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

MONICA CUTHBERT, SHERRI
MAYER, BELA CRISPIN, CORRINE
SALAZAR-ROSE, individuals, on
behalf of themselves and on behalf of
all persons similarly situated,

Plaintiffs,

vs.

AMERICAN PACIFIC MORTGAGE
CORPORATION, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE No. **S-CV-0049369**

Hearing Date: February 18, 2025
Hearing Time: 8:30 a.m.
*[Hearing scheduled by Orders dated July 23
2024 and November 4, 2024]*

Judge: Hon. Trisha Hirashima
Department: 42

Action Filed: October 27, 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.....	5
5.	The Strength of Plaintiff's Case	6
6.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	8
7.	The Amount Offered in Settlement.....	9
V.	THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARD SHOULD BE APPROVED	11
A.	The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund Method.....	11
B.	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. 4 th 1135 (2000)	2, 3
<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652 (E.D. Cal. Jun 24, 2008)	5
<i>Andrews v. Plains All Am. Pipeline L.P.</i> , 2022 U.S. Dist. LEXIS 172183, (C.D. Cal. 2022)	15
<i>Barbosa v. Cargill Meat Solutions Corp.</i> , 297 F.R.D. 431 (E.D. Cal. 2013)	12
<i>Barcia v. Contain-A-Way, Inc.</i> , 2009 U.S. Dist. LEXIS 17118 (S. D. Cal. 2009)	8
<i>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. Nov. 16, 2007)	7
<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, 470 (2d Cir. 1974)	13
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	3, 4
<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); <i>aff'd</i> 2009 U.S. App. LEXIS 10328 (9 th Cir. May 14, 2009)	5, 9, 11, 15
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	6
<i>Hopson v. Hanesbrands Inc.</i> , 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009)	7

1	<i>Huens v. Tatum,</i>	
2	52 Cal. App. 4 th 259 (1997).....	2
3	<i>In re Austrian & German Bank Holocaust Litigation,</i>	
4	80 F. Supp. 2d 164 (S.D.N.Y. 2000).....	6
5	<i>In re Sutter Health Uninsured Pricing Cases,</i>	
6	171 Cal.App.4th 495 (2009).....	14
7	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
8	168 Cal. App. 4th 116 (2008).....	3
9	<i>Laffitte v. Robert Half Int'l,</i>	
10	1 Cal. 5th 480 (2016)	11, 13
11	<i>Laskey v. Int'l Union,</i>	
12	638 F.2d 954 (6th Cir. 1981)	6
13	<i>Louie v. Kaiser Foundation Health Plan, Inc.,</i>	
14	2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008)	8, 15
15	<i>Ma v. Covidien Holding, Inc.,</i>	
16	2014 WL 2472316, (C.D. Cal. 2014)	11
17	<i>Mathein v. Pier 1 Imps.,</i>	
18	2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018).....	15
19	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
20	186 Cal. App. 4th 399 (2010).	3
21	<i>Naranjo v. Spectrum Sec. Servs., Inc.,</i>	
22	2024 Cal. LEXIS 2438 (May 6, 2024).....	7, 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>	
26	182 Cal.App.4th 278 (2010).....	13
27	<i>Reynolds v. Direct Flow Med., Inc.,</i>	
28	2019 U.S. Dist. LEXIS 149865, (N.D. Cal. 2019).....	15
	<i>Rutti v. Lojack Corp., Inc.,</i>	
	2012 WL 3151077 (C.D. Cal. 2012).....	14
	<i>Serrano v. Priest,</i>	
	20 Cal. 3d 25 (1977).....	11
	<i>Stanger v. China Elec. Motor, Inc.,</i>	
	812 F.3d 734 (9th Cir. 2016)	13
	<i>Stetson v. Grissom,</i>	
	821 F.3d 1157 (9th Cir. 2016)	13, 14

1	<i>Stoetzner v. U.S. Steel Corp.</i> ,	
2	897 F.2d 115 (3d. Cir. 1990).....	6
3	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
4	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015).....	11
5	<i>Swedish Hospital v. Shalala</i> ,	
6	1 F.3d 1261 (D.C. Cir. 1993)	12
7	<i>Taylor v. Fedex Freight, Inc.</i> ,	
8	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016).....	14
9	<i>Viceral v. Mistras Grp., Inc.</i> ,	
10	2016 WL 5907869 (N.D. Cal. 2016)	11
11	<i>Vincent v. Hughes Air West, Inc.</i> ,	
12	557 F.2d 759 (9th Cir. 1997)	11
13	<i>Vizcaino v. Microsoft Corp.</i> ,	
14	290 F.3d 1043 (9th Cir. 2002)	13
15	<i>Wershba v. Apple Computer</i> ,	
16	91 Cal. App. 4 th 224 (2001).....	3, 11, 14

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 July 23, 2024 (“Preliminary Approval Order”),
6 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 Monica Cuthbert, Bela Crispin, Sherri Mayer, and Corrine
9 Salazar-Rose (“Plaintiffs”) respectfully submits moves for final approval, including attorneys’ fees,
10 costs and the service award, and the proposed entry of the Final Approval Order and Judgment,
11 submitted herewith. The settlement represents an excellent result for the Class and avoids the delays,
12 risks, and costs of further litigation. After disseminating the notice to the members of the Class, there
13 were **no objections and no request for exclusion**, which means that the entire Class (100%) has
14 elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a positive response from the Class
15 evidencing their collective approval of the settlement. As a result, Plaintiffs respectfully submit that
16 the class settlement should be finally approved for the same reasons that the Court preliminarily
17 approved the settlement as fair, reasonable, and adequate.

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

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
20 American Pacific Mortgage Corporation (“Defendant”) is Six Hundred Thousand Dollars (\$600,000.00)
21 (the “Gross Settlement Amount”). (Agreement at ¶¶ 1.24 and 3.1.) Under the Settlement, the Gross
22 Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments
23 _____

24 ¹ Capitalized terms are defined in the Agreement.

25 ² The “Class” is defined as “all individuals who were employed by Defendant in California and
26 classified as a non-exempt employee at any time during the Class Period who did not sign an arbitration
27 agreement, and excluding non-exempt employees who were employed by Defendant as loan officer
28 assistants or processors, or who performed equivalent duties to loan officer assistants and processors,
up to February 18, 2020.” The “Class Period” is defined as “October 27, 2018 through December 1,
2023.” (Preliminary Approval Order at ¶6.)

1 to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation
2 Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service
3 Payments to Plaintiffs; and (5) the PAGA Penalties. (Agreement at ¶ 1.24.) Blumenthal Decl. ¶3(a).
4 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶
5 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶
6 3.1.) Blumenthal Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and
7 the proposed deductions:

8 **\$600,000** (Gross Settlement Amount)

- 9 - \$50,000 (Plaintiffs' proposed service awards not to exceed \$12,500 each)
- \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$200,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$50,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 11 - \$20,000 (Administrative Expenses Payment - not to exceed amount)

12 **\$255,000** (Net Settlement Amount)

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 ¶ 4.) In sum, the Settlement valued
18 at \$600,000 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
the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

17 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
18 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
19 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
20 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117 (2009). “The
21 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
22 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
23 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
24 offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience
25 and views of counsel, the presence of a governmental participant, and the reaction of the class members
26 to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)
27 (internal citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th
28 399, 408 (2010).

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

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

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

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

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

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

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

27 The Parties attended an arms-length mediation session with Tripper Orman, Esq., a respected
28 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In

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

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

14 From September 2023 to December 2023, the settlement agreement and exhibits thereto were
15 finalized and executed. On July 23, 2024, the Court issued its Order granting preliminary approval of
16 the settlement as fair, adequate, and reasonable to the Class. Blumenthal Decl. ¶7(c).

17 3. Class Counsel is Experienced in Similar Litigation

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

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

28 The reaction of the Class unequivocally supports approval of the Settlement. On November 18,

2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each class member with the terms of the Settlement, including notice of the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award that were being sought, how individual settlement awards would be calculated, and the specific, estimated payment amount to that individual. See Declaration of Madely Nava ("Nava Decl.") ¶ 7, Exh. A. In disseminating the notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have been no objections and no requests to opt-out. Nava Decl. ¶¶ 11-12. As such, the entire Class (100 %) will participate in the Settlement and will be sent a settlement check. See Nava Decl. at ¶¶ 13-15; Blumenthal Decl. ¶4.

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

5. The Strength of Plaintiffs' Case

The Action generally alleges that Plaintiffs and other Class Members were not properly paid all overtime wages for hours worked and at the correct rate of pay, were not provided meal and rest periods or paid premiums at the correct rate of pay in lieu thereof, were not timely paid earned wages, were not provided reimbursement for required expenses, were not paid accrued and used sick pay at the correct rate of pay, were not provided accurate itemized wage statements, and were not paid all wages at the time of termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and owing to Plaintiffs and the other Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant

1 present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant asserted
2 that Defendant's practices complied with all applicable Labor laws. Defendant argued that Class
3 Members were paid for all time worked and that all work time was properly recorded. Defendant
4 maintained there was no miscalculation of the regular rate when paying wages to the Plaintiffs and the
5 Class. Defendant contend that their meal and rest period policies fully complied with California law
6 and that Defendant did not fail to provide the opportunity for legally required meal and rest breaks.
7 Defendant contends that there was no failure to pay for business expenses and any cell phone usage was
8 merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendant
9 could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
10 weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period
11 claims. Defendant also argues that based on its facially lawful practices, Defendant acted in good faith
12 and without willfulness, which if accepted would negate the claims for waiting time penalties and/or
13 inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065
14 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and accurate
15 wage statement in compliance with the requirements of section 226, then it has not knowingly and
16 intentionally failed to comply with the wage statement law.") If successful, Defendant's defenses could
17 eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses
18 could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk
19 to recovery by the Class. Blumenthal Decl. ¶8(a).

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

22 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
23 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
24 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.

25 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007
26 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
approval.").

27 As recognized in a federal decision approving settlement of an overtime wage class action:
28

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

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

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

20 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
21 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
22 substantial defenses both to liability and to class certification. The maximum and average class member
23 allocation (in addition to their Individual PAGA Payment) are \$2,690.37 and \$798.46, respectively.
24 *See Nava Decl.* ¶15. Given the complexities of this case, the defenses, along with the uncertainties of
25 proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
26 approved. Blumenthal Decl. at ¶8(e).

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

28 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

1 an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

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

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

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

21 *Id.* at *12.

22 7. The Amount Offered in Settlement

23 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
24 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
25 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
26 favorably to the value of the claims. Based upon 325 Class Members who collectively worked an
27 estimated 25,850 workweeks, the Gross Settlement Amount provides an average value of \$1,8461per
28 Class Member and \$23 per workweek and, after deductions, the Net Settlement Amount provides an
average recovery of \$798.46 per Class Member and a recovery of \$10.03 per workweek. Blumenthal
Decl. at ¶8(d).

1 The calculations to compensate for the amount due for the Class at the time of the mediation
2 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
3 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
4 wages for the employees. For the Class, the maximum potential damages were calculated to be
5 \$261,906 for alleged reporting time wages, \$779,538 for the alleged unpaid wages for off-the-clock
6 work at one hour per week, \$84,038 for the alleged unpaid wages due to miscalculation of the regular
7 rate when paying wages, \$105,152 for the alleged underpayment of sick pay, \$1,570,836 for alleged
8 meal period damages based upon a 41.7% potential violation rate for all shifts worked, \$1,662,265 for
9 alleged rest period damages based upon the same 41.7% potential violation rate for shifts worked,
10 \$26,450 for alleged unreimbursed business expenses at \$5 per month. Decl. Nordrehaug, ¶6. As a result,
11 the total damage valuation was calculated that Defendant was subject to a maximum damage claim in
12 the amount of \$6,228,280. As to potential penalties, Plaintiffs calculated that potential waiting time
13 penalties were a maximum of between \$745,929 and \$1,030,092, and potential maximum wage
14 statement penalties were \$569,700.³ Defendant vigorously disputed Plaintiffs' calculations and exposure
15 theories. Blumenthal Decl. ¶8(d).

16 Consequently, the Gross Settlement Amount of \$600,000 represents more than 14% of the
17 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
18 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
19 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
20 waiting time and wage statement penalties, even if wages were owed to the class. The above maximum

21
22 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
23 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
24 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
25 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class
26 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
27 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute
28 as to whether and when the wages were due.").

29 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
30 Plaintiffs did not included the PAGA claim in this discussion of the value of the class claims. The
31 PAGA claim was addressed in the Declaration of Kyle Nordrehaug at ¶33 filed in support of Plaintiffs'
32 Motion for Preliminary Approval..

1 calculations should then be realistically risk adjusted in consideration for both the risk of class
2 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
3 settlement as compared to the potential value of claims in this case and the defenses asserted by
4 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
5 Blumenthal Decl. ¶8(d).

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

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

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

18 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
19 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
20 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*
21 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state
22

23 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
27 approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
28 *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 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
2 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
3 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
4 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
5 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

13 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
14 Here, Plaintiffs and their counsel secured a \$600,000 settlement for the benefit of the Class, and not one
15 Class Member objected. The Settlement was possible only because Class Counsel was able to convince
16 Defendant that Plaintiffs could potentially prevail on the contested issues regarding liability, maintain
17 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
18 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
19 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
20 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
21 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
22 **one-third of the common fund as attorneys' fees has been found to be appropriate.**”)

23 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
24 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
25 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
26 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
27 Class Counsel would be seeking a one-third fee award. Again, there were no objections.
28

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

3 No one expects a lawyer whose compensation is contingent upon his success to charge, when
4 successful, as little as he would charge a client who had agreed to pay for his services, regardless
5 of success. Nor, particularly in complicated cases producing large recoveries, is it just to make
6 a fee depend solely on the reasonable amount of time expended.
7 495 F.2d 448, 470 (2d Cir. 1974).

8 Here, it is clear that a settlement fund of \$600,000 has been created. For Class Counsel, the fees
9 here were wholly contingent in nature and the case presented far more risk than the usual contingent
10 fee case. Among the risks was the cost inherent in class action litigation, as well as a long battle with
11 a corporate Defendant who had retained a premier and highly experienced defense firm. **Counsel**
12 **retained on a contingency fee basis, whether in private matters or in class action litigation, is**
13 **entitled to a premium above their hourly rate in order to compensate for both the risks and the**
14 **delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016)
15 (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016)
16 (abuse of discretion not to apply risk multiplier).

17 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
18 the requested attorneys' fee of one-third equal to \$200,000 is also established by reference to Class
19 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
20 **that through January 23, 2025, Class Counsel's total lodestar is \$198,738.75, with significant**
21 **additional fees still to be incurred to complete final approval and the settlement process.**
22 Blumenthal Decl. at ¶12 and Exhibit #3. The requested fee award is therefore currently equivalent to
23 Class Counsel's total lodestar, and there will be additional lodestar incurred by Class Counsel to
24 complete the settlement process and manage the settlement distribution and reports. Blumenthal Decl.
25 at ¶12. Such a cross-check is below the range of positive multipliers approved in other cases such as
26 *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

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

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 reimbursement for
6 incurred litigation expenses and costs in the amount of \$23,761.23. Class Counsel have incurred
7 \$23,761.23 based upon counsel's billing records, which is less than the "not to exceed" amount of
8 \$25,000. These litigation expenses include filing fees, mediation expenses, expert expenses (Berger
9 Consulting), and attorney service charges (Knox, OneLegal), research charges (LexisNexis), and
10 appearance fees, all of which are costs normally billed to and paid by the client.⁷ The details of the
11 litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3. These costs were
12 reasonably incurred in the prosecution of the Action. Blumenthal Decl. at ¶13. Because these costs
13 were necessary to the successful prosecution of these claims, the request should be granted.

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

15 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
16 be awarded the agreed service award of \$12,500 each, in accordance with the Agreement for their time,
17 risk and effort expended on behalf of the Class as the class representatives. (Agreement at ¶ 3.2(a).)
18 Defendant has agreed to this payment and there have been no objections to the requested service awards.
19 The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California
20 in similar cases, which further supports the request in this case. The Plaintiffs' Declarations are
21 submitted in support of this request and are attached as Exhibits #5, 6, 7 and 8 to the Blumenthal Decl.

22 _____
23 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming 2.52 multiplier as "fair and reasonable"); *Chavez*
24 *v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming 2.53 multiplier as well within the approved
25 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, photocopying,
28 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 As the representatives of the Class, Plaintiffs performed their duties to the Class admirably and
2 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,
3 responding to numerous requests, searching for documents, working with counsel, and reviewing the
4 settlement documentation. Blumenthal Decl. at ¶ 14. Plaintiffs' Declarations detail the involvement,
5 stress and risks they undertook as a result of this Action. Plaintiffs also assumed the serious risk that
6 they might possibly be liable for costs and fees to Defendant, as well as the reputational risk of being
7 "blacklisted" by other future employers for having filed a class action on behalf of employees.
8 Blumenthal Decl. at ¶15. Without the Plaintiffs' participation, cooperation and information, no other
9 employees would be receiving any benefit. Blumenthal Decl. at ¶¶ 15-16.

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

26 Dated: January 22, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Attorneys for Plaintiffs