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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO**

CHAMARIE SPEARS, an individual,
and KATHLEEN LEONARD, an
individual on behalf of herself and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

VITALANT, a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22-CIV-03291

**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: July 25, 2024
Hearing Time: 9:00 a.m.

[Hearing scheduled by Order dated March 22, 2024]

Judge: Hon. Susan L. Greenberg
Dept.: 3

Action Filed: September 27, 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 March 22, 20224 (“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 ChaMarie Spears and Kathleen Leonard (“Plaintiffs”) respectfully
9 move for final approval, including attorneys’ fees, costs and the service award, 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 1,212 members of the Class, there were **no objections** and only one request for exclusion
13 from the California Class and twelve requests for exclusion from the FCRA Class, which means that
14 nearly the entire Class (99.7%) has elected to participate in the Settlement. Blumenthal Decl. ¶4. This
15 is a positive response from the Class evidencing their collective approval of the settlement. As a result,
16 Plaintiffs respectfully submit that the settlement should be finally approved for the same reasons that
17 the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

19 As consideration for this Settlement, the Total Settlement Amount to be paid by Defendant
20 Vitalant (“Defendant”) is Two Million Dollars (\$2,000,000). (Agreement at ¶¶ 1.25 and 3.1.) Under
21 the Settlement, the Total Settlement Amount consists of the following elements: (1) payment of the

23 ¹ Capitalized terms are defined in the Agreement.

24 ² The “Class” consists of both the “California Class” and the “FCRA Class.” The “California Class”
25 is defined as “all individuals who were employed by Defendant in California and classified as a
26 non-exempt employee at any time during the Class Period.” The “California Class Period” is defined
27 as “August 11, 2018 through July 28, 2023.” The “FCRA Class” is defined as “all individuals who
28 applied to work for Defendant who were classified as either exempt or non-exempt in the United States
 during the FCRA Class Period for whom background checks were run using the same federal FCRA
 form as that contained on page 2 of the forms provided to Plaintiff Spears” The “FCRA Class Period”
 is defined as August 11, 2020 through December 9, 2022.” (Preliminary Approval Order at ¶ 6.)

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. (Agreement at ¶ 1.25.)
4 Blumenthal Decl. ¶3(a). The Total Settlement Amount does not include Defendant's share of payroll
5 taxes. (Agreement at ¶ 3.1.) The Total Settlement Amount shall be all-in with no reversion to
6 Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b). The following is a table of the key financial
7 terms of the Settlement and the proposed deductions:

8 **\$2,000,000** (Total Settlement Amount)

- 9 - \$25,000 (Plaintiffs' proposed service awards not to exceed \$12,500 each)
10 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
11 - \$666,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
12 - \$50,000 (PAGA Payment - 75% to LWDA / 25% to PAGA Members)
13 - \$33,495 (Administration Expenses Payment)

11 **\$1,204,839** (Net Settlement Amount)

- 12 - \$62,212.50 (Individual FCRA Class Payments = \$17.50 each to 3,555 members)

12 **\$1,135,911.50** (Payable to California Class as Individual Class Payments)

13 The specific details of the Settlement were discussed in the Motion for Preliminary Approval
14 and 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 ¶ 3.) In sum, the Settlement valued
18 at \$2,000,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
19 that liability and class certification in this case were far from certain in light of the defenses asserted
20 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
21 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
22 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 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are

1 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

9 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
10 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
11 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
12 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
13 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
14 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*,
15 48 Cal. App. 4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the
16 proposed settlement satisfies that standard and the presumption applies.

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

18 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
19 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
20 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
21 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "The
22 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
23 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
24 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
25 offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience
26 and views of counsel, the presence of a governmental participant, and the reaction of the class members
27 to the proposed 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 one arms-length mediation and contentious negotiations through an all-day mediation presided over by David A. Rotman, Esq. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

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. Defendant has 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 of the Class in accordance with this Settlement, based upon the experience of Class Counsel who has previously litigated similar claims against other employers. Blumenthal Decl. ¶7(a).

1 The Parties attended an arms-length mediation session with David A. Rotman, Esq., a respected
2 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
3 preparation for the mediation, Defendant provided to Plaintiffs and Class Counsel payroll and
4 employment data and other information regarding the Class Members, various internal documents, and
5 other compensation and employment-related materials. Class Counsel analyzed the data with the
6 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
7 mediator. Following this all-day mediation, the Parties agreed to this Settlement based upon a
8 mediator's proposal. Blumenthal Decl. ¶7(b).

9 The fact that the settlement was negotiated with the assistance of an experienced mediator
10 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
11 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 at *15 (N.D. Cal. 2007) (where settlement was “negotiated
12 and approved by experienced counsel on both sides of the litigation, with the assistance of a
13 well-respected mediator” this factor supports approval of the settlement”).

14 From May 2023 to August 2023, the settlement agreement and exhibits thereto were finalized
15 and executed. On March 21, 2024, the Court granted the Motion for Preliminary Approval, and entered
16 the Order granting preliminary approved of the settlement as fair and reasonable to the Class on March
17 22, 2024. Blumenthal Decl. ¶7(c).

18 3. Class Counsel is Experienced in Similar Litigation

19 Class Counsel in this matter has extensive class action experience and has represented thousands
20 of persons in class actions including employment litigation, wage and hour class actions, and complex
21 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
22 claims similar to this case and have been approved as experienced class counsel during contested
23 motions in state and federal courts throughout California. The experience of counsel and class action
24 cases managed and settled by the Class Counsel in this action is provided to the Court in the Blumenthal
25 Decl. at Exhibit #1. Class Counsel have participated in every aspect of the settlement discussions and
26 have concluded the settlement is fair, adequate and reasonable and in the best interests of the Class.
27 Blumenthal Decl. ¶ 3(j).
28

1 4. There Are No Objections and Only A Few Requests for Exclusion

2 The reaction of the Class unequivocally supports approval of the Settlement. On April 25, 2024,
3 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
4 class member with the terms of the Settlement, including notice of the claims at issue and the financial
5 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
6 how individual settlement awards would be calculated, and the specific, estimated payment amount to
7 that individual. See Declaration of Nicole Bench ["Bench Decl."], ¶ 7, Exh. A. In disseminating the
8 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
9 Approval Order. Significantly, there have been no objections and only thirteen (13) requests to opt-out,
10 of which only one was from the California Class and twelve from the FCRA Class. Bench Decl. ¶¶11-
11 12. As such, nearly the entire Class (99.7%) will participate in the Settlement and will be sent a
12 settlement check. See Bench Decl. at ¶¶ 15-16; 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."); *Stoetznner v. 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 overtime wages for hours worked and at the correct rate, were not provided meal and rest periods, were
24 not timely paid earned wages, were not provided reimbursement for required expenses, were not
25 provided accurate itemized wage statements, were not paid sick wages at the correct rate, were not paid
26 all wages at the time of termination, and were not provided with proper disclosures and authorizations
27 that complied with the Fair credit Reporting Act ("FCRA"). The Action seeks unpaid wages, penalties,
28

1 attorney fees, litigation costs, and any other equitable or legal relief allegedly due and owing to
2 Plaintiffs and the other Class Members by virtue of the foregoing claims. 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 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
6 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
7 argued that Class Members were paid for all time worked, that all work time was properly recorded, and
8 that any rounding was facially neutral and was lawful at the time. Defendant contends that its meal and
9 rest period policies fully complied with California law and Defendant did not fail to provide the
10 opportunity for legally required meal and rest breaks. Defendant could argue that its payment of
11 significant meal period premiums is evidence of lawful practices. Defendant contends that there was
12 no failure to pay for business expenses and any cell phone usage was merely convenient and voluntary
13 such that reimbursement was not legally required. Finally, Defendant could argue that the Supreme
14 Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on
15 liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that
16 based on its facially lawful practices, Defendant acted in good faith and without willfulness, which if
17 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. As to
18 FCRA claim, Defendant argued that its forms complied with FCRA in all respects. *Coleman v. Kohl's*
19 *Dep't Stores, Inc.*, 2015 U.S. Dist. LEXIS 135746, *17 (N.D. Cal. 2015) (holding a release in a separate
20 document does not violate FCRA); *Luna v. Hansen & Adkins Auto Transp., Inc.*, 2018 U.S. Dist. LEXIS
21 100055, *18-*19 & n.6 (C.D. Cal. 2018). Finally, the court may find remitter/reduction of the statutory
22 damages appropriate. *See e.g. Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS
23 81029, 2007 WL 3118505, at *5 (E.D.Pa. 2007). If successful, Defendant's defenses could eliminate
24 or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be
25 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
26 recovery by the Class. Blumenthal Decl. ¶8(a).

27 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, 2009
28

1 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009), explained in approving an overtime class action settlement:

2 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
3 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
4 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
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.

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

15 *Kaiser Foundation Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).

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

25 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
26 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
27 substantial defenses both to liability and to class certification. The FCRA Class Member will each get
28 \$17.50 and the maximum and average California Class Member allocation (in addition to their

Individual PAGA Payment) are \$2,364.61 and \$943.53, respectively. *See* Bench Decl. ¶16. Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely 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 Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further litigation is substantial.

1 *Id.* at *12.

2 7. The Amount Offered in Settlement

3 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
4 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
5 which discussed the value of the class claims in detail, the Total Settlement Amount compares favorably
6 to the value of the claims. Based upon 1,211 California Class Members who collectively worked
7 125,637 Workweeks, the Total Settlement Amount provides an average value of \$1,651 per California
8 Class Member and \$15 per Workweek and after deductions the Net Settlement Amount provides an
9 average recovery of \$943.53 per California Class Member and a recovery of \$9.09 per Workweek.
10 Blumenthal Decl. at ¶8(d).

11 The calculations to compensate for the amount due for the Class at the time of the mediation
12 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
13 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
14 wages for the employees. For the California Class, maximum potential damages were calculated to be
15 \$78,442 for the alleged unpaid wages due to rounding practices which ended in October 2020,
16 \$3,130,235 for the alleged unpaid wages due to alleged off-the-clock work at 10 minutes per shift,
17 \$828,971 for alleged meal period damages based upon a 16.7% potential violation rate for shifts worked
18 and after deducting the meal premiums (\$1,339,827) actually paid by Defendant, \$2,354,409 for alleged
19 rest period damages based upon the same potential 16.7% violation rate observed for meal periods,
20 \$795,930 for alleged unreimbursed business expenses for personal cell phone usage at \$30 per month.
21 As a result, the total damage valuation was calculated that Defendant was subject to a maximum
22 damage claim in the amount of \$7,187,986. As to potential penalties, Plaintiffs calculated that potential
23 waiting time penalties were a maximum of between \$1,277,620 and \$4,435,375, depending on the
24 predicate violation giving rise to the penalty, and potential maximum wage statement penalties were
25 \$2,072,950.³ Defendant vigorously disputed Plaintiffs' calculations and exposure theories.

26 _____
27 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
28 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses.
See Nordstrom Commission Cases, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to

1 Consequently, the Total Settlement Amount of \$2,000,000, after deducting the \$62,422.50
2 allocated to FCRA payments, represents more than 26% of the maximum value of the alleged damages
3 at issue in this case at the time this Settlement was negotiated.⁴ The above maximum calculations
4 should then be adjusted in consideration for both the risk of class certification and the risk of
5 establishing class-wide liability on all claims. Blumenthal Decl. ¶8(d).

6 As to the FCRA Class, FCRA provides for statutory damages of \$100 to \$1,000 per willful
7 violation. 15 U.S.C. § 1681n. This means the maximum value of the FCRA claim for the 3,567
8 individuals in the FCRA Class is between \$356,700 and \$3,567,000. In this Settlement, the allocation
9 is \$17.50 for each Participating FCRA Class Member. A comparison of approved FCRA settlements
10 involving similar facts further confirms the reasonableness of this Settlement. In *Greco v. Selection*
11 *Mgmt. Sys.*, San Diego County Superior Court, a FCRA settlement of \$11.97 per class member was
12 approved; in *Fernandez v. Home Depot USA, Inc.*, United States District Court C.D. Cal., a FCRA
13 settlement of \$12.71 per class member was approved; and in *Aceves v. Autozone, Inc.*, United States
14 District Court C.D. Cal., a FCRA settlement of \$20 per class member was approved.⁵ Here, the
15 Settlement allocation of \$17.50 per FCRA Class Member is certainly fair and reasonable given the prior
16 approved FCRA settlements. Blumenthal Decl. ¶8(d).

17
18
19
20 pay wages if the employer and employee have a good faith dispute as to whether and when the wages
21 were due." Importantly, the recent decision that good faith belief of compliance by the employer in
22 *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the
23 claims for waiting time and wage statement penalties, even if wages were owed to the class.

24 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
25 Plaintiffs did not include the PAGA claim in this discussion of the value of the class claims. The
26 PAGA claim was addressed in the Declaration of Nordrehaug at ¶33 filed in support of the Motion for
27 Preliminary Approval.

28 ⁵ See also *Moore v. Aerotek, Inc.*, 2017 WL 2838148, at *4 (S.D. Ohio 2017) (per-capita gross
recovery of \$25 in FCRA case); *Aceves v. Autozone Inc.*, No. 5:14-cv-2032, ECF No. 58 (C.D. Cal.
2016) (approval of FCRA settlement with gross recovery of \$20 per class member); *Patrick v. Interstate*
Mgmt. Co., LLC, No. 8:15-cv-1252, ECF No. 42 (M.D. Fla. 2016) (approval of FCRA claim where class
members received \$9 each); *Landrum v. Acadian Ambulance Serv., Inc.*, No. 14-cv-1467, ECF No. 37
(S.D. Tex. 2015) (approval of FCRA disclosure settlement of \$10 per person).

Given the amount of the settlement as compared to the potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

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

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

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

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

⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a settlement where the settlement amount constituted approximately 25% of the estimated overtime damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%" of maximum valuation).

1 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
2 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
3 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
4 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

5 First, the fee award representing one-third of the fund clearly falls within that range and is
6 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
7 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
8 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
9 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
10 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte v. Robert Half Int’l*, 1 Cal.
11 5th 480, 503 (2016), The California Supreme Court both (1) joined the majority of federal and state
12 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
13 members, the trial court in its equitable powers awards class counsel a fee out of that fund, and (2)
14 expressly approved of one-third as a reasonable percentage in a contingent common fund class
15 settlement. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

16 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
17 Here, Plaintiffs and their counsel secured a \$2,000,000 settlement for the benefit of the Class and very
18 few of the Class Members elected to opt out. Similarly, not one Class Member objected. The
19 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
20 could potentially prevail on the contested issues regarding liability, maintain class certification,
21 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
22 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
23 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
24 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
25 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
26 **common fund as attorneys' fees has been found to be appropriate.**”)
27
28

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

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

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

12 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$2,00,000 has been created.
13 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
14 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
15 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
16 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
17 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
18 the risks and the delay in payment.** *See e.g. Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
19 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
20 Cir. 2016) (abuse of discretion not to apply risk multiplier).

21 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
22 the requested attorneys’ fee of one-third equal to \$666,666 is also established by reference to Class
23 Counsel’s lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
24 through July 1, 2024, Class Counsel’s total lodestar is \$330,983.75, with significant additional fees still
25 to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
26 Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel’s total
27 lodestar with a reasonable multiplier of 2, and there will be additional lodestar incurred by Class
28 Counsel to complete the settlement process and manage the settlement distribution and reports.
(Blumenthal Decl. at ¶12.) Such a multiplier is within the range of multipliers approved in other cases

1 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷

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

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

5 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
6 Litigation Expenses Payment of not more than \$20,000." Class Counsel requests reimbursement for
7 incurred litigation expenses and costs in the amount of \$20,000. Class Counsel have incurred
8 \$31,757.07 based upon counsel's billing records; therefore, this requested amount of \$20,000 is less
9 than the amount actually incurred by Class Counsel. These litigation expenses include the expenses
10 incurred for filing fees, mediation expenses, expert expenses (Berger Consulting), and attorney service
11 charges (Knox, OneLegal), research charges (LexisNexis), and appearance fees, all of which are costs
12 normally billed to and paid by the client.⁸ The details of the litigation expenses incurred are set forth
13 the Blumenthal Decl. at ¶13 and Exhibits #3 and 4. These costs were reasonably incurred in the
14 prosecution of the Action. (Blumenthal Decl. at ¶13.) Because these costs were reasonable and
15 necessary to the successful prosecution of these claims, the request is 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 \$12,500 each, in accordance with the Agreement for their time,
19

20 ⁷ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
21 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
22 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
23 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
24 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez*
25 *v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved
range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26
multiplier).

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 risk and effort expended on behalf of the Class as the class representatives. (Agreement at ¶ 3.2(a).)
2 Defendant has agreed to this payment and there have been no objections to the requested service awards.
3 The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California
4 in similar cases, which further supports the request in this case. The Plaintiffs' Declarations are
5 submitted in support of these requests and are attached as Exhibit #6 to the Blumenthal Decl.

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

17 The payment of service awards to successful class representatives is appropriate and the amount
18 of \$12,500 is within the currently awarded range for similar settlements. *See, e.g., Andrews v. Plains*
19 *All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the
20 requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019
21 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award);
22 *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500
23 where average class member payment was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
24 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs
25 in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007)
26 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
27 Accordingly, Class Counsel respectfully request approval of the requested Class Representative Service
28

1 Payments in accordance with the Agreement.

2 **VI. CONCLUSION**

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

6 Respectfully submitted,

7 Dated: July 1, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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9 By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug
Attorneys for Plaintiff

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