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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

JENNIFER MONTOYA and JUAN
GONTEZ, individually, on behalf of
themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

FPR II, L.L.C., dba LEADPOINT
BUSINESS SERVICES, a Limited
Liability Company; and DOES 1
through 50, inclusive,

Defendants.

CASE No. **22CV404499**

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

Hearing Date: April 2, 2025

Hearing Time: 1:30 p.m.

[Hearing scheduled by Order dated December 20,
2024]

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed: October 13, 2022

Trial Date: Not set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and on November 20, 2024, the Court
3 preliminarily approved the Joint Stipulation Re: Class Action and Representative Action Settlement
4 (“Settlement,” “Agreement” or “Settlement Agreement”), a true and correct copy of which is attached
5 as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In accordance with the
6 Preliminary Approval Order dated December 20, 2024 (“Preliminary Approval Order”), the approved
7 Class Notice has been disseminated to the Class.²

8 The purpose of this hearing is to determine whether the proposed settlement of the litigation
9 should be finally approved. Plaintiffs Jennifer Montoya (“Plaintiff Montoya”) and Juan Manso Gontez
10 (“Plaintiff Gontez”) (collectively “Plaintiffs”) respectfully move for final approval, including attorneys’
11 fees, costs and the service award, and the proposed entry of the Final Approval Order and Judgment,
12 submitted herewith. The settlement represents an excellent result for the Class and avoids the delays,
13 risks, and costs of further litigation. After disseminating the notice to the 1,485 members of the Class,
14 to date, **there were no objections and, only two (2) requests for exclusion from the Class, which**
15 **means that nearly the entire Class (99.86%) has elected to participate in the Settlement.**³
16 Blumenthal Decl. ¶4. This is a positive response from the Class evidencing their collective approval of
17 the settlement. As a result, Plaintiffs respectfully submit that the settlement should be finally approved
18 for the same reasons that the Court preliminarily approved the settlement as fair, reasonable, and
19 adequate.

20 **II. THE SETTLEMENT BEFORE THE COURT**

21 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
22 FPR II, LLC, dba Leadpoint Business Services (“Defendant”) is One Million Five Hundred

24 ¹ Capitalized terms are defined in the Agreement.

25 ² The “Class” is defined as “all persons currently or formerly employed by Defendant as non-exempt,
26 hourly-paid employees during the Class Period in the State of California.” The “Class Period” is defined
27 as “October 13, 2018, through January 25, 2024.” (Preliminary Approval Order at Section III(A).)

28 ³ Because the Response Deadline is March 7, 2025, the final administration figures are being
compiled will be provided in a forthcoming Declaration of Cassandra Polites.

1 Thousand Dollars (\$1,500,000.00) (Agreement at ¶¶ 1(M).) Under the Settlement, the Gross Settlement
2 Amount consists of the following elements: (1) payment of the Individual Class Payments to the
3 Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses
4 Payment; (3) Administration Expenses Payment; (4) the Service Awards to Plaintiffs; and (5) the PAGA
5 Penalties payment. (Agreement at ¶ 1(M).) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does
6 not include Defendant's share of payroll taxes. *Id.* The Gross Settlement Amount shall be all-in with
7 no reversion to Defendant. *Id.* Blumenthal Decl. ¶3(b). The following is a table of the key financial
8 terms of the Settlement and the proposed deductions:

9 **\$1,500,000** (Gross Settlement Amount)

- 10 - \$12,500 (Plaintiffs' proposed service awards reduced to \$7,500 for Plaintiff Montoya
and \$5,000 to Plaintiff Gontez)
11 - \$50,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
12 - \$500,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)⁴
- \$75,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- \$15,000 (Settlement Administration Costs - not to exceed amount)

13 **\$847,500** (Net Settlement Amount)

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

16 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
17 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
18 is "fair, reasonable, and adequate." (Preliminary Approval Order at pp. 6-7.) In sum, the Settlement
19 valued at \$1,500,000 is an excellent result for the Class. This result is particularly favorable in light of
20 the fact that liability and class certification in this case were far from certain in light of the defenses
21 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
22 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
23 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

25 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal.App.4th 259,

27 ⁴ In accordance with the Court's Order for Preliminary Approval, counsel for Plaintiffs have
28 submitted lodestar information (including hourly rate and hours worked), evidence of actual costs
incurred, and evidence of settlement administration costs).

1 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
2 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
3 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
4 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

12 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
13 the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute
14 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
15 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
16 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
17 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*,
18 48 Cal.App.4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the
19 proposed settlement satisfies that standard and the presumption applies.

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

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

1 of counsel, the presence of a governmental participant, and the reaction of the class members to the
2 proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008) (internal
3 citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th 399, 408
4 (2010).

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

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

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

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

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

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

25 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
26 an experienced and well-respected mediator. Defendant has expressly denied and continue to deny any
27 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
28 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class

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

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

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

16 From February 2024 to June 2024, the settlement agreement and exhibits thereto were finalized
17 and executed. On November 20, 2024, the Court granted the Motion for Preliminary Approval, and on
18 December 20, 2024 the Court entered the Order granting preliminary approval of the settlement as fair
19 and reasonable to the Class. Blumenthal Decl. ¶7(c).

20 3. Class Counsel is Experienced in Similar Litigation

21 Class Counsel in this matter has extensive class action experience and has represented thousands
22 of persons in class actions including employment litigation, wage and hour class actions, and complex
23 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
24 claims similar to this case and have been approved as experienced class counsel during contested
25 motions in state and federal courts throughout California. The experience of counsel and class action
26 cases managed and settled by the Class Counsel in this action is provided to the Court in the Blumenthal
27 Decl. at Exhibit #1 and the Declaration of David Bibiyan (“Bibiyan Decl.”) at ¶¶ 1-13. Class Counsel
28 have participated in every aspect of the settlement discussions and have concluded the settlement is fair,

adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

4. There Are No Objections and Only Two Requests for Exclusion

The reaction of the Class unequivocally supports approval of the Settlement. On January 6, 2025, 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 Cassandra Polites ("Polites Decl."), Exh. A. In disseminating the notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. To date, there have been no objections and only two (2) requests to opt-out.⁵ The Polites Decl. will document the final administration results. 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, were not provided meal and rest periods, were not timely paid earned wages, were not provided reimbursement for required expenses, were not provided accurate itemized wage statements, were not paid all sick pay at the correct rate, and were not paid all wages at the time of termination. The Action seeks unpaid wages, penalties, attorney fees,

⁵ The Response Deadline is March 7, 2025, which is after the filing deadline for Plaintiffs' instant Motion. Before the Final Approval Hearing, Plaintiffs will submit the administration final figures in the Declaration of Polites.

1 litigation costs, and any other equitable or legal relief allegedly due and owing to Plaintiffs and the other
2 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 Defendant
5 present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant maintains
6 that its practices complied with all applicable wage and hour laws. Defendant maintains that all Class
7 Members' work time was properly recorded and compensated and that there was no miscalculation of
8 the regular rate. Defendant contends that its meal and rest period policies and practices are facially
9 lawful and provide Class Members with meal and rest periods. As to expense reimbursement,
10 Defendant maintains that it did not fail to provide reimbursement for necessary business expenses
11 because, among other things, employees are not required to use their personal cell phones to perform
12 their work. Defendant could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004
13 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's*
14 *Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value,
15 and preclude claims from proceeding on a class or representative basis. Defendant also maintains that
16 a good faith dispute and absence of willfulness would negate the claims for waiting time penalties
17 and/or failure to provide accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.,*
18 *Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was
19 providing a complete and accurate wage statement in compliance with the requirements of section 226,
20 then it has not knowingly and intentionally failed to comply with the wage statement law.") If
21 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
22 While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses
23 have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

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

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

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

The potential complexity and possible duration of trial also weigh in favor of granting final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the uncertainty of outcome, and believe defendant would appeal in the event of adverse judgment. A post-judgment appeal would require many years to resolve and delay payment to class members. ...the Court agrees, the actual recovery confers substantial benefits on the class that outweigh the potential recovery through full adjudication.

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

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

The Settlement is a fair and reasonable result, and provides the Class with a significant recovery, particularly when viewed in light of the fact that the Defendant asserted serious and substantial defenses both to liability and to class certification. The maximum and average Individual Class Payments to Participating Class Members will be documented in the forthcoming Polites Decl. 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).

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

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

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

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

21 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
22 and likely duration of further litigation likewise favors the settlement. Regardless of how
23 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."

24 *Id.* at *12.

25 7. The Amount Offered in Settlement

26 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
27 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
28

1 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
2 favorably to the value of the claims. Based upon the 1,483 Participating Class Members who
3 collectively worked 58,224 Workweeks, which were the estimated class figures at mediation, the Gross
4 Settlement Amount provides a value of \$1,011 per Class Member and \$25 per Workweek and after
5 deductions, the Net Settlement Amount provides an average recovery of \$571.47 per Class Member and
6 a recovery of \$14.55 per Workweek. Blumenthal Decl. at ¶8(d).

7 The calculations to compensate for the amount due to the Class Members at the time the
8 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
9 mediation. Class Counsel analyzed the data for putative class members and determined the potential
10 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
11 wages due to alleged rounding practices was \$145,718, the maximum value of the claim for unpaid
12 wages due to the alleged miscalculation of the regular rate applicable to overtime pay and sick pay was
13 \$7,790, the maximum value of the claim for unpaid wages due to alleged off-the-clock work was
14 \$1,487,756, the maximum potential damages for alleged meal period violations were estimated to be
15 \$4,519,427 based upon a potential 93.1% violation rate observed in the time records and after deduction
16 of meal premiums already paid by Defendant, the maximum potential damages for alleged rest period
17 violations were estimated to be \$4,478,470 based upon the same 93.1% potential violation rate observed
18 for meal periods, and the maximum potential damages for the alleged failure to reimburse business
19 expenses were calculated to be \$78,955 based upon \$5 per month. In total, the damages for the Class
20 were calculated to have a maximum potential total value of \$10,718,115. In addition, Plaintiffs
21 calculated that the maximum value of the potential waiting time penalties were between \$534,810 and
22 \$5,549,831, depending on the predicate violations, and the maximum value of the potential wage
23 statement penalties were \$2,959,800.⁶ Defendant vigorously disputed Plaintiffs' calculations and
24

25 ⁶ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code §§ 203 and 226,
26 these 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 29% of Plaintiffs' 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. 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 maximum calculations should then be realistically risk rated in consideration for both the risk of
8 class certification and the risk of establishing class-wide liability on all claims.⁷ Given the amount of
9 the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
10 reasonable.⁸ Clearly, the goal of this litigation has been met.

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

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

15 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
16 for the successful prosecution and resolution of this action. California state and federal courts have
17 recognized that an appropriate method for determining award of attorneys' fees is based on a percentage
18 of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91
19 Cal.App.4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444

20 ⁷ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not include the
21 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
22 Declaration of Kyle Nordrehaug at ¶ 33 filed in support of the motion for preliminary approval.

23 ⁸ 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."); *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
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 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
2 of this equitable doctrine is to avoid unjust enrichment to the Class and to “spread litigation costs
3 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
4 alone.” *Vincent*, 557 F.2d at 769.

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

14 First, the fee award representing one-third of the fund clearly falls within that range and is
15 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
16 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
17 in legal services. In *Laffitte v. Robert Half Int’l*, 1 Cal.5th 480, 503 (2016), the California Supreme
18 Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third
19 (1/3) as a reasonable percentage in a contingent common fund class settlement. Such similar awards by
20 other Courts are set forth in the Blumenthal Decl. ¶11.

21 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
22 Here, Plaintiffs and their counsel secured a \$1,500,000 settlement for the benefit of the Class and, to
23 date, only two (2) of the Class Members elected to opt out. Similarly, not one Class Member objected.
24 The Settlement was possible only because Class Counsel was able to successfully navigating hurdles
25 and displayed the necessary skills in both wage and hour and class action litigation. Moreover, as
26 discussed above, there were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat*
27 *Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain,**
28 **an award of one-third of the common fund as attorneys’ fees has been found to be appropriate.**”)

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

7 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
8 reward is the attendant risks inherent in the litigation. For Class Counsel, the fees here were wholly
9 contingent in nature and the case presented far more risk than the usual contingent fee case. Among the
10 risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendant
11 who had retained a premier and highly experienced defense firm. **Counsel retained on a contingency**
12 **fee basis, whether in private matters or in class action litigation, is entitled to a premium above**
13 **their hourly rate in order to compensate for both the risks and the delay in payment.** *See e.g.*
14 *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts “must” apply a risk
15 enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply
16 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 \$500,000 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 March 6, 2025, Class Counsel’s total lodestar is \$456,941.25, 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 [lodestar of \$202,416.25]; Bibiyan Decl. at ¶¶ 15-18 [lodestar
23 of \$254,525]. The requested fee award is therefore currently equivalent to Class Counsel’s total lodestar
24 with a reasonable multiplier of less than 1.1, and there will be additional lodestar incurred by Class
25 Counsel to complete the settlement process and manage the settlement distribution and reports.
26 Blumenthal Decl. at ¶12. Such a lodestar cross-check is well below the range of positive multipliers
27 approved in other cases such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir.
28

2002).⁹ For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the common fund is reasonable and should be approved.

B. The Reimbursement of Litigation Expenses

The Agreement provides at paragraph 12, that Class Counsel may seek a "Class Counsel Litigation Expenses Payment of not more than \$50,000." Class Counsel have incurred \$29,043.57 based upon counsel's billing records, which is less than the "not to exceed amount" of \$50,000. Class Counsel, therefore, requests reimbursement for litigation expenses in the capped amount of \$29,043.57. These litigation expenses include the expenses incurred for filing fees, postage, photocopies, mediation expenses, expert expenses (Berger Consulting), and attorney service charges (Knox, OneLegal), and research charges and (LexisNexis), all of which are costs normally billed to and paid by the client.¹⁰ The details of the expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3 [costs of \$19,998.95]; Bibiyan Decl. at ¶ 19 [costs of \$9,044.62]. Because these expenses were reasonably incurred and necessary to the successful prosecution of these claims, the request is reasonable and should be granted.

C. The Service Award Is Reasonable and Should be Approved

Plaintiffs respectfully submits that for their service as the class representatives, Plaintiffs should be awarded the service awards of \$7,500 for Plaintiff Montoya and \$5,000 for Plaintiff Gontez (which are the reduced amounts ordered by the Court at preliminary approval) in accordance with the Agreement for their time, risk and effort expended on behalf of the Class as the class representatives.

⁹ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino* *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 Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez 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).

¹⁰ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging, 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 (Agreement at ¶¶ 1(AA), 13; Preliminary Approval Order at p.4.) Defendant has agreed to this payment
2 and there have been no objections to the requested service awards. The Blumenthal Decl., at ¶14,
3 provides a long list of equivalent service awards approved in California in similar cases, which further
4 supports the request in this case. Plaintiffs' Declarations are submitted in support of these requests and
5 are attached as Exhibits #5 and #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. The Plaintiffs' Declarations detail the
10 involvement, stress and risks they undertook as a result of this Action. Plaintiffs also assumed the
11 serious risk that they might possibly be liable for costs and fees to Defendant, as well as the reputational
12 risk of being "blacklisted" by other future employers for having filed a class action on behalf of
13 employees. Blumenthal Decl. at ¶15. Without the Plaintiffs' participation, cooperation and information,
14 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); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal.
19 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist.
20 LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500). Accordingly, Class Counsel respectfully requests
21 approval of the Service Awards in accordance with the Agreement.

22 **VI. CONCLUSION**

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

26 Respectfully submitted,

27 Dated: March 6, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Attorneys for Plaintiffs