

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

REBEKAH DIAZ, RANDI
STENSBERG, RAFAEL URIBE, and
VIRGINIA ZEBLEY, individuals, on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiff,

vs.

LOYAL SOURCE GOVERNMENT
SERVICES LLC, a limited liability
company; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **22STCV15413**
[consolidated with Case No. 22STCV22205]

**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 19, 2024
Hearing Time: 10:30 a.m.
[Hearing scheduled by Order dated October 4,
2023]

Judge: Hon. Stuart M. Rice
Dept: SS-1

Date Filed: May 10, 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	-9-
7.	The Amount Offered in Settlement.....	-10-
V.	THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARDS SHOULD BE APPROVED	-11-
A.	The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund Method	-11-
B.	The Reimbursement of Litigation Expenses.....	-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)	-3-
<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652 (E.D. Cal. Jun 24, 2008)	-5-
<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)	-14-
<i>City of Detroit v. Grinnell Corp</i> 495 F.2d 448 (2d Cir. 1974)	-13-
<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)	-11-
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	-8-
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	-12-
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330 (N.D. Cal. 2007)	-5-, -9-

1	<i>Hanlon v. Chrysler Corp.</i> ,	
	150 F.3d 1011 (9th Cir. 1998)	-7-
2	<i>Holman v. Experian Info. Solutions, Inc.</i> ,	
3	2014 U.S. Dist. LEXIS 173698	-15-
4	<i>Hopson v. Hanesbrands Inc.</i> ,	
	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009).....	-7-
5	<i>Huens v. Tatum</i> ,	
6	52 Cal. App. 4th 259 (1997)	-2-
7	<i>In re Austrian & German Bank Holocaust Litigation</i> ,	
	80 F. Supp. 2d 164 (S.D.N.Y. 2000).....	-6-
8	<i>In re Sutter Health Uninsured Pricing Cases</i> ,	
9	171 Cal.App.4th 495 (2009)	-14-
10	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
	168 Cal. App. 4th 116 (2008)	-4-
11	<i>Laffitte v. Robert Half Int'l</i> ,	
12	1 Cal. 5th 480 (2016)	-12-, -13-
13	<i>Laskey v. Int'l Union</i> ,	
	638 F.2d 954 (6th Cir. 1981)	-6-
14	<i>Lockheed Martin Corp. v. Superior Ct.</i> ,	
15	29 Cal. 4th 1096 (2003)	-7-
16	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
	2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008)	-8-
17	<i>Ma v. Covidien Holding, Inc.</i> ,	
18	2014 WL 2472316 (C.D. Cal. 2014)	-11-
19	<i>Mathein v. Pier 1 Imps.</i> ,	
	2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018)	-15-
20	<i>Munoz v. BCI Coca-Cola Bottling Co. of L. A.</i> ,	
21	186 Cal. App. 4th 399 (2010)	-3-
22	<i>Nordstrom Commission Cases</i> ,	
	186 Cal. App. 4th 576 (2010)	-10-
23	<i>Officers for Justice v. Civil Service Com'n</i> ,	
24	688 F.2d 615 (9th Cir. 1982)	-3-
25	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
	182 Cal.App.4th 278 (2010)	-13-
26	<i>Rutti v. Lojack Corp., Inc.</i> ,	
27	2012 WL 3151077 (C.D. Cal. 2012).....	-14-
28		

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

1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement and the Stipulation and Order Regarding Class Period
4 End Date (collectively the “Agreement”), a true and correct copy of which is attached as Exhibit #2 to
5 the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In accordance with the Preliminary
6 Approval Order dated October 4, 2023 (“Preliminary Approval Order”), the approved Class Notice has
7 been disseminated to the Class.²

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

19 **II. THE SETTLEMENT BEFORE THE COURT**

20 Plaintiffs and Defendant Loyal Source Government Services LLC (“Defendant”) reached a full
21 and final settlement of the above-captioned action, which is embodied in the Agreement filed
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 in
25 California who were classified as hourly, non-exempt employees at any time during the Class Period,
26 but excluding individuals who: (a) were hired on or before September 29, 2020, (b) have not worked
27 for Defendant in California at any time since on or after January 29, 2021, and (c) were “Participating
28 Class Members” in the settlement of the consolidated matters of Ortega, et al. v. Loyal Source
Government Services, LLC, Case No. 3:20-cv-00879 and Ortega v. Loyal Source Government Services,
LLC, Case No. 3:20-cv-01173 (the “Ortega Settlement”).” (Preliminary Approval Order at 3:13-21.)
The “Class Period” is September 29, 2020 through February 2, 2023. (Order dated October 31, 2023.)

1 concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount is One
2 Million Nine Hundred Fifty Thousand Dollars (\$1,950,000). (Agreement at ¶ 1.22.) Under the
3 Settlement, the Gross Settlement Amount consists of the following elements: (i) all Individual Class
4 Payments and Individual PAGA Payments; (ii) the LWDA PAGA Payment; (iii) the Class Counsel Fees
5 Payment and the Class Counsel Litigation Expenses Payment; (iv) the Class Representative Service
6 Payments; and (v) the Administration Expenses Payment. (Agreement at ¶ 1.22.) Blumenthal Decl.
7 ¶3(a). The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement
8 at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement
9 at ¶ 3.1.) Blumenthal Decl. ¶3(b). The following is a table of the key financial terms of the Settlement
10 and the proposed deductions:

11 **\$1,950,000** (Gross Settlement Amount)

- 12 - \$40,000 (Plaintiffs' proposed service award not to exceed \$10,000 each)
13 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
14 - \$650,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
15 - \$50,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
16 - \$20,000 (Administration Expenses Payment - not to exceed amount)

17 **\$1,165,000** (Net Settlement Amount)

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

20 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
21 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
22 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
23 at \$1,950,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
24 that liability and class certification in this case were far from certain in light of the defenses asserted
25 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
26 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
27 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

28 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL 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

1 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
2 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
3 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

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

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 almost two years of litigation, the Parties engaged in the investigation of the
17 claims, including the production of documents, class data, and other information, allowing for the full
18 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
19 investigation performed was detailed at length in support of the motion for preliminary approval. The
20 Settlement was the product of arms-length and contentious negotiations through an all-day mediation
21 presided over by David Rotman, Esq., a respected and experience mediator of wage and hour class
22 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 continues 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 David Rotman, a respected and
5 experienced mediator of wage and hour class actions, in order to reach the Settlement. In preparation
6 for the mediation, Defendant provided Class Counsel with necessary information, including data for
7 the Class. Plaintiffs analyzed the data with the assistance of a damages expert, Berger Consulting, and
8 prepared and submitted a mediation brief and damage valuation to the Mediator. Following the all-day
9 mediation, the Parties agreed to the Settlement, which was memorialized in the form of a Memorandum
10 of Understanding. Blumenthal Decl. ¶7(b).

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

17 From April of 2023 to August of 2023, the Agreement and exhibits thereto were finalized and
18 executed, and then presented by motion to this Court for preliminary approval. On October 4, 2023,
19 the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the
20 Class. Blumenthal Decl. ¶7(c).

21 3. Class Counsel is Experienced in Similar Litigation

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

1 of the Class. Blumenthal Decl. ¶ 3(j).

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

3 The reaction of the Class unequivocally supports approval of the Settlement. On November 3,
4 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
5 each class member with the terms of the Settlement, including notice of the claims at issue and the
6 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
7 sought, how individual settlement awards would be calculated, and the specific, estimated payment
8 amount to that individual. See Declaration of Makenna Snow ("Snow Decl.") ¶8, Exh. A. In
9 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
10 its Preliminary Approval Order. Significantly, there have been no objections and no requests for
11 exclusion. Snow Decl. ¶¶12-14. As such, the entire Class will participate in the Settlement and will
12 be sent a settlement check. Blumenthal Decl. ¶4.

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

21 5. The Strength of Plaintiffs' Case

22 The Action generally alleges that Plaintiffs and other Class Members were not properly paid all
23 regular and overtime wages for hours worked, were not provided meal and rest periods, were not timely
24 paid earned wages, were not provided reimbursement for required expenses, were not provided accurate
25 itemized wage statements, were not paid all wages at the time of termination. The Action seeks unpaid
26 wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and
27 owing to Plaintiffs and the other Class Members by virtue of the foregoing claims. Blumenthal Decl.
28 ¶5.

1 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
3 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
4 maintains that its practices complied with all applicable wage and hour laws. Defendant maintains that
5 all Class Members' work time was properly recorded and compensated and that there was no
6 miscalculation of the regular rate. Defendant contends that its meal and rest period policies and
7 practices provide Class Members with meal and rest periods and that the payment of meal premiums
8 is evidence of Defendant's legal compliant practices. As to expense reimbursement, Defendant
9 maintains that it did not fail to provide reimbursement for necessary business expenses because, among
10 other things, employees are not required to use their personal cell phones to perform their work.
11 Defendant could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
12 *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy*
13 *Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value, and
14 preclude his claim from proceeding on a class or representative basis. Defendant also maintains that
15 a good faith dispute and absence of willfulness would negate the claims for waiting time penalties
16 and/or failure to provide accurate itemized wage statements. Defendant also argued that the existence
17 of arbitration agreements with Class members would preclude a class-wide recovery at trial. If
18 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
19 While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses
20 have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

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

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

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

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

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

14 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
15 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
16 Defendant argued that the individual experience of each putative class member varied with respect to
17 the claims, which would preclude the claims from proceeding on a class or representative basis. For
18 instance, Plaintiffs’ meal and rest period claims would require individualized inquiries into whether each
19 employee took a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are aware
20 of other cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*,
21 43 Cal. App. 5th 885 (2019) (denying certification of rest break claims). Finally, even if class
22 certification was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S.*
23 *Bank National Association*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a
24 class-wide recovery even where a class has been certified. While other cases have approved class
25 certification of wage and hour claims, class certification in this Action would have been hotly disputed
26 and was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

27 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
28 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
substantial defenses both to liability and to class certification. Currently, the maximum and average
class member allocations are \$4,233.63 and \$927.91, respectively. Snow Decl. at ¶17. Given the
complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed

1 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

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. As set forth in the Declaration of Nordrehaug in support of preliminary approval
4 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
5 favorably to the value of the claims. The calculations to compensate for the amount due to the Class
6 Members at the time the Settlement was negotiated were calculated by Plaintiffs' expert, Berger
7 Consulting, in advance of mediation. Class Counsel analyzed the data for putative class members and
8 determined the potential maximum damages for the class claims. For the Class, the maximum value
9 of the claim for unpaid wages due to the alleged miscalculation of the regular rate applicable to
10 overtime pay, meal premiums and sick pay was \$908,683, the maximum value of the claim for unpaid
11 wages due to alleged off-the-clock work for COVID checks was \$230,378, the maximum potential
12 damages for alleged meal period violations were estimated to be \$2,632,955 based upon a 28%
13 violation rate observed in the time records and after deduction of meal premiums paid, the maximum
14 potential damages for alleged rest period violations were estimated to be \$2,672,487 based upon the
15 same 28% violation rate, and the maximum potential damages for the alleged failure to reimburse
16 business expenses were calculated to be \$37,500. In total, the damages for the Class were calculated
17 to have a maximum potential total value of \$6,482,003. In addition, Plaintiff calculated that the
18 maximum value of the potential waiting time penalties were between \$2,872,844 and \$9,344,998,
19 depending on the predicate unpaid wage giving rise to the waiting time penalty, and the maximum value
20 of the potential wage statement penalties were between \$598,300 and \$1,783,050, depending on the
21 predicate violation.³ Defendant vigorously disputed Plaintiffs' calculations and exposure theories.
22 Blumenthal Decl. ¶8(d).

23 Consequently, the Gross Settlement Amount represents more than 30% of Plaintiffs' calculation

24 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
25 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
26 by Defendants, including but not limited to, a good-faith dispute defense as to whether any premium
27 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and
28 Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576,
584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
dispute as to whether and when the wages were due.").

1 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
2 all be proven in full at trial⁴ The above maximum calculations should then be adjusted in consideration
3 for both the risk of class certification and the risk of establishing class-wide liability on all claims.
4 Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is
5 most certainly fair and reasonable.⁵ Clearly, the goal of this litigation has been met. Blumenthal Decl.
6 ¶8(d).

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

9 **A. The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund 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
22 ⁴ 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
Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶ 33.

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

1 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*
2 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state
3 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
4 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
5 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
6 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
7 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

15 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
16 Here, Plaintiffs and their counsel secured a \$1,950,000 settlement for the benefit of the Class. The
17 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
18 could potentially prevail on the contested issues regarding liability, maintain class certification,
19 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
20 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
21 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
22 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
23 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
24 **common fund as attorneys' fees has been found to be appropriate.**”)

25 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
26 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
27 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
28 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that

1 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

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

8 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$1,950,000 has been created.
9 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
10 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
11 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
12 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
13 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
14 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
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 \$650,000 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 25, 2024, Class Counsel's total lodestar is \$266,958.75, with additional fees still to be
20 incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and Exhibits
21 #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel's total lodestar
22 with a reasonable multiplier of 2.4, and there will be additional lodestar incurred by Class Counsel to
23 complete the settlement process and manage the settlement distribution. (Blumenthal Decl. at ¶12.)
24 Such a multiplier is within the range of positive multipliers approved in other cases such as *Laffitte* and
25 *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. The Reimbursement of Litigation Expenses**

4 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
5 Litigation Expenses Payment of not more than \$25,000." Class Counsel requests an award for incurred
6 litigation expenses and costs in the amount of \$25,000 based upon counsel's billing records which
7 evidence total expenses of \$28,650.80. The requested expense award is less than the actual expenses
8 incurred. These litigation expenses include the expenses incurred for filing fees, mediation expenses,
9 expert fees (Berger Consulting Group), attorney service charges (Knox, One Legal), Lexis research
10 charges, all of which are costs normally billed to and paid by the client.⁷ The details of the litigation
11 expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4. These costs were
12 reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.) Because these costs
13 were reasonable and necessary to the successful prosecution of these claims, the request is reasonable
14 and should be granted.

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

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

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 ⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging,
28 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
mediation, exhibits, documents scanning, and visual equipment are typically recoverable." *Rutti v.*
Lojack Corp., Inc., 2012 WL 3151077, at *12 (C.D. Cal. 2012).

1 this request and are attached as Exhibits #6, 7, 8 and 9 to the Blumenthal Decl.

2 As the representatives of the Class, Plaintiffs performed their duty to the Class admirably and
3 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,
4 responding to numerous requests, searching for documents, working with counsel, and reviewing the
5 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, the Plaintiffs are
6 also providing a comprehensive release as part of the Settlement, far beyond the class release. The
7 Declaration of the Plaintiffs detail the involvement, stress and risks they undertook as a result of this
8 Action. Plaintiffs also assumed the serious risk that she might possibly be liable for costs and fees to
9 Defendant, as well as the reputational risk of being “blacklisted” by other future employers for having
10 filed a class action on behalf of fellow former employees. (Blumenthal Decl. at ¶15.) Without the
11 Plaintiffs’ participation, cooperation and information, no other employees would be receiving any
12 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. Mathein v. Pier*
15 *1 Imps.*, 2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018) (approving two
16 service awards of \$12,500 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
17 173698 (approving \$10,000 service award where class member recovery was \$375); *Bellinghausen v.*
18 *Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$10,000 award). Accordingly,
19 Class Counsel respectfully request approval of the requested Class Representative Service Payment in
20 accordance with the Agreement.

21 **VI. CONCLUSION**

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

25 Dated: March 25, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Esq.
Attorneys for Plaintiffs