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

DORIS VANESSA JACOBY, an
individual, on behalf of herself, and on
behalf of all persons similarly situated,

Plaintiff,

vs.

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

Defendants.

CASE No. **SCV-271141**

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

Hearing Date: December 4, 2024

Hearing Time: 3:00 p.m.

*[Hearing scheduled by Orders dated August 21, 2024
and September 25, 2024]*

Judge: Hon. Bradford DeMeo
Dept: 17

Date Filed: July 8, 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 August 21, 2024 (“Preliminary Approval
6 Order”) and the September 25, 2024 Order, the Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiff Doris Vanessa Jacoby (“Plaintiff”) respectfully moves for final
9 approval, including attorneys’ fees, costs and the service award, and the proposed entry of the Final
10 Approval Order and Judgment, submitted herewith. The settlement represents an excellent result for
11 the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice to
12 the 1,227 members of the Class, to date there have been **no objections** and few requests for exclusion,
13 which means that nearly the entire Class elected to participate in the Settlement. Blumenthal Decl. ¶4.
14 This is a positive response from the Class evidencing their approval of the settlement. As a result,
15 Plaintiff respectfully submits that the settlement should be finally approved for the same reasons that
16 the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
19 NorCal HealthConnect, LLC (“Defendant”) is One Million Dollars (\$1,000,000) (Agreement at ¶¶ 1.26
20 and 3.1.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
21 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees

23 ¹ Capitalized terms are defined in the Agreement.

24 ² The “Class” is collectively defined as the “Wage and Hour Class” and the “Background Check
25 Class.” The “Wage and Hour Class” means “all individuals who were employed by Defendant in
26 California and classified as a non-exempt employee at any time during the Class Period.” The “Class
27 Period” is “July 8, 2018, through October 15, 2023.” The “Background Check Class” means “all
28 individuals who were executed Defendant's background check disclosure form at any time during the
 Background Check Class Period.” The “Background Check Class Period is “July 8, 2020, through
 October 15, 2023.” (Preliminary Approval Order at p. 2, no. 1.)

1 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4)
2 the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment.
3 (Agreement at ¶ 1.26.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include
4 Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in
5 with no reversion to Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b). The following is a table
6 of the key financial terms of the Settlement and the proposed deductions:

7 **\$1,000,000** (Gross Settlement Amount)

- 8 - \$20,000 (Plaintiff's proposed service award not to exceed amount)
- 9 - \$40,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$333,333 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 11 - \$40,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$17,000 (Administration Expenses Payment - not to exceed amount)
- 13 - \$38,250 (Background Check Class Payments - \$50 x 765)

14 **\$549,667** (Net Settlement Amount for Individual Class Payments)

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

17 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
18 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
19 is "fair, reasonable, and adequate." (Preliminary Approval Order at p. 3, no. 9.) In sum, the Settlement
20 valued at \$1,000,000 is an excellent result for the Class. This result is particularly favorable in light of
21 the fact that liability and class certification in this case were far from certain in light of the defenses
22 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
23 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
24 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

25 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
26 **OF CLASS ACTION SETTLEMENTS**

27 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
28 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
v. Southland Corp., 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

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

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

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

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

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

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

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

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

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

20 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
21 an experienced and well-respected mediator. Defendant has expressly denied and continue to deny any
22 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
23 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
24 Claims of the Class in accordance with this Settlement, based upon the experience of Class Counsel
25 who has previously litigated similar claims against other employers. Blumenthal Decl. ¶7(a).

26 The Parties attended an arms-length mediation session with Tripper Ortman, Esq., a respected
27 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
28 preparation for the mediation, Defendant provided to Plaintiff and Class Counsel payroll and

1 employment data and other information regarding the Class Members, various internal documents, and
2 other compensation and employment-related materials. Class Counsel analyzed the data with the
3 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
4 mediator. Following this all-day mediation, the Parties agreed to this Settlement based upon a
5 mediator's proposal. Blumenthal Decl. ¶7(b).

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

11 From April 2024 to May 2024, the settlement agreement and exhibits thereto were finalized and
12 executed. On August 21, 2024, the Court granted the Motion for Preliminary Approval, and entered the
13 Order granting preliminary approved of the settlement as fair and reasonable to the Class. The Parties
14 later stipulated to continue Plaintiff's Final Approval hearing date from November 6, 2024 to December
15 4, 2024, which the Court granted on September 25, 2024. Blumenthal Decl. ¶7(c).

16 3. Class Counsel is Experienced in Similar Litigation

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

26 4. There Are No Objections and Few Requests for Exclusion

27 The reaction of the Class unequivocally supports approval of the Settlement. On September 20,
28 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided

1 each class member with the terms of the Settlement, including notice of the claims at issue and the
2 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
3 sought, how individual settlement awards would be calculated, and the specific, estimated payment
4 amount to that individual. *See* Declaration of Cassandra Polites (to be filed in advance of the hearing).
5 In disseminating the notice, the Administrator followed the notice procedures authorized by the Court
6 in its Preliminary Approval Order. To date, there have been no objections and few requests to opt-out.³
7 As such, nearly the entire Class will participate in the Settlement and will be sent a settlement check.
8 *See* Blumenthal Decl. ¶4.

9 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
10 Settlement. *See In re Austrian & German Bank Holocaust Litigation*, 80 F.Supp.2d 164, 175 (S.D.N.Y.
11 2000) ("If only a small number of objections are received, that fact can be viewed as indicative of the
12 adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29
13 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*, 638 F.2d 954
14 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed settlement should
15 be considered when determining fairness of settlement). Here, where there are no objections, the
16 approval of the class is evident.

17 5. The Strength of Plaintiff's Case

18 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
19 overtime wages for hours worked and at the correct rate, were not provided meal and rest periods, were
20 not timely paid earned wages, were not provided reimbursement for required expenses, were not
21 provided accurate itemized wage statements, were not paid accrued and used sick pay at the correct rate
22 of pay, were not provided with compliant disclosures and/or authorizations in violation of the Fair
23 Credit Reporting Act, the Investigative Consumer Reporting Agencies Act and the Consumer Credit
24 Reporting Agencies Act, and were not paid all wages at the time of termination. The Action seeks
25 unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly
26

27 ³ The Response Deadline is on November 19, 2024, which is after the filing of this motion. As a
28 result, the final Administration figures will be documented in the forthcoming Declaration of Polites,
to be filed after November 19 and in advance of the December 4, 2024 hearing.

1 due and owing to Plaintiff and the Class Members. Blumenthal Decl. ¶5.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant
4 present serious threats to the claims of the Plaintiff and the other Class Members. Defendant maintains
5 that its practices complied with all applicable wage and hour laws. Defendant maintains that all Class
6 Members' work time was properly recorded and compensated and that there was no unpaid overtime.
7 Defendant also argued that any unpaid overtime attributable to workers subject to a CBA is not
8 compensable overtime under the CBA. Defendant contends that its meal and rest period policies and
9 practices provide Class Members with meal and rest periods and that the payment of significant meal
10 premiums is evidence of Defendant's legal compliant practices. As to expense reimbursement,
11 Defendant maintains that it did not fail to provide reimbursement for necessary business expenses
12 because, among other things, employees are not required to use their personal cell phones to perform
13 their work. Defendant could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004
14 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's*
15 *Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims in terms of liability and value,
16 and preclude claims from proceeding on a class or representative basis. Defendant also maintains that
17 a good faith dispute and absence of willfulness would negate the claims for waiting time penalties
18 and/or failure to provide accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.*,
19 2024 Cal. Lexis 2438, at *3 (May 6, 2024) ("if an employer reasonably and in good faith believed it was
20 providing a complete and accurate wage statement in compliance with the requirements of section 226,
21 then it has not knowingly and intentionally failed to comply with the wage statement law.") If
22 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
23 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
24 have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

27 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
28 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
settlement amount and the Class Members' expected net recovery, after fees and other

1 costs are deducted, appear to be a reasonable compromise, in light of the risks of
2 litigation.

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

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

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

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

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

1 Member allocation will be set forth in the forthcoming Declaration of Polites. Given the complexities
2 of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is
3 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

24 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
25 and likely duration of further litigation likewise favors the settlement. Regardless of how
26 this Court might have ruled on the merits of the legal issues, the losing party likely
27 would have appealed, and the parties would have faced the expense and uncertainty of
28 litigating an appeal. "The expense and possible duration of the litigation should be
considered in evaluating the reasonableness of [a] settlement."

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 Plaintiff's 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. Based upon 1,227 Wage and Hour Class Members who collectively
6 worked 121,281 Workweeks, the Gross Settlement Amount provides a value of \$814 per Class Member
7 and \$8 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery
8 of \$416.80 per Class Member and \$4.21 per Workweek. Blumenthal Decl. at ¶8(d).

9 The calculations to compensate for the amount due for the Class at the time of the mediation
10 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
11 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
12 wages for the employees. For the Class, the maximum value of the claim for unpaid wages due to the
13 alleged unpaid overtime was \$2,678,992.74, the maximum value of the claim for unpaid wages due to
14 alleged off-the-clock work was \$3,571,990.32, the maximum value of unpaid sick pay was \$84,730,
15 the maximum potential damages for alleged meal period violations were estimated to be \$1,689,505.78
16 after deduction of meal premiums already paid by Defendant, the maximum potential damages for
17 alleged rest period violations were estimated to be \$3,574,990.32 after deduction of rest premiums
18 already paid by Defendant, and the maximum potential damages for the alleged failure to reimburse
19 business expenses were calculated to be \$206,738 based upon \$5 per month. In total, the damages for
20 the Class were calculated to have a maximum potential total value of \$11,806,947. In addition, Plaintiff
21 calculated that the maximum value of the potential waiting time penalties were between \$1,015,109 and
22 \$9,014,169, depending on the predicate violation, and the maximum value of the potential wage
23 statement penalties were \$3,323,900.⁴ Defendant vigorously disputed Plaintiff's calculations and
24

25 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code §§ 203 and 226, these
26 claims were subject to additional, separate defenses asserted by Defendant, including, a good faith
27 dispute defense as to whether any premium wages for meal or rest periods or other wages were owed
28 given Defendant's position that 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 exposure theories. Blumenthal Decl. at ¶ 8(d).

2 Consequently, the Gross Settlement Amount represents more than 8% of Plaintiff's calculation
3 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
4 all be proven in full at trial.⁵ Importantly, the recent decision that good faith belief of compliance by the
5 employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely
6 negate the claims for waiting time and wage statement penalties, even if wages were owed to the Class.
7 The above maximum calculations should then be adjusted in consideration for both the risk of class
8 certification and the risk of establishing class-wide liability on all claims. Blumenthal Decl. ¶8(d).

9 As to the Background Check Class, a comparison of approved FCRA settlements involving
10 similar facts further confirms the reasonableness of this Settlement. The Court in *Pietras v. Sentry Ins.*
11 *Co.*, 513 F. Supp. 2d 983, 985 (N.D. Ill 2007), "cited eighteen cases, which settled for an average of
12 \$34.59 per class member." Similarly, in *Bailes v. Lineage Logistics, LLC*, 2016 U.S. Dist. LEXIS
13 110943 (D. Kan 2016), the District Court approved a FCRA class settlement which provided for a fund
14 of \$149,205 for a class of 3,430, which correlates to \$43.50 per person. In *Feist v. Petco Animal*
15 *Supplies, Inc.*, 2018 U.S. Dist. LEXIS 98686 (S.D. Cal. 2018), Judge Marilyn Huff granted preliminary
16 approval to an FCRA class settlement of \$1.2 million for a class of 37,000, which equates to \$32.43 per
17 person. Here, the Settlement allocation of \$50 per FCRA Class Member is certainly fair and reasonable
18 given the prior approved FCRA settlements and the defenses asserted by Defendant. Blumenthal Decl.
19 ¶ 8(d). Given the amount of the Settlement as compared to the potential value of the claims, the
20 Settlement is most certainly fair and reasonable.⁶

21
22 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
Declaration of Kyle Nordrehaug at ¶ 33 filed in support of the motion for preliminary approval.

24 ⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
25 settlement where the settlement amount constituted approximately 25% of the estimated overtime
26 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
27 (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.*
28 *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

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

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

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

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

20 First, the fee award representing one-third of the fund clearly falls within that range and is
21 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
22 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market
23 in legal services. In *Laffitte v. Robert Half Int'l*, 1 Cal.5th 480, 503 (2016), the California Supreme
24 Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third
25 (1/3) as a reasonable percentage in a contingent common fund class settlement. Such similar awards by

26 _____
27 settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
28 Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 other Courts are set forth in the Blumenthal Decl. ¶11.

2 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
3 Here, Plaintiff and her counsel secured a \$1,000,000 settlement for the benefit of the Class and not one
4 Class Member objected. The Settlement was possible only because Class Counsel was able to convince
5 Defendant that Plaintiff could potentially prevail on the contested issues regarding liability, obtain class
6 certification, overcome difficulties in proof as to monetary relief and take the case to trial if need be.
7 Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
8 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
9 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
10 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
11 **one-third of the common fund as attorneys' fees has been found to be appropriate.**”)

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

17 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
18 reward is the attendant risks inherent in the litigation. For Class Counsel, the fees here were wholly
19 contingent in nature and the case presented far more risk than the usual contingent fee case. Among the
20 risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendant
21 who had retained a premier and highly experienced defense firm. **Counsel retained on a contingency**
22 **fee basis, is entitled to a premium above their hourly rate in order to compensate for both the**
23 **risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th
24 Cir. 2016) (courts “must” apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir.
25 2016) (abuse of discretion not to apply risk multiplier).

26 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
27 the requested attorneys’ fee of one-third equal to \$333,333 is also established by reference to Class
28 Counsel’s lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**

1 **that through November 5, 2024, Class Counsel’s total lodestar is \$350,476.25.** (Blumenthal Decl.
2 at ¶12 and Exhibit #3.) The requested fee award is therefore less than Class Counsel’s current lodestar,
3 representing a “negative multiplier”, and there will be additional lodestar incurred by Class Counsel to
4 complete the settlement process and manage the settlement distribution and reports. (Blumenthal Decl.
5 at ¶12.) Such negative lodestar cross-check is below the range of positive multipliers approved in other
6 cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷ For such
7 reasons, Class Counsel’s request for attorneys’ fees in the amount of one-third of the common fund is
8 reasonable and should be approved.

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

10 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a “Class Counsel
11 Litigation Expenses Payment of not more than \$40,000.” Class Counsel incurred \$41,138.89 based
12 upon counsel’s billing records, and therefore requests reimbursement for litigation expenses in the
13 capped amount of \$40,000. These litigation expenses include the expenses incurred for filing fees,
14 mediation expenses, expert expenses (Berger Consulting and DM&A), Bel-Aire notice expenses
15 (ILYM), attorney service charges (Knox, OneLegal), and deposition expenses, all of which are costs
16 normally billed to and paid by the client. The details of the expenses incurred are set forth the
17 Blumenthal Decl. at ¶13 and Exhibit #3. Because these expenses were reasonably incurred and
18 necessary to the successful prosecution of these claims, the request is reasonable and should be granted.⁸

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

20 Plaintiff respectfully submits that for her service as the sole class representative, Plaintiff should
21 be awarded the agreed service award of \$20,000, in accordance with the Agreement for her time, risk
22

23 ⁷ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
24 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
25 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
26 4th at 255 (“multipliers can range from 2 to 4 or even higher.”); *In re Sutter Health Uninsured Pricing*
27 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as “fair and reasonable”); *Chavez*
28 *v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53); *Taylor v. Fedex Freight,*
Inc., 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

⁸ Nontaxable costs are properly awarded where authorized by the parties’ agreement. *Stetson*, 821
F.3d at 1165; see also *Rutti v. Lojack Corp., Inc.*, 2012 WL 3151077, at *12 (C.D. Cal. 2012).

1 and effort expended on behalf of the Class as the sole class representative. (Agreement at ¶ 3.2(a).)
2 Defendant has agreed to this payment and there have been no objections to the requested service award.
3 The Plaintiff's Declaration is submitted in support of this request and is attached as Exhibit #5 to the
4 Blumenthal Decl.

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

15 The payment of service awards to successful class representatives is appropriate and the amount
16 is within the currently awarded range for similar settlements. *See, e.g., Andrews v. Plains All Am.*
17 *Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (service awards of \$15,000 each
18 are appropriate); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)
19 (awarding \$12,500 where average class member payment was \$351); *Louie, supra*, 2008 WL 4473183
20 at *7 (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass, supra*,
21 2007 WL 221862 at *16-17 (awarding \$25,000 service award). Accordingly, Plaintiff respectfully
22 requests approval of the Class Representative Service Payment in accordance with the Agreement.

23 **VI. CONCLUSION**

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

27 Dated: November 5, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
28 By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Attorneys for Plaintiff