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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

TAMIKA WALKER and SHANNON
PEETE, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: **22CV400335**

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

Hearing Date: April 18, 2024

Hearing Time: 1:30 p.m.

*[Hearing scheduled by Orders dated August 11, 2023
and December 20, 2023]*

Judge: Hon. Charles F. Adams

Dept: 7

Date Filed: July 13, 2022

Trial Date: Not set

TABLE OF CONTENTS

I.	INTRODUCTION.....	-1-
II.	THE SETTLEMENT BEFORE THE COURT	-1-
III.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS.....	-2-
IV.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.....	-3-
A.	The Settlement Satisfies the California Test for Fairness.....	-4-
1.	The Investigation and Analysis of Documents are Sufficient to Allow Counsel and the Court to Act Intelligently	-4-
2.	The Settlement was Reached Through Arm's Length Bargaining	-4-
3.	Class Counsel is Experienced in Similar Litigation	-5-
4.	There Are No Objections and No Requests for Exclusion	-6-
5.	The Strength of Plaintiffs' Case	-6-
6.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	-8-
7.	The Amount Offered in Settlement.....	-9-
V.	THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARD SHOULD BE APPROVED	-11-
A.	The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund Method	-11-
B.	Class Counsel Litigation Expenses Payment	-14-
C.	The Service Award Is Reasonable and Should be Approved	-14-
VI.	CONCLUSION.....	-15-

TABLE OF AUTHORITIES

Cases:	Page:
<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	-2-, -3-
<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652 (E.D. Cal. Jun 24, 2008)	-5-
<i>Andrews v. Plains All Am. Pipeline L.P.</i> , 2022 U.S. Dist. LEXIS 172183 (C.D. Cal. 2022)	-15-
<i>Barbosa v. Cargill Meat Solutions Corp.</i> , 297 F.R.D. 431 (E.D. Cal. 2013)	-12-
<i>Barcia v. Contain-A-Way, Inc.</i> , 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009)	-8-
<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245 (N.D. Cal. 2015)	-15-
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	-11-
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	-7-
<i>Browning v. Yahoo!, Inc.</i> , 2007 U.S. Dist. LEXIS 86266 (N.D. Cal. 2007)	-7-
<i>Cacho v. Eurostar, Inc.</i> , 43 Cal. App. 5th 885 (2019)	-8-
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2009)	-3-
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	-13-
<i>City of Detroit v. Grinnell Corp</i> 495 F.2d 448 (2d Cir. 1974)	-12-
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	-3-, -4-
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9th Cir. 2000)	-9-, -11-
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	-8-, -9-
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	-12-

1	<i>Glass v. UBS Fin. Servs.,</i>	
2	2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330 (N.D. Cal. 2007)	-5-, -9-
3	<i>Hanlon v. Chrysler Corp.,</i>	
4	150 F.3d 1011 (9th Cir. 1998)	-6-
5	<i>Holman v. Experian Info. Solutions, Inc.,</i>	
6	2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	-15-
7	<i>Hopson v. Hanesbrands Inc.,</i>	
8	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009)	-7-
9	<i>Huens v. Tatum,</i>	
10	52 Cal. App. 4th 259 (1997)	-2-
11	<i>In re Austrian & German Bank Holocaust Litigation,</i>	
12	80 F. Supp. 2d 164 (S.D.N.Y. 2000)	-6-
13	<i>In re Sutter Health Uninsured Pricing Cases,</i>	
14	171 Cal.App.4th 495 (2009)	-13-
15	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
16	168 Cal. App. 4th 116 (2008)	-3-
17	<i>Laffitte v. Robert Half Int'l,</i>	
18	1 Cal. 5th 480 (2016)	-11-, -12-, -13-
19	<i>Laskey v. Int'l Union,</i>	
20	638 F.2d 954 (6th Cir. 1981)	-6-
21	<i>Lockheed Martin Corp. v. Superior Ct.,</i>	
22	29 Cal. 4th 1096 (2003)	-7-
23	<i>Louie v. Kaiser Foundation Health Plan, Inc.,</i>	
24	2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008)	-8-
25	<i>Ma v. Covidien Holding, Inc.,</i>	
26	2014 WL 2472316, (C.D. Cal. 2014)	-11-
27	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.,</i>	
28	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	-15-
	<i>Munoz v. BCI Coca-Cola Bottling Co. of L. A.,</i>	
	186 Cal. App. 4th 399 (2010)	-3-
	<i>Nordstrom Commission Cases,</i>	
	186 Cal. App. 4th 576 (2010)	-10-
	<i>Officers for Justice v. Civil Service Com'n,</i>	
	688 F.2d 615 (9th Cir. 1982)	-3-

1	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
2	182 Cal.App.4th 278 (2010)	-13-
3	<i>Reynolds v. Direct Flow Med., Inc.</i> ,	
4	2019 U.S. Dist. LEXIS 149865 (N.D. Cal. 2019)	-15-
5	<i>Rutti v. Lojack Corp., Inc.</i> ,	
6	2012 WL 3151077 (C.D. Cal. 2012).....	-14-
7	<i>Salazar v. See's Candy Shops Inc.</i> ,	
8	64 Cal.App.5th 85 (2021)	-7-
9	<i>Serrano v. Priest</i> ,	
10	20 Cal. 3d 25 (Cal. 1977)	-11-
11	<i>Stanger v. China Elec. Motor, Inc.</i> ,	
12	812 F.3d 734 (9th Cir. 2016)	-13-
13	<i>Stetson v. Grissom</i> ,	
14	821 F.3d 1157 (9th Cir. 2016)	-13-, -14-
15	<i>Stoetznner v. U.S. Steel Corp.</i> ,	
16	897 F.2d 115 (3d. Cir. 1990)	-6-
17	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
18	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	-11-
19	<i>Swedish Hospital v. Shalala</i> ,	
20	1 F.3d 1261 (D.C. Cir. 1993)	-12-
21	<i>Taylor v. Fedex Freight, Inc.</i> ,	
22	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016).....	-13-
23	<i>Viceral v. Mistras Grp., Inc.</i> ,	
24	2016 WL 5907869 (N.D. Cal. 2016)	-11-
25	<i>Vincent v. Hughes Air West, Inc.</i> ,	
26	557 F.2d 759 (9th Cir. 1997)	-11-
27	<i>Vizcaino v. Microsoft Corp.</i> ,	
28	290 F.3d 1043 (9th Cir. 2002)	-13-
	<i>Wershba v. Apple Computer</i> ,	
	91 Cal. App. 4th 224 (2001)	-3-, -11-, -13-

Secondary Sources:

Page:

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-12-

1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Order dated August 11, 2023 (“Preliminary Approval Order”) and the Order dated
6 December 20, 2023, the approved Class Notice was disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiffs Tamika Walker and Shannon Peete (“Plaintiffs”) respectfully
9 submits this memorandum in support of the unopposed motion for final approval and the proposed entry
10 of the Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent
11 result for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the
12 notice to the members of the Class, there were **no objections and no requests for exclusion**, which
13 means that the entire Class has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is
14 a positive response from the Class evidencing their collective approval of the settlement. As a result,
15 Plaintiffs respectfully submit 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 Plaintiffs and Defendant DJO, LLC (“Defendant”) reached a full and final settlement of the
19 above-captioned action, which is embodied in the Agreement filed concurrently with the Court. As
20 consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is One Million
21 Five Hundred Thousand Dollars (\$1,500,000). (Agreement at ¶ 1.22.) Because of the escalator
22 provision in the Agreement, the Gross Settlement Amount increased to \$1,950,515.97. Under the
23 Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the

25 ¹ Capitalized terms are defined in the Agreement.

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

1 Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and
2 Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class
3 Representative Service Payments to Plaintiffs; and (5) the PAGA Penalties payment. (Agreement at
4 ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include Defendant's share of
5 payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
6 to Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b). The following is a table of the key
7 financial terms of the Settlement and the proposed deductions:

8 **\$1,500,000** (original Gross Settlement Amount)
 + \$450,515.97 (increase due to escalator)
9 **\$1,950,515.97**
 - \$20,000 (Plaintiffs' proposed service awards not to exceed \$10,000 each)
10 - \$21,500 (Class Counsel Litigation Expenses Payment - not to exceed amount)
 - \$650,171.99 (Class Counsel Fees Payment - not to exceed one-third of settlement)
11 - \$150,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
 - \$12,430.88 (Administration Expenses Payment - not to exceed amount)
12 **\$1,096,413.10** (Net Settlement Amount)

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

15 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
16 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
17 is "fair, adequate, and reasonable". (Preliminary Approval Order at 7:7-9.) In sum, the Settlement
18 valued at \$1,950,515.97 is an excellent result for the Class. This result is particularly favorable in light
19 of the fact that liability and class certification in this case were far from certain in light of the defenses
20 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
21 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
22 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

23 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
24 **OF CLASS ACTION SETTLEMENTS**

25 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
26 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
27 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
28

1 v. *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
2 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

19 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
20 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
21 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
22 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "The
23 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
24 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
25 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
26 offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience
27 and views of counsel, the presence of a governmental participant, and the reaction of the class members
28

1 to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
2 (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th
3 399, 408 (2010).

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

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

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

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

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

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

24 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
25 before an experienced and well-respected mediator. Defendant has expressly denied and continue to
26 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
27 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
28 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to

1 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
2 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has
3 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

4 The Parties attended an arms-length mediation session with Mark Rudy, a respected and
5 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
6 for the mediation, Defendant provided Class Counsel with necessary information for the members of
7 the Class, including payroll data and information concerning the composition of the Class. Plaintiffs
8 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
9 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
10 agreed to this Settlement based upon the Mediator's proposal, which was memorialized in the form of
11 a Memorandum of Understanding. The final settlement terms were negotiated and set forth in the
12 Agreement now presented for this Court's approval. Blumenthal Decl. ¶7(b).

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

19 From February 2023 to June 2023, the settlement agreement and exhibits thereto were finalized
20 and executed, and then presented by motion to this Court for preliminary approval. On August 11,
21 2023, the Court issued its Order granting preliminary approved of the settlement as fair and reasonable
22 to the Class. Blumenthal Decl. ¶7(c).

23 3. Class Counsel is Experienced in Similar Litigation

24 Class Counsel in this matter has extensive class action experience and has represented thousands
25 of persons in class actions including employment litigation, wage and hour class actions, and complex
26 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
27 claims similar to this case and have been approved as experienced class counsel during contested
28

1 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
2 knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2. Class Counsel have participated in
3 every aspect of the settlement discussions and have concluded the settlement is fair, adequate and
4 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

6 The reaction of the Class unequivocally supports approval of the Settlement. On January 11,
7 2024 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
8 each class member with the terms of the Settlement, including notice of the claims at issue and the
9 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
10 sought, how individual settlement awards would be calculated, and the specific, estimated payment
11 amount to that individual. See Declaration of Cassandra Polities ("Polities Decl.") at ¶ 9, Exh. A. In
12 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
13 its Preliminary Approval Order. Significantly, there have been no objections and no requests for
14 exclusion. Polities Decl. at ¶¶ 13-14. As such, the entire Class will participate in the Settlement and
15 will be sent a settlement check. See Polities Decl. at ¶¶ 17 and 18; Blumenthal Decl. ¶4.

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

24 5. The Strength of Plaintiffs' Case

25 The Action generally alleges that Plaintiffs and other Class Members were not properly paid all
26 overtime wages for hours worked, were not provided meal and rest periods, were not timely paid earned
27 wages, were not provided reimbursement for required expenses, were not provided accurate itemized
28

1 wage statements, were not paid all wages at the time of termination. The Action seeks unpaid wages,
2 penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and owing
3 to Plaintiffs and the other Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

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

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

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

1 Associates were misclassified as exempt. In addition to the uncertainties raised by
2 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
3 Defendants notes that the question of an employer's duty to provide rest and meal
4 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.

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

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

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

19 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
20 to obtain class certification and thereby not recover on behalf of any employees other than himself.
21 Defendant argued that the individual experience of each putative class member varied with respect to
22 the claims. Defendant could also contest class certification by arguing injury and good faith were case-
23 by-case determinations that precluded class certification. Plaintiffs are aware of other cases where class
24 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019)
25 (denying certification of rest break claims). Finally, even if class certification was successful, as
26 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
27 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the class
28 has been certified. While other cases have approved class certification in wage and hour claims, class
certification in this action would have been hotly disputed and was by no means a foregone conclusion.
Blumenthal Decl. ¶8(b).

1 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
2 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
3 substantial defenses both to liability and to class certification. Currently, the maximum and average
4 class member allocation are \$5,344.92 and \$681.85, respectively. *See* Politics Decl. ¶18. Given the
5 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
6 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

14 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying
15 this Action against Defendant and then litigating possible appeals which could take several years. Class
16 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
17 class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent problems
18 of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
19 Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the
20 best interest of the Class Members. Blumenthal Decl. ¶8(c).

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

25 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
26 and likely duration of further litigation likewise favors the settlement. Regardless of how
27 this Court might have ruled on the merits of the legal issues, the losing party likely
28 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*

1 *Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further
2 litigation is substantial.

3 *Id.* at *12.

4 7. The Amount Offered in Settlement

5 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
6 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
7 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
8 favorably to the value of the claims. The calculations to compensate for the amount due to the Class
9 Members at the time this Settlement was negotiated were calculated by Plaintiffs' expert, Berger
10 Consulting, in advance of mediation. Class Counsel analyzed the data for putative class members and
11 determined the potential maximum damages for the class claims. For the Class, the maximum value
12 of the claim for unpaid overtime wages due to the alleged miscalculation of the regular rate was
13 \$79,744, the maximum potential damages for underpaid meal period premiums were estimated to be
14 \$83,359, the maximum potential rest period damages were estimated to be \$794,390 based upon one
15 missed rest period per week, and the maximum potential damages for failure to provide expense
16 reimbursement were calculated to be \$46,250. In total, the damages for the Class were calculated to
17 have a maximum potential total value of \$1,003,743. In addition, Plaintiff calculated that the maximum
18 value of the potential waiting time penalties were \$434,270, and the maximum value of the potential
19 wage statement penalties were \$496,450.³ Defendant vigorously disputed Plaintiffs' calculations and
20 exposure theories. Blumenthal Decl. ¶8(d).

21 Consequently, the Gross Settlement Amount represents more than the potential maximum
22 damages at issue for the Class in this case, assuming these amounts could all be proven in full at trial.⁴

23 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
24 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
25 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
26 meal or rest periods or other wages were owed given Defendant's position that Class Members were
27 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010).

28 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the

1 The above maximum calculations should then be adjusted in consideration for both the risk of class
2 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
3 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
4 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 percentage
12 of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91
13 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (Cal. 1977); *Boeing Co. v. Van*
14 *Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
15 The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread
16 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear
17 the entire burden alone." *Vincent*, 557 F.2d at 769.

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

22 Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶ 33.

23 ⁵ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
24 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
25 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
26 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
27 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
28 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 class
2 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
3 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
4 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
5 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”). In *Laffitte*, the Court expressly approved
12 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

13 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
14 Here, Plaintiffs and their counsel secured a \$1,950,515.97 settlement for the benefit of the Class. The
15 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
16 could potentially prevail on the contested issues regarding liability, maintain class certification,
17 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
18 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
19 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
20 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
21 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
22 **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 that
27 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

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

7 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$1,950,515.97 has been
8 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
9 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action
10 litigation, as well as a long battle with a corporate Defendant who had retained a premier and highly
11 experienced defense firm. **Counsel retained on a contingency fee basis, whether in private matters
12 or in class action litigation, is entitled to a premium above their hourly rate in order to
13 compensate for both the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*,
14 812 F.3d 734, 741 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821
15 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply risk multiplier).

16 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
17 the requested attorneys' fee of one-third equal to \$650,171.99 is also established by reference to Class
18 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
19 through March 22, 2024, Class Counsel's total lodestar is \$235,046.25, with significant additional fees
20 still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
21 Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel's total
22 lodestar with a reasonable multiplier of less than 2.8, and there will be additional lodestar incurred by
23 Class Counsel to complete the settlement process and manage the settlement distribution and reports.
24 (Blumenthal Decl. at ¶12.) Such a multiplier is within the range of multipliers approved in other cases
25 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

26 ⁶ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
27 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
28 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
Computer, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*

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. Class Counsel Litigation Expenses Payment**

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 \$21,500." Class Counsel requests approval of the Class
6 Counsel Litigation Expenses Payment in the amount of \$21,500 based upon counsel's billing records
7 which evidence total expenses of \$21,991.50.⁷ The requested amount is less than actual expenses
8 incurred by Class Counsel. The details of the litigation expenses incurred are set forth the Blumenthal
9 Decl. at ¶13 and Exhibits #3 and 4). These costs were reasonably incurred in the prosecution of the
10 Action. (Blumenthal Decl. at ¶13.) Because these costs were reasonable and necessary to the successful
11 prosecution of these claims, the request is reasonable and should be granted.

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

13 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
14 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
15 risk and effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendant has agreed to this
16 payment and there have been no objection to the requested service award. The Blumenthal Decl., at
17 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
18 further supports the request in this case. The Plaintiffs' declarations detail the involvement, stress and
19 risks they undertook as a result of this Action and are submitted in support of this request attached as
20 Exhibits #6 and 7 to the Blumenthal Decl.

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re Sutter Health Uninsured Pricing Cases, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of
23 2.52 as "fair and reasonable"); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming
24 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).

25 ⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
26 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging,
27 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
28 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 representatives of the Class, Plaintiffs performed their duty to the Class admirably and
2 without exception. Plaintiffs 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 Plaintiffs are
5 also providing a comprehensive release as part of the Settlement, far beyond the class release. The
6 Declaration of the Plaintiffs. Plaintiffs also assumed the serious risk that they might possibly be liable
7 for costs and fees to Defendant, as well as the reputational risk of being “blacklisted” by other future
8 employers for having filed a class action on behalf of fellow former employees. (Blumenthal Decl. at
9 ¶15.) Without the Plaintiffs’ participation, cooperation and information, no other employees would be
10 receiving any benefit. (Blumenthal Decl. at ¶¶ 15-16).

11 The payment of service awards to successful class representatives is appropriate and the amount
12 of \$10,000 is well within the currently awarded range for similar settlements. *See e.g. Andrews v.*
13 *Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the
14 requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019
15 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award);
16 *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500
17 where average class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S.
18 Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class member recovery
19 was \$375); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving
20 \$10,000 award). Accordingly, Class Counsel respectfully request approval of the requested Class
21 Representative Service Payment in accordance with the Agreement.

22 **VI. CONCLUSION**

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

26 Dated: March 22, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Esq., Attorneys for Plaintiffs