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

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

15 DONALD MATHEWS, an individual, on
16 behalf of himself and on behalf of all
17 persons similarly situated,

18 Plaintiffs,

19 vs.

20 HANSEN & ADKINS AUTO
21 TRANSPORT, INC., a California
22 Corporation; and DOES 1 through 50,
23 inclusive,

24 Defendants.

CASE NO.: **CVRI2203075**
[Consolidated with CVRI2203224]

**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: April 2, 2024

Hearing Time: 8:30 a.m.

*[Hearing scheduled by Order dated November
21, 2023]*

Judge: Hon. Harold W. Hopp
Dept: 1

Action Filed: July 21, 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 First Amended Class Action and PAGA Settlement Agreement (the "Agreement"), a true and correct
4 copy of which is attached as Exhibit #2 to the Declaration of Norman Blumenthal ("Blumenthal
5 Decl.").¹ In accordance with the Preliminary Approval Order dated November 21, 2023 ("Preliminary
6 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 Donald Mathews ("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 were **no objections and no requests for exclusion**, which means that
13 the entire Class has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a positive
14 response from the Class evidencing their collective approval of the settlement. As a result, Plaintiff
15 respectfully submits that the class settlement should be finally approved for the same reasons that the
16 Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 The following is a table of the key financial terms of the Settlement and the proposed
19 deductions:

20 **\$575,000** (Gross Settlement Amount)
21 - \$12,500 (Plaintiff's proposed service award not to exceed amount)
22 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
23 - \$191,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
24 - \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
25 - \$12,000 (Administration Expenses Payment - not to exceed amount)
26 **\$323,834** (Net Settlement Amount)

27 Plaintiff and Defendant Hansen & Adkins Auto Transport, Inc. ("Defendant") reached a full and
28

26 ¹ Capitalized terms are defined in the Agreement.

27 ² The "Class" is defined as "all individuals who are or previously worked for Defendant in
28 California who were classified as non-exempt at any time during the Class Period." The "Class Period"
is defined as "July 21, 2018 through September 8, 2023" (Preliminary Approval Order at 3:23-26.)

1 final settlement of the above-captioned action, which is embodied in the Agreement filed concurrently
2 with the Court. As consideration for this Settlement, the Gross Settlement Amount to be paid by
3 Defendant is Five Hundred Seventy-Five Thousand Dollars (\$575,000). (Agreement at ¶ 1.22.) Under
4 the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the
5 Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and
6 Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class
7 Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment. (Agreement at ¶
8 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include Defendant's share of
9 payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
10 to Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b).

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

13 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
14 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
15 is “fair, adequate, and reasonable”. (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
16 at \$575,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
17 that liability and class certification in this case were far from certain in light of the defenses asserted
18 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
19 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
20 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

21 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL** 22 **OF CLASS ACTION SETTLEMENTS**

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

28 The court must decide whether the proposed settlement falls within the range of reasonable

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

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

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

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

28 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.

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

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

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

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

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

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

20 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
21 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
22 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
23 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
24 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to
25 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
26 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has
27 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

28 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and

1 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
2 for the mediation, Defendant provided Class Counsel with necessary information for the members of
3 the Class, including time punch data, payroll data and information concerning the composition of the
4 Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and
5 prepared and submitted a mediation brief and damage valuation to the Mediator. Following this all-day
6 mediation, the Parties agreed to this Settlement pursuant to a mediator's proposal. Blumenthal Decl.
7 ¶7(b).

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

14 From June of 2023 to August of 2023, the settlement agreement and exhibits thereto were
15 finalized and executed, and then presented by motion to this Court for preliminary approval. On
16 November 13, 2023, the Court issued a ruling outlining certain issues to be addressed by the Parties.
17 In response to the ruling, the Parties amended the settlement agreement and presented the Agreement
18 to the Court for preliminary Approval. On November 21, 2023, the Court issued its Order granting
19 preliminary approved of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

20 3. Class Counsel is Experienced in Similar Litigation

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

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

2 The reaction of the Class unequivocally supports approval of the Settlement. On December 15,
3 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
4 each class member with the terms of the Settlement, including notice of the claims at issue and the
5 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
6 sought, how individual settlement awards would be calculated, and the specific, estimated payment
7 amount to that individual. See Declaration of Christina Fowler ("Fowler Decl.") ¶7, Exh. A. In
8 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
9 its Preliminary Approval Order. Significantly, there have been no objections and no requests for
10 exclusion. Fowler Decl. ¶¶11-13. As such, the entire Class will participate in the Settlement and will
11 be sent a settlement check. Blumenthal Decl. ¶4.

12 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
13 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
14 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
15 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
16 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
17 *Union*, 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 regular and overtime wages for hours worked, were not provided meal and rest periods, were not timely
23 paid earned wages, were not provided reimbursement for required expenses, were not provided accurate
24 itemized wage statements, were not paid all wages at the time of termination. The Action seeks unpaid
25 wages, penalties, attorney fees, litigation costs, and any other relief allegedly due and owing to Plaintiff
26 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 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by

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

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

18 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
19 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
20 Associates were misclassified as exempt. In addition to the uncertainties raised by
21 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
22 Defendants notes that the question of an employer's duty to provide rest and meal
periods is an open one, signaling even less certainty for Plaintiffs. [...T]he gross
settlement amount and the Class Members' expected net recovery, after fees and other
costs are deducted, appear to be a reasonable compromise, in light of the risks of
litigation.

23 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
24 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
25 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
26 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

27 The potential complexity and possible duration of trial also weigh in favor of granting
28 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
uncertainty of outcome, and believe defendant would appeal in the event of adverse

1 judgment. A post-judgment appeal would require many years to resolve and delay
2 payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
3 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
recovery through full adjudication.

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

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

15 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
16 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
17 substantial defenses both to liability and to class certification. Currently, the maximum and average
18 class member allocations are \$3,521.73 and \$1,029.46, respectively. Fowler Decl. at ¶16. Given the
19 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
20 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

28 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant

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

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

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

22 *Id.* at *12.

23 7. The Amount Offered in Settlement

24 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
25 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
26 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
27 favorably to the value of the claims. The calculations to compensate for the amount due to the Class
28 Members at the time this Settlement was negotiated were calculated by Plaintiff's expert, Berger
Consulting, in advance of mediation. Class Counsel analyzed the data for putative class members and
determined the potential maximum damages for the class claims. The maximum potential damages
were calculated to be \$815,769 for the potential unpaid wages due to alleged off-the-clock work, \$5,000

1 for the potential unpaid overtime, meal period premiums and sick pay due to the miscalculation of the
2 regular rate, \$107,821 for alleged rest period damages based upon a 9.5% potential violation rate,
3 \$31,295 for alleged unreimbursed business expenses for personal cell phone usage at \$5 per month.
4 Other than the alleged miscalculation of the regular rate, the meal break claim for missed meal periods
5 had nominal value because Defendant established that it paid more meal period premiums than the
6 number of violations apparent in the time records. Decl. Nordrehaug, ¶6. As a result, the total damage
7 valuation was calculated that Defendant was subject to a maximum damage claim in the amount of
8 \$959,884. As to potential penalties, Plaintiff calculated that potential waiting time penalties were a
9 maximum of \$879,214 and potential wage statement penalties were \$532,000. Defendant vigorously
10 disputed Plaintiff's calculations and exposure theories. Blumenthal Decl. ¶8(d).

11 Consequently, the Gross Settlement Amount represents more than 59.5% of the potential
12 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
13 full.³ The above maximum calculations should then be adjusted in consideration for both the risk of
14 class certification and the risk of establishing class-wide liability on all claims. Given the amount of
15 the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
16 reasonable.⁴ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

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22 ³ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶ 33.

24 ⁴ 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 **V. THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARD SHOULD**
2 **BE APPROVED**

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

5 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
6 for the successful prosecution and resolution of this action. California state and federal courts have
7 recognized that an appropriate method for determining award of attorneys' fees is based on a
8 percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple*
9 *Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (Cal. 1977);
10 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759,
11 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the Class
12 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.

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

22 First, the fee award representing one-third of the fund clearly falls within that range and is
23 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
24 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market
25 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
26 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
27 "[m]ost fee awards were between 25 percent and 35 percent"). In *Laffitte*, the Court expressly approved
28 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

1 Second, the results delivered by Class Counsel also support the requested percentage of the
2 fund. Here, Plaintiff and their counsel secured a \$575,000 settlement for the benefit of the Class. The
3 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiff
4 could potentially prevail on the contested issues regarding liability, maintain class certification,
5 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
6 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
7 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
8 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
9 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
10 **common fund as attorneys' fees has been found to be appropriate.**”)

11 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
12 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
13 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
14 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class
15 that Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

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

22 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$575,000 has been created.
23 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
24 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
25 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
26 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class**
27 **action litigation, is entitled to a premium above their hourly rate in order to compensate for both**
28 **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

1 Cir. 2016) (abuse of discretion not to apply risk multiplier).

2 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
3 the requested attorneys' fee of one-third equal to \$191,666 is also established by reference to Class
4 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
5 through March 6, 2024, Class Counsel's total lodestar is \$153,100, with additional fees still to be
6 incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and Exhibits
7 #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel's total lodestar
8 with a reasonable multiplier of less than 1.3, and there will be additional lodestar incurred by Class
9 Counsel to complete the settlement process and manage the settlement distribution. (Blumenthal Decl.
10 at ¶12.) Such a multiplier is below the range of positive multipliers approved in other cases such as
11 *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁵

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

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

15 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
16 Litigation Expenses Payment of not more than \$20,000." Class Counsel requests reimbursement for
17 incurred litigation expenses and costs in the amount of \$20,000 based upon counsel's billing records
18 which evidence total expenses of \$25,216.45. The requested expense reimbursement is less than the
19 actual expenses incurred, with the difference to be retained in the Net Settlement Amount to be
20 distributed to the Class. These litigation expenses include the expenses incurred for filing fees,
21 mediation expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One
22
23

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

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

7 Plaintiff respectfully submits that for his service as the only class representative, Plaintiff should
8 be awarded the agreed service award of \$12,500 in accordance with the Agreement for his time, risk
9 and effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendant has agreed to this
10 payment and there have been no objections to the requested service award. The Blumenthal Decl., at
11 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
12 further supports the request in this case. The Declarations of the Plaintiff is submitted in support of this
13 request and are attached as Exhibits #6 to the Blumenthal Decl.

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

25
26 ⁶ 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 The payment of service awards to successful class representatives is appropriate and the amount
2 of \$12,500 is well within the currently awarded range for similar settlements. *See e.g. Andrews v.*
3 *Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the
4 requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019
5 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award);
6 *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500
7 where average class member payment was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
8 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime
9 class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007). Accordingly, Class
10 Counsel respectfully request approval of the requested Class Representative Service Payment in
11 accordance with the Agreement.

12 **VI. CONCLUSION**

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

16
17 Dated: March 8, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

18 By: /s/ Kyle Nordrehaug
19 Kyle R. Nordrehaug, Esq.
20 Attorneys for Plaintiff
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