of the Motion for Preliminary Approval.

24 ⁵ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

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

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

13 Second, the results delivered by Class Counsel also support the requested percentage of the
14 fund. Class Counsel secured a \$850,000 settlement for the benefit of the Class and no Class Members
15 chose to object. The Settlement was possible only because Class Counsel was able to convince
16 Defendant that Plaintiff could potentially prevail on the contested issues regarding liability, maintain
17 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
18 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
19 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
20 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
21 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
22 **one-third of the common fund as attorneys' fees has been found to be appropriate.**”)

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

28 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees

1 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

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

6 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$850,000 has been created.
7 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
8 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
9 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
10 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
11 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
12 the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
(9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
13 Cir. 2016) (abuse of discretion not to apply risk multiplier).

14 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
15 the requested attorneys' fee of one-third equal to \$283,333 is also established by reference to Class
16 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
17 through **December 15, 2023, Class Counsel's total lodestar is \$197,191.25**, with significant additional
18 fees still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12
19 and Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel's
20 total lodestar with a modest multiplier of only 1.4, and there will be additional lodestar incurred by
21 Class Counsel to complete the settlement process and manage the settlement distribution and reports.
22 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases
23 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

24 ⁶ 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 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 "Class Counsel
5 Litigation Expenses Payment of not more than \$25,000." Class Counsel requests reimbursement for
6 **incurred litigation expenses and costs in the amount of \$22,747.89 based upon counsel's billing**
7 **records**. The requested expense reimbursement is less than the not-to-exceed amount identified in the
8 Agreement and the difference will remain in the Net Settlement Amount for distribution to the Class.
9 These litigation expenses include the expenses incurred for filing fees, mediation expenses, expert fees
10 (Berger Consulting Group), attorney service charges (Knox, One Legal), court appearance chargers,
11 research (LexisNexis) charges, all of which are costs normally billed to and paid by the client.⁷ The
12 details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and
13 4. These costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.)
14 Because these costs were reasonable and necessary to the successful prosecution of these claims, the
15 request is reasonable and should be granted.

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

17 Plaintiff respectfully submit that for her service as the class representative, Plaintiff should be
18 awarded the agreed service award of \$10,000, in accordance with the Agreement for her time, risk and
19 effort expended on behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).) Defendant
20 has agreed to this payment and there have been no objections to the requested service award. The
21 Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California in
22 similar cases, which further supports the request in this case. The Declaration of Plaintiff details the
23 involvement, stress and risks she undertook as a result of this Action and is attached as Exhibit #5 to
24 the Blumenthal Decl.

25
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 sole representative of the Class, Plaintiff performed her 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
5 also providing a comprehensive release as part of the Settlement, far beyond the class release. Plaintiff
6 also assumed the serious risk that she might possibly be liable for costs and fees to Defendant, as well
7 as the reputational risk of being “blacklisted” by other future employers for having filed a class action
8 on behalf of fellow former employees. (Blumenthal Decl. at ¶15.) Without the Plaintiff’s participation,
9 cooperation and information, no other employees would be receiving any benefit.

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

18 **VI. CONCLUSION**

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

22 Respectfully submitted,

23 Dated: December 15, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

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