

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (SBN 068687)
Kyle R. Nordrehaug (SBN 205975)
Aparajit Bhowmik (SBN 248066)
Victoria B. Rivapalacio (SBN 275115)
Christine T. LeVu (SBN 288271)
Adolfo Sanchez Contreras (SBN 354371)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiff

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

IGNACIO MORENO, an individual, on
behalf of himself and on behalf of all
persons similarly situated, and on behalf
of the State of California, as a private
attorney general,

Plaintiffs,

vs.

DOMAINE CHANDON, INC., a
Corporation; NEWTON VINEYARD
LLC; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **22CV001128**
[Consolidated with Case No. 22CV001500]

**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: February 11, 2025
Hearing Time: 8:30 a.m.
*[Hearing set by Orders dated October 10, 2024 and
October 24, 2024]*

Judge: Hon. Cynthia P. Smith
Courtroom: A

Date Action Filed: September 27, 2023
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. 4th 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. 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)	-13-
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	-8-
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	-3-, -4-
<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 (N.D. Cal. 2007)	-5-, -9-, -11-
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th 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. 4th 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)	-13-
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)	-12-, -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	<i>Ma v. Covidien Holding, Inc.,</i>	
16	2014 WL 2472316 (C.D. Cal. 2014)	-11-
17	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.,</i>	
18	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	-15-
19	<i>Munoz v. BCI Coca-Cola Bottling Co. of L. A.,</i>	
20	186 Cal. App. 4th 399 (2010)	-3-
21	<i>Naranjo v. Spectrum Sec. Servs., Inc.,</i>	
22	15 Cal. 5th 1056 (2024)	-7-, -10-
23	<i>Nordstrom Commission Cases,</i>	
24	186 Cal. App. 4th 576 (2010)	-10-
25	<i>Officers for Justice v. Civil Service Com'n,</i>	
26	688 F.2d 615 (9th Cir. 1982)	-3-
27	<i>Pellegrino v. Robert Half Intern., Inc.,</i>	
28	182 Cal.App.4th 278 (2010)	-13-
	<i>Reynolds v. Direct Flow Med., Inc.,</i>	
	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 (Cal. 1977)	-11-
	<i>Stanger v. China Elec. Motor, Inc.,</i>	
	812 F.3d 734 (9th Cir. 2016)	-13-

1	<i>Stetson v. Grissom</i> ,	
2	821 F.3d 1157 (9th Cir. 2016)	-13-, -14-
3	<i>Stoetznner v. U.S. Steel Corp.</i> ,	
4	897 F.2d 115 (3d. Cir. 1990)	-6-
5	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
6	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	-11-
7	<i>Swedish Hospital v. Shalala</i> ,	
8	1 F.3d 1261 (D.C. Cir. 1993)	-12-
9	<i>Taylor v. Fedex Freight, Inc.</i> ,	
10	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016).....	-14-
11	<i>Viceral v. Mistras Grp., Inc.</i> ,	
12	2016 WL 5907869 (N.D. Cal. 2016)	-11-
13	<i>Vincent v. Hughes Air West, Inc.</i> ,	
14	557 F.2d 759 (9th Cir. 1997)	-11-
15	<i>Vizcaino v. Microsoft Corp.</i> ,	
16	290 F.3d 1043 (9th Cir. 2002)	-13-
17	<i>Wershba v. Apple Computer</i> ,	
18	91 Cal. App. 4th 224 (2001)	-3-, -11-, -13-
19	Secondary Sources:	
20	Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Award</i> ,	
21	7 J. Empirical Leg. Stud. 811 (2010)	-12 -

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 Order dated October 24, 2024 (“Preliminary Approval Order”), the approved Class
6 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 Ignacio Moreno (“Plaintiff”) respectfully submits this
9 memorandum in support of the unopposed motion for final approval and entry of the Final Approval
10 Order and Judgment. The settlement represents an excellent result for the Class and avoids the delays,
11 risks, and costs of further litigation. After disseminating the notice to the members of the Class, to date,
12 there have been **no objections and no requests for exclusion**, which means that currently the entire
13 Class has elected to participate in the Settlement.³ Blumenthal Decl. ¶4. This is a positive response
14 from the Class evidencing their collective approval of the settlement. As a result, Plaintiff respectfully
15 submits that the class settlement should be finally approved for the same reasons that the Court
16 preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 Plaintiff and Defendants Domaine Chandon, Inc. and Newton Vineyard LLC (collectively
19 “Defendants”) reached a full and final settlement of the above-captioned action, which is embodied in
20 the Agreement filed concurrently with the Court. As consideration for this Settlement, the Gross
21 Settlement Amount to be paid by Defendants is Eight Hundred Thousand Dollars (\$800,000.00).

23 ¹ Capitalized terms are defined in the Agreement.

24 ² The “Class” is defined as “all individuals who are or previously were employed by either Domaine
25 Chandon, Inc. and/or Newton Vineyards LLC in the State of California as a non-exempt hourly
26 employee at any time during the Class Period”. The “Class Period” is defined as “September 27, 2018
27 to November 3, 2023.” (Preliminary Approval Order at ¶6.)

28 ³ The Response Deadline is January 14, 2024. The final Administration figures are still being
prepared and will be documented in a forthcoming Declaration of Cassandra Polities to be filed in
advance of the hearing on this motion.

(Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payment to the Plaintiff; and (5) the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendants' share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and the proposed deductions:

\$800,000 (Gross Settlement Amount)

- \$10,000 (Plaintiff's proposed service award not to exceed amount)
- \$24,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$266,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$40,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$11,495 (Administration Expenses Payment)

\$447,839 (Net Settlement Amount)

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

The Settlement is fair, adequate and reasonable to the class and should be finally approved for the same reasons the Court granted preliminary approval of the Settlement. (Preliminary Approval Order at ¶3.) In sum, the Settlement valued at \$800,000 is an excellent result for the Class. This result is particularly favorable in light of the fact that liability and class certification in this case were far from certain. Given the complexities of this case, the defenses asserted, the risk of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly 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.")

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*, 48 Cal. App. 4th
14 at 1801. Here, the facts and circumstances compel the conclusion that the proposed settlement satisfies
15 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 the more than two years of litigation, the Parties engaged in the investigation
14 of the claims, including the production of documents, class data, and other information, allowing for
15 the full and complete analysis of liabilities and defenses to the claims in this Action. The procedural
16 history and investigation performed was detailed at length in support of the motion for preliminary
17 approval. The Settlement was the product of arms-length and contentious negotiations through an
18 all-day mediation presided over by Louis Marlin, Esq., a respected and experience mediator of wage
19 and hour class actions. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(h).

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
22 before an experienced and well-respected mediator. Defendants have expressly denied and continue
23 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
24 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
25 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to
26 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
27 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has
28 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

1 The Parties attended an arms-length mediation session with Louis Marlin, a respected and
2 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
3 for the mediation, Defendants provided Class Counsel with necessary information for the members of
4 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiff
5 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
6 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
7 agreed to this Settlement. Blumenthal 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”). From August 2023 to June 2024, the
14 settlement agreement and exhibits thereto were finalized and executed, and then presented by motion
15 to this Court for preliminary approval. On October 24, 2024, the Court issued its Order granting
16 preliminary approved of the settlement. 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. As such, Class Counsel is experienced and
23 knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2. Class Counsel have participated in
24 every aspect of the settlement discussions and have concluded the settlement is fair, adequate and
25 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

27 The reaction of the Class unequivocally supports approval of the Settlement. On November 15,
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 Polities. In disseminating the notice, the
5 Administrator followed the notice procedures authorized by the Court in its Preliminary Approval
6 Order. To date, there have been no objections and no requests for exclusion. As such, currently the
7 entire Class will participate in the Settlement and will be sent a settlement check. Blumenthal Decl. ¶4.
8 The final Administration figures will be set forth in forthcoming Declaration of Cassandra Polities to
9 be filed in advance of the hearing on this motion.

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

18 5. The Strength of Plaintiff's Case

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

25 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
26 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
27 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
28 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants

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

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

20 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
21 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
22 Associates were misclassified as exempt. In addition to the uncertainties raised by
23 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
24 Defendants notes that the question of an employer's duty to provide rest and meal
periods is an open one, signaling even less certainty for Plaintiffs. [...T]he gross
settlement amount and the Class Members' expected net recovery, after fees and other
costs are deducted, appear to be a reasonable compromise, in light of the risks of
litigation.

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
27 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
28 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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, Plaintiff 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 himself. At the time of the mediation, Defendants forcefully opposed the
14 propriety of class certification, arguing that individual issues precluded class certification. Additionally,
15 Defendants argued that the vast majority of putative class members had entered into arbitration
16 agreements that precluded their ability to participate in a class action. Further, as demonstrated by the
17 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
18 are significant hurdles to overcome for a class-wide recovery even where the class has been certified.
19 While other cases have approved class certification in wage and hour claims, class certification in this
20 action was hotly disputed and the maintenance of a certified class through trial was by no means a
21 foregone conclusion. Blumenthal Decl. ¶8(b).

22 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
23 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
24 substantial defenses both to liability and to class certification. The maximum and average class member
25 allocations will be set forth in the forthcoming Declaration of Cassandra Polities. Given the
26 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
27 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
cannot be overstated. There is little doubt that Defendants would post a bond and appeal in the event
of an adverse judgment. A post-judgment appeal by Defendants would have required many more years

1 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
2 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
3 an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

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

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

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

24 *Id.* at *12.

25 7. The Amount Offered in Settlement

26 The Settlement in this case is fair, reasonable and adequate considering Defendants’ defenses
27 to Plaintiff’s claims. The Declaration of Nordrehaug submitted in support of preliminary approval
28 discussed the value of the class claims in detail. Based upon 432 Class Members who worked 26,191
work weeks, the Gross Settlement Amount provides an average value of \$1,851 per Class Member and
\$30.54 per workweek and after deductions the Net Settlement Amount provides an average recovery

1 of \$1,036.66 per Class Member and a recovery of \$17.09 per workweek. Blumenthal Decl. at ¶8(d).

2 The calculations to compensate for the amount due for the Class at the time of the mediation
3 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
4 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
5 wages for the employees. The maximum potential damages were calculated to be \$4,610 for the alleged
6 unpaid wages due to rounding practices, \$787,490 for the alleged unpaid wages for off-the-clock work
7 at one hour per week, \$40,289 for the alleged underpaid meal premiums and sick pay due to the
8 miscalculation of the result rate, \$349,898 for alleged meal period damages based upon a 16.7%
9 potential violation rate for all shifts worked observed in the time records and after deduction for meal
10 premiums paid by Defendants, \$437,291 for alleged rest period damages based upon the same 16.7%
11 potential violation rate for shifts worked, \$33,090 for alleged unreimbursed cell-phone expenses at \$5
12 per month. As a result, the total damage valuation was calculated that Defendants were subject to a
13 maximum damage claim in the amount of \$1,652,667. As to potential penalties, Plaintiff calculated
14 that potential waiting time penalties were a maximum of between \$546,834 and \$1,327,213, and
15 potential maximum wage statement penalties were between \$302,550 and \$511,050, both depending
16 on the predicate violation giving rise to the penalty.⁴ Defendants vigorously disputed Plaintiff's
17 calculations and exposure theories. Blumenthal Decl. ¶8(d).

18 Consequently, the Gross Settlement Amount of \$800,000 represents more than 48% of the
19 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
20 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
21

22 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
23 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
24 by Defendants, including, a good faith dispute defense as to whether any premium wages for meal or
25 rest periods or other wages were owed given Defendants' position that Plaintiff and Class Members
26 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.").

27 ⁵ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
28 Plaintiff did not include the PAGA claim in this discussion of the value of the class claims. The PAGA
claim was addressed in the Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶33.

1 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
2 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
3 calculations should then be realistically risk adjusted in consideration for both the risk of class
4 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
5 settlement as compared to the potential value of claims in this case and the defenses asserted by
6 Defendants, this settlement is fair and reasonable.⁶ Clearly, the goal of this litigation has been met.
7 Blumenthal Decl. ¶8(d).

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

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

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

21 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
22 wage and hour class action settlements. Under California law, the award of attorneys' fees in common

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

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

15 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
16 Here, Plaintiff and their counsel secured a \$800,000 settlement for the benefit of the Class. The
17 Settlement was possible only because of Class Counsel’s ability to credibly argue in litigation and
18 mediation that Plaintiff could potentially prevail on the contested issues regarding liability, maintain
19 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
20 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
21 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
22 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
23 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
24 **one-third of the common fund as attorneys' fees has been found to be appropriate.**”)

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

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

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

12 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
13 the requested attorneys' fee of one-third equal to \$266,666 is also established by reference to Class
14 Counsel's lodestar in this matter. The Class Counsel Fees Payment awarded shall be allocated seventy-
15 five percent (75%) to Blumenthal Nordrehaug Bhowmik De Blouw LLP and twenty-five percent (25%)
16 to The Tran Firm. The contemporaneous billing records for Class Counsel evidence that through
17 January 15, 2025, Class Counsel's total lodestar is \$210,800.00, with significant additional fees still
18 to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
19 Exhibits #3.) The requested fee award is therefore currently equivalent to Class Counsel's total lodestar
20 with a multiplier cross-check of less than 1.3, and there will be additional lodestar incurred by Class
21 Counsel to complete the settlement process and manage the settlement distribution and reports.
22 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases
23 such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷

24
25 ⁷ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
26 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
27 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
28 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("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

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 "a Class Counsel
5 Litigation Expenses Payment of not more than \$24,000". Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$22,916.85 based upon counsel's billing records
7 which evidence total expenses of \$22,916.85. These litigation expenses include the expenses incurred
8 for filing fees, mediation expenses, expert fees (Berger Consulting Group), and attorney service charges
9 (Knox, One Legal) and Lexis research charges, all of which are costs normally billed to and paid by the
10 client.⁸ The details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and
11 Exhibits #3. These costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl.
12 at ¶13.) Because these costs were reasonable and necessary to the successful prosecution of these
13 claims, the request is reasonable and should be granted.

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

15 Plaintiff respectfully submits that for his service as the class representatives, Plaintiff should be
16 awarded the agreed service award of \$10,000, in accordance with the Agreement for his time, risk and
17 effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendants have agreed to this
18 payment and there have been no objections to the requested service award. The Blumenthal Decl., at
19 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
20 further supports the request in this case. The Declaration of the Plaintiff is submitted in support of this
21 request and is attached as Exhibit #5 to the Blumenthal Decl.

22 As the sole representative of the Class, Plaintiff performed his duty to the Class admirably and

23 _____
24 multiplier of 2.53 as well within the approved range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S.
25 Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

26 ⁸ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging,
28 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
mediation, exhibits, documents scanning, and visual equipment are typically recoverable." *Rutti v. Lojack Corp., Inc.*, 2012 WL 3151077, at *12 (C.D. Cal. 2012).

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

11 The payment of service awards to successful class representatives is appropriate and the amount
12 of \$12,500 is well within the currently awarded range for similar settlements. *See, e.g., Andrews v.*
13 *Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (service awards
14 of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865,
15 at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.),*
16 *Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member
17 payment was \$351). Accordingly, Class Counsel respectfully request approval of the requested Class
18 Representative Service Payment in accordance with the Agreement.

19 **VI. CONCLUSION**

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

23 Dated: January 15, 2025

24 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
By: /s/ Kyle Nordrehaug
25 Kyle R. Nordrehaug, Esq.
26 Attorneys for Plaintiff
27
28