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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF MONTEREY**

15 ANGELA GARCIA, an individual, on
16 behalf of herself and on behalf of all
17 persons similarly situated,

18 Plaintiff,

19 v.

20 SUNDERSTORM INC., a Corporation;
21 SUNDERSTORM BAY LLC, a Limited
22 Liability Company; and DOES 1 through
23 50, inclusive,

24 Defendants.

Case No. 22CV001827

**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: February 23, 2024

Hearing Time: 8:30 a.m.

[Hearing scheduled by Order dated October 3, 2023]

Judge: Hon. Thomas W. Wills

Dept: 15

Complaint Filed: June 29, 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 and the Stipulation Regarding Cy Pres (collectively the
4 “Agreement”), a true and correct copy of which is attached as Exhibit #2 to the Declaration of Norman
5 Blumenthal (“Blumenthal Decl.”).¹ In accordance with the Preliminary Approval Order dated October
6 3, 2023 (“Preliminary Approval 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 Angela Garcia (“Plaintiff”) respectfully submits moves for final
9 approval, including attorneys’ fees, costs and the service award, 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 were **no objections and no requests for exclusion**, which means that
13 the entire Class (100%) has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a
14 positive response from the Class evidencing their collective approval of the settlement. As a result,
15 Plaintiff respectfully submits that the class settlement should be finally approved for the same reasons
16 that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
19 Sunderstorm Inc. and Sunderstorm Bay LLC (“Defendants”) is Six Hundred Thousand Dollars
20 (\$600,000). (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross Settlement Amount
21 consists of the following elements: (1) payment of the Individual Class Payments to the Participating
22 Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
23 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5)
24 the PAGA Penalties. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount

25 _____
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals who were employed by Defendants in California and
28 classified as a non-exempt employee at any time during the Class Period.” The “Class Period” is
 defined as “June 29, 2018 through July 1, 2023.” (Preliminary Approval Order at 3:13-15.)

1 does not include Defendants' share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement
2 Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b).
3 The following is a table of the key financial terms of the Settlement and the proposed deductions:

4 **\$600,000** (Gross Settlement Amount)

- 5 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 6 - \$15,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 7 - \$200,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 8 - \$24,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
- 9 - \$5,250 (Administration Expenses Payment)

7 **\$345,750** (Net Settlement Amount)

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

10 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
11 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
12 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
13 at \$600,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
14 that liability and class certification in this case were far from certain in light of the defenses asserted
15 by Defendants. Given the complexities of this case, the defenses asserted, the uncertainty of class
16 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
17 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

18 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
19 **OF CLASS ACTION SETTLEMENTS**

20 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
21 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
22 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
23 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
24 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

25 The court must decide whether the proposed settlement falls within the range of reasonable
26 settlements, taking into account that settlements are compromises between the parties reflecting
27 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See*
28 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be

1 judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs
2 prevailed at trial.”) In *Wershba*, the Court explained that “the merits of the underlying class claims are
3 not a basis for upsetting the settlement of a class action.” *Id.*; see also *7-Eleven, supra*, at 1150.

4 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
5 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
6 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
7 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
8 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
9 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*,
10 48 Cal. App. 4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the
11 proposed settlement satisfies that standard and the presumption applies.

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

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

25 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
26 Due regard should be given to what is otherwise a private consensual agreement between the parties.
27 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
28 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,

1 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*
2 “Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing,
3 gross approximations and rough justice.' [Citation omitted.]” *Id.*

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

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

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

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

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

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

23 The Parties attended an arms-length mediation session with Hon. Carl J. West (Ret.), a respected
24 jurist and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
25 preparation for the mediation, Defendants provided to Plaintiff and Class Counsel payroll and
26 employment data and other information regarding the Class Members, various internal documents, and
27 other compensation and employment-related materials. Class Counsel analyzed the data with the
28 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the

1 mediator. Following this all-day mediation, the Parties agreed to this Settlement based upon a
2 mediator's proposal. Blumenthal Decl. ¶7(b).

3 The fact that the settlement was negotiated with the assistance of an experienced mediator
4 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
5 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
6 2007) ("The settlement was negotiated and approved by experienced counsel on both sides of the
7 litigation, with the assistance of a well-respected mediator with substantial experience in employment
8 litigation[, and] this factor supports approval of the settlement").

9 From May 2023 to August 2023, the settlement agreement and exhibits thereto were finalized
10 and executed. On October 3, 2023, the Court issued its Order granting preliminary approval of the
11 settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

12 3. Class Counsel is Experienced in Similar Litigation

13 Class Counsel in this matter has extensive class action experience and has represented thousands
14 of persons in class actions including employment litigation, wage and hour class actions, and complex
15 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
16 claims similar to this case and have been approved as experienced class counsel during contested
17 motions in state and federal courts throughout California. The experience of counsel and class action
18 cases managed and settled by the Class Counsel in this action is provided to the Court in the Blumenthal
19 Decl. at Exhibit #1. Class Counsel have participated in every aspect of the settlement discussions and
20 have concluded the settlement is fair, adequate and reasonable and in the best interests of the Class.
21 Blumenthal Decl. ¶ 3(j).

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

23 The reaction of the Class unequivocally supports approval of the Settlement. On October 26,
24 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
25 each class member with the terms of the Settlement, including notice of the claims at issue and the
26 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
27 sought, how individual settlement awards would be calculated, and the specific, estimated payment
28 amount to that individual. See Fowler Decl. ¶ 7, Exh. A. In disseminating the notice, the Administrator

1 followed the notice procedures authorized by the Court in its Preliminary Approval Order.
2 Significantly, there have been no objections and no requests to opt-out. Fowler Decl. ¶¶11-12. As
3 such, the entire Class (100%) will participate in the Settlement and will be sent a settlement check. *See*
4 Fowler Decl. at ¶¶ 11-12; Blumenthal Decl. ¶4.

5 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
6 Settlement. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
7 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
8 indicative of the adequacy of the settlement."); *Stoetznerv v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d.
9 Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*,
10 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
11 settlement should be considered when determining fairness of settlement). Here, where there are no
12 objections, the approval of the class is evident.

13 5. The Strength of Plaintiff's Case

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

21 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
22 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
23 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
24 Defendants asserted that Defendants' practices complied with all applicable laws. Defendants argued
25 that all work time was paid for and that the regular rate was properly calculated. Defendants contended
26 that their meal and rest period policies fully complied with California law, that Defendants' timekeeping
27 system recorded meal periods, and that all meal periods were provided. Defendants' could argue the
28 significant meal period premiums paid was evidence of their legally compliance practices. As to

1 expenses reimbursement, Defendants maintained that employees were not required to use their cell
2 phones and any use of their cell phone was voluntary for their convenience and therefore not subject
3 to Labor Code §2802. Defendants argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th
4 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v.*
5 *See's Candy Shops Inc.*, 64 Cal. App.5th 85 (2021), weakened Plaintiff's claims, on liability, value, and
6 class certifiability as to the meal and rest period claims. Defendants also argue that based on its facially
7 lawful practices, they acted in good faith and without willfulness, which if accepted would negate the
8 claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendants'
9 defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believe that
10 these defenses could be overcome, Defendants maintains these defenses have merit and therefore
11 present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

14 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
15 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
16 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.

17 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
18 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
19 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
20 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

1 There was also a significant risk that, if the Actions were not settled, Plaintiff would be unable
2 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
3 Defendants argued that the individual experience of each putative class member varied with respect to
4 the claims. Defendants could also contest class certification by arguing injury and good faith were case-
5 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
6 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019)
7 (denying certification of rest break claims). Finally, even if class certification was successful, as
8 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
9 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the class
10 has been certified. While other cases have approved class certification in wage and hour claims, class
11 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
12 Blumenthal Decl. ¶8(b).

13 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
14 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
15 substantial defenses both to liability and to class certification. The maximum and average class member
16 allocation (in addition to their Individual PAGA Payment) are \$9,179.53 and \$1,711.63, respectively.
17 *See Fowler Decl. ¶15.* Given the complexities of this case, the defenses, along with the uncertainties
18 of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
19 approved. Blumenthal Decl. at ¶8(e).

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

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

27 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendants
28 through possible appeals which could take at least another two or three years. Class Counsel also have

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

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

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

20 *Id.* at *12.

21 7. The Amount Offered in Settlement

22 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
23 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
24 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
25 favorably to the value of the claims. Based upon 202 Class Members who collectively worked 9,341
26 weeks, the Gross Settlement Amount provides a value of \$2,970 per Class Member and \$64 per work
27 week and the Net Settlement Amount provides an average recovery of \$1,711.63 per Class Member and
28 a recovery of \$37.01 per work week. The 25% allocation of the PAGA Penalties will be distributed
to the 109 Aggrieved Employees who worked 2,378 pay periods during the PAGA Period, resulting in
an average Individual PAGA Payment of \$55.05 per Aggrieved Employee and \$2.52 per PAGA Pay
Period. Blumenthal Decl. at ¶8(d).

1 The calculations to compensate for the amount due for the Class at the time of the mediation
2 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
3 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
4 wages for the employees. For the Class, the maximum value of the claim for unpaid wages due to off
5 the clock work was potentially \$260,878, the maximum value of the claim for unpaid wages due to an
6 alleged miscalculation of the regular rate for wages and sick pay was \$17,157, the maximum value of
7 the claim for unpaid wages due to the maximum potential damages for unpaid meal premiums were
8 estimated to be \$47,400 based upon an alleged 18% violation rate and after deducting the significant
9 meal period premiums paid by Defendants, the maximum potential rest period damages were estimated
10 to be \$821,758 based upon an potential 85% violation rate observed in the time records, and the
11 maximum potential damages for failure to provide expense reimbursement were calculated to be
12 \$12,870. In total, the damages for the Class were calculated to have a maximum potential total value
13 of \$1,160,064. In addition, Plaintiff calculated that the maximum value of the potential waiting time
14 penalties were between \$223,914 and \$447,828, depending on the predicate violation, and the
15 maximum value of the potential wage statement penalties were \$215,500.³ Blumenthal Decl. ¶8(d).

16 Consequently, the Gross Settlement Amount represents more than 51% of the potential
17 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
18 full at trial.⁴ Given the amount of the settlement as compared to the potential value of claims in this
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20
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22
23 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
24 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
25 by Defendants, including, a good faith dispute defense as to whether any wages were owed given
26 Defendants' position that Plaintiff were properly compensated. *See Nordstrom Commission Cases*, 186
Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee
have a good faith dispute as to whether and when the wages were due.").

27 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
28 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
Motion for Preliminary Approval in paragraph 33 of the supporting Declaration of Nordrehaug.

case and the defenses asserted by Defendants, this settlement is fair and reasonable.⁵ Blumenthal Decl. ¶8(d).

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

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

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

The California Supreme Court has provided guidance regarding the award of attorneys' fees in wage and hour class action settlements. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. See *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund

⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a settlement where the settlement amount constituted approximately 25% of the estimated overtime damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents approximately 10% of what class might have been awarded had they succeeded at trial."). 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 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
2 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

10 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
11 Here, Plaintiff and her counsel secured a \$600,000 settlement for the benefit of the Class and none of
12 the Class elected to opt out. Similarly, not one Class Member objected. The Settlement was possible
13 only because Class Counsel was able to convince Defendants that Plaintiff could potentially prevail on
14 the contested issues regarding liability, maintain class certification, overcome difficulties in proof as
15 to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In successfully
16 navigating these hurdles Class Counsel displayed the necessary skills in both wage and hour and class
17 action litigation. Moreover, as discussed above, there were significant risks to the contingent litigation.
18 See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case,**
19 **where recovery is uncertain, an award of one-third of the common fund as attorneys' fees has**
20 **been found to be appropriate.**”)

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

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

28 No one expects a lawyer whose compensation is contingent upon his success to charge, when

1 successful, as little as he would charge a client who had agreed to pay for his services, regardless
2 of success. Nor, particularly in complicated cases producing large recoveries, is it just to make
a fee depend solely on the reasonable amount of time expended.

3 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$600,000 has been created.
4 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
5 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
6 well as a long battle with a corporate Defendants who had retained a premier and highly experienced
7 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
8 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
9 the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
10 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
11 Cir. 2016) (abuse of discretion not to apply risk multiplier).

12 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
13 the requested attorneys' fee of one-third equal to \$200,000 is also established by reference to Class
14 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence
15 that through January 26, 2024, Class Counsel's total lodestar is \$159,123.75**, with significant
16 additional fees still to be incurred to complete final approval and the settlement process. (Blumenthal
17 Decl. at ¶12 and Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class
18 Counsel's total lodestar with a multiplier of less than 1.3, and there will be additional lodestar incurred
19 by Class Counsel to complete the settlement process and manage the settlement distribution and reports.
20 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases
21 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

22
23
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*, 91 Cal. App.
27 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
28 *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 is fair, of
2 the common fund is 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 \$15,000." Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$15,000. Class Counsel have incurred
7 \$19,805.21 based upon counsel's billing records; therefore, this requested amount of \$15,000 is less
8 than the amount actually incurred by Class Counsel. These litigation expenses include the expenses
9 incurred for filing fees, mediation expenses, expert expenses (Berger Consulting), and attorney service
10 charges (Knox, OneLegal), research charges (LexisNexis), and appearance fees, all of which are costs
11 normally billed to and paid by the client.⁷ The details of the litigation expenses incurred are set forth
12 the Blumenthal Decl. at ¶13 and Exhibits #3 and 4. These costs were reasonably incurred in the
13 prosecution of the Action. (Blumenthal Decl. at ¶13.) Because these costs were reasonable and
14 necessary to the successful prosecution of these claims, the request is reasonable and should be granted.

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

16 Plaintiff respectfully submit that for her service as the class representative, Plaintiff should be
17 awarded the agreed service award of \$10,000, in accordance with the Agreement for her time, risk and
18 effort expended on behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).) Defendants
19 have agreed to this payment and there have been no objections to the requested service award. The
20 Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California in
21 similar cases, which further supports the request in this case. The Declaration of Plaintiff is submitted
22 in support of this request and is attached as Exhibit #6 to the Blumenthal Decl.

23 As the representative of the Class, Plaintiff performed her duty to the Class admirably and
24 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,

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

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: January 26, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug
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