

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Victoria B. Rivapalacio (State Bar #275115)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

MESSRELIAN LAW INC.

Harout Messrelian (SB# 272020)
hm@messrelianlaw.com
Maralle Messrelian, Of Counsel (SB#316974)
maralle@messrelianlaw.com
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY**

AURORA GARCIA JIMENEZ,
EDWARD ANGUIANO II, and EVELYN
SERRATO on behalf of themselves and
on behalf of all persons similarly situated,

Plaintiffs,

vs.

KIND OP CORP.; ULTRA
PERSONNEL, LLC; and DOES 1 through
25, inclusive,

Defendants.

CASE NO.: **22CV001723**

**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: September 6, 2024
Hearing Time: 8:30 a.m.
[Hearing scheduled by Order dated February 15,
2024]

Judge: Hon. Carrie M. Panetta
Dept.: 14

Action Filed: June 17, 2022
Trial Date: Not set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated February 15, 2024 (“Preliminary Approval
6 Order”), the approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiffs Aurora Garcia Jimenez, Edward Anguiano II, and Evelyn Serrato
9 (“Plaintiffs”) respectfully submit this memorandum in support of the unopposed motion for final
10 approval and the proposed entry of the Final Approval Order and Judgment, submitted herewith. The
11 settlement represents an excellent result for the Class and avoids the delays, risks, and costs of further
12 litigation. After disseminating the notice to the members of the Class, currently there have been **no**
13 **objections and no requests for exclusion**, which means that at this time the entire Class has elected
14 to participate in the Settlement.³ Blumenthal Decl. ¶4. This is a positive response from the Class
15 evidencing their collective approval of the settlement. As a result, Plaintiffs respectfully submit that
16 the class settlement should be finally approved for the same reasons that the Court preliminarily
17 approved the settlement as fair, reasonable, and adequate.

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

19 Plaintiffs and Defendants Ultra Personnel, LLC and Kind Op Corp (“Defendants”) reached a
20 full and final settlement of the above-captioned action, which is embodied in the Agreement filed
21 concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount is Five

22 _____
23 ¹ Capitalized terms are defined in the Agreement.

24 ² The “Class” is defined as “all individuals who are or previously were employed by Defendant Ultra
25 Personnel, LLC and who were staffed to work at Kind Op Corp. in California at any time during the
26 Class Period.” The “Class Period” is August 12, 2018, through April 17, 2023. (Preliminary Approval
27 Order at 3:15-19.)

28 ³ The Response Deadline is August 16, 2024, which is a few days after the filing of this motion.
The final figures will be documented in the Declaration of Madely Nava to be filed after August 16,
2024 and before the hearing on this motion.

1 Hundred Thousand Dollars (\$500,000) to be paid by Defendants. (Agreement at ¶ 1.22.) Under the
2 Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the
3 Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and
4 Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class
5 Representative Service Payments to Plaintiffs; and (5) the PAGA Penalties payment. (Agreement at
6 ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include Defendants' share of
7 payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
8 to Defendants. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b). The following is a table of the key
9 financial terms of the Settlement and the proposed deductions:

10 **\$500,000** (Gross Settlement Amount)

- 11 - \$30,000 (Plaintiffs' proposed service awards - not to exceed \$10,000 each)
- 12 - \$27,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 13 - \$166,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 14 - \$20,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
- 15 - \$12,000 (Administration Expenses Payment - not to exceed amount)

16 **\$244,334** (Net Settlement Amount).

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

19 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
20 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
21 is "fair, adequate, and reasonable". (Preliminary Approval Order at 2:19-23.) In sum, the Settlement
22 valued at \$500,000 is an excellent result for the Class. This result is particularly favorable in light of
23 the fact that liability and class certification in this case were far from certain in light of the defenses
24 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
25 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
26 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

27 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
28 **OF CLASS ACTION SETTLEMENTS**

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

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

omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

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

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

A. The Settlement Satisfies the California Test for Fairness

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

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

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

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendants have expressly denied and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims, which is tethered to allegations in the Action as the “Released Class Claims” are “all claims that were alleged, or reasonably could have been alleged, based facts stated in the Operative Complaint which occurred during the Class Period.” (Agreement at ¶¶ 1.38 and 6.2.) Class Counsel are

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

5 The Parties attended an arms-length mediation session with Louis Marlin, a respected jurist and
6 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
7 for the mediation, Defendants provided Class Counsel with necessary information for the members of
8 the Class, including time punch data, payroll data and information concerning the composition of the
9 Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger Consulting, and
10 prepared and submitted a mediation brief and damage valuation to the Mediator. Following this all-day
11 mediation, the Parties agreed to this Settlement. Blumenthal Decl. ¶7(b).

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

18 From October 2023 to January 2024, the settlement agreement and exhibits thereto were
19 finalized and executed, and then presented by motion to this Court for preliminary approval. On
20 February 15, 2024, the Court issued its Order granting preliminary approved of the settlement as fair
21 and reasonable to the Class. Blumenthal Decl. ¶7(c).

22 3. Class Counsel is Experienced in Similar Litigation

23 Class Counsel in this matter has extensive class action experience and has represented thousands
24 of persons in class actions including employment litigation, wage and hour class actions, and complex
25 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
26 claims similar to this case and have been approved as experienced class counsel in state and federal
27 courts throughout California. As such, Class Counsel is experienced and knowledgeable in this area
28 of law. See Blumenthal Decl. at ¶ 2; Declaration of Messrelian at ¶ 3. Class Counsel have participated

1 in every aspect of the settlement discussions and have concluded the settlement is fair, adequate and
2 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

4 The reaction of the Class unequivocally supports approval of the Settlement. On July 17, 2024,
5 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
6 class member with the terms of the Settlement, including notice of the claims at issue and the financial
7 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
8 how individual settlement awards would be calculated, and the specific, estimated payment amount to
9 that individual. See Declaration of Madely Nava at Exh. A. In disseminating the notice, the
10 Administrator followed the notice procedures authorized by the Court in its Preliminary Approval
11 Order. To date, there have been no objections and no requests for exclusion. The Response Deadline
12 is August 16, 2024, which is a few days after the filing of this motion, and therefore the final results will
13 be detailed in the Declaration of Madely Nava' (the Administrator) to be filed in after the Response
14 Deadline and in advance of the Final Approval Hearing. Blumenthal Decl. ¶4.

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

23 5. The Strength of Plaintiffs' Case

24 The Action generally alleges that Plaintiffs and other Class Members were not properly paid all
25 overtime and minimum wages for hours worked, were not provided meal and rest periods, were not
26 timely paid earned wages, were not provided reimbursement for required expenses, were not provided
27 accurate itemized wage statements, were not paid all wages at the time of termination. The Action
28 seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief

1 allegedly due and owing to Plaintiffs and the other Class Members by virtue of the foregoing claims.
2 Blumenthal Decl. ¶5.

3 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
4 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
5 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
6 Defendants asserted that Defendants' practices complied with all applicable laws. Defendants argued
7 that all work time was paid for and that the rounding practice was legal. Defendants contended that
8 their meal and rest period policies fully complied with California law, that Defendants' timekeeping
9 system recorded meal periods, and that all meal periods were provided. As to expenses reimbursement,
10 Defendants maintained that employees were not required to use their cell phones and any use of their
11 cell phone was voluntary for their convenience and therefore not subject to Labor Code §2802.
12 Defendants argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed*
13 *Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*,
14 64 Cal. App.5th 85 (2021), weakened Plaintiffs' claims, on liability, value, and class certifiability as
15 to the meal and rest period claims. Defendants also argue that based on its facially lawful practices,
16 they acted in good faith and without willfulness, which if accepted would negate the claims for waiting
17 time penalties and/or inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15
18 Cal. 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a
19 complete and accurate wage statement in compliance with the requirements of section 226, then it has
20 not knowingly and intentionally failed to comply with the wage statement law.") If successful,
21 Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs
22 believe that these defenses could be overcome, Defendants maintains these defenses have merit and
23 therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

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

1 periods is an open one, signaling even less certainty for Plaintiffs. [...T]he gross
2 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.

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

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

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

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

26 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
27 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
28 substantial defenses both to liability and to class certification. Currently, the maximum and average

1 class member allocation are \$3,806 and \$588, respectively, and the final figures will be in the
2 forthcoming Declaration of Madely Nava. Given the complexities of this case, the defenses, along with
3 the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and
4 should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

12 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying
13 this Action against Defendants and then litigating possible appeals which could take several years.
14 Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in
15 complex class actions such as this Action. Moreover, post-trial motions and appeals would have been
16 inevitable. Costs would have mounted and recovery would have been delayed if not denied, thereby
17 reducing the benefits of an ultimate victory. Plaintiffs and Class Counsel believe that the Settlement
18 confers substantial benefits upon the Class. Based upon their evaluation, Plaintiffs and Class Counsel
19 have determined that the Settlement set forth in the Agreement is in the best interest of the Class
20 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.

Id. at *12.

1 7. The Amount Offered in Settlement

2 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
3 to Plaintiffs' claims. The Declaration of Nordrehaug and Supplemental Declaration of Nordrehaug
4 submitted in support of preliminary approval discussed the value of the class claims in detail. Based
5 upon 415 Class Members who collectively worked 6,997 weeks, the Gross Settlement Amount provides
6 a value of \$1,204 per Class Member and \$71 per work week and the Net Settlement Amount provides
7 an average recovery of \$588.75 per Class Member and a recovery of \$34.91 per work week.

8 The calculations to compensate for the amount due to the Class Members at the time this
9 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
10 mediation. Class Counsel analyzed the data for putative class members and determined the potential
11 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
12 wages due to off the clock work was potentially \$155,166, the maximum value of the claim for unpaid
13 wages due to rounding \$1,230, the maximum value of the claim for unpaid wages due to the maximum
14 potential damages for unpaid meal premiums were estimated to be \$108,956 based upon an alleged 21%
15 violation rate observed in the time records, the maximum potential rest period damages were estimated
16 to be \$112,980 based upon the same 21% violation rate, and the maximum potential damages for failure
17 to provide expense reimbursement were calculated to be \$53,520. In total, the damages for the Class
18 were calculated to have a maximum potential total value of \$433,850. In addition, Plaintiff calculated
19 that the maximum value of the potential waiting time penalties were between \$1,165,038, and the
20 maximum value of the potential wage statement penalties were \$689,000.⁴ Defendant vigorously
21 disputed Plaintiffs' calculations and exposure theories. Blumenthal Decl. ¶8(d).

22 Consequently, the Gross Settlement Amount represents more than the potential maximum
23
24

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

1 damages at issue for the Class in this case, assuming these amounts could all be proven in full at trial.⁵
2 The above maximum calculations should then be risk adjusted in consideration for both the risk of class
3 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
4 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
5 reasonable.⁶ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

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

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

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

19 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
20 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
21 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*

22 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not included the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
24 Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶ 33.

25 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
26 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
27 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
28 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full 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 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state
2 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
3 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
4 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
5 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
6 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

14 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
15 Here, Plaintiffs and their counsel secured a \$500,000 settlement for the benefit of the Class. The
16 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
17 could potentially prevail on the contested issues regarding liability, maintain class certification,
18 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
19 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
20 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
21 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
22 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
23 **common fund as attorneys' fees has been found to be appropriate.**”)

24 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
25 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
26 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
27 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
28 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 \$500,000 has been created.
8 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
9 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
10 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
11 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
12 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
13 the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
14 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
15 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 \$166,666.66 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 August 13, 2024, **Class Counsel's total lodestar is \$223,386.25**, with significant additional
20 fees still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12
21 and Exhibits #3 and 4 [lodestar of \$189,436.25]); Declaration of Harout Messrelian at ¶5 [lodestar of
22 \$33,950].) The requested fee award is therefore less than Class Counsel's total lodestar, representing
23 a "negative multiplier" of 0.75, and there will be additional lodestar incurred by Class Counsel to
24 complete the settlement process and manage the settlement distribution and reports. Blumenthal Decl.
25 at ¶12. Such a negative multiplier is below the range of positive multipliers approved in other cases
26 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷ For such

27 ⁷ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
28 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
(2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
Computer, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*

1 reasons, Class Counsel's request for attorneys' fees equal to one-third of the common fund is fair and
2 reasonable and should be approved.

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

4 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "a Class Counsel
5 Litigation Expenses Payment of not more than \$27,000". Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$27,000 based upon counsel's billing records
7 which evidence total expenses of \$28,091.63. The requested expense reimbursement is less than actual
8 expenses incurred. These litigation expenses include the expenses incurred for filing fees, mediation
9 expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One Legal), Lexis
10 charges, all of which are costs normally billed to and paid by the client.⁸ The details of the litigation
11 expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4 [expenses of
12 \$14,723.32]; Declaration of Harout Messrelian at ¶6 and Exhibit 1 [expenses of \$13,369.31]. These
13 costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.) Because
14 these costs were reasonable and necessary to the successful prosecution of these claims, the request is
15 reasonable and should be granted.

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

17 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
18 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
19 risk and effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendant has agreed to this
20 payment and there have been no objections to the requested service awards. The Blumenthal Decl., at
21 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which

22 _____
23 *re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of
24 2.52 as "fair and reasonable"); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming
25 multiplier of 2.53 as well within the approved range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S.
Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

26 ⁸ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging,
28 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
mediation, exhibits, documents scanning, and visual equipment are typically recoverable." *Rutti v.*
Lojack Corp., Inc., 2012 WL 3151077, at *12 (C.D. Cal. 2012).

1 further supports the request in this case. The Declarations of the Plaintiffs detail the involvement, stress
2 and risks they undertook as a result of this Action and are attached as Exhibits #6, 7 and 8 to the
3 Blumenthal Decl.

4 As the representatives of the Class, Plaintiffs performed their duty to the Class admirably and
5 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,
6 responding to numerous requests, searching for documents, working with counsel, and reviewing the
7 settlement documentation. Blumenthal Decl. at ¶ 14. As set forth in the Agreement, the Plaintiffs are
8 also providing a comprehensive release as part of the Settlement, far beyond the class release. Plaintiffs
9 also assumed the serious risk that they might possibly be liable for costs and fees to Defendant, as well
10 as the reputational risk of being “blacklisted” by other future employers for having filed a class action
11 on behalf of fellow former employees. Without the Plaintiffs’ participation, cooperation and
12 information, no other employees would be receiving any benefit. Blumenthal Decl. at ¶¶ 15-16.

13 The payment of service awards to successful class representatives is appropriate and the amount
14 of \$10,000 is well within the currently awarded range for similar settlements. *See, e.g., Andrews v.*
15 *Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding service
16 awards of \$15,000 are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865,
17 at *19 (N.D. Cal. 2019) (granting \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018
18 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
19 \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. 2008) (\$25,000
20 service award to each of six plaintiffs); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal.
21 2007) (awarding \$25,000 service award). Accordingly, Class Counsel respectfully request approval of
22 the requested Class Representative Service Payment in accordance with the Agreement.

23 **VI. CONCLUSION**

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

27 Dated: August 14, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Esq., Attorneys for Plaintiffs