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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

ABEL YOUNG, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

TABC, INC., a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22STCV25696

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

Hearing Date: December 21, 2023
Hearing Time: 10:00 a.m.
[Hearing scheduled by Order dated August 7, 2023]

Judge: Hon. Lawrence P. Riff
Dept: SS-7

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated August 7, 2023 (“Preliminary Approval
6 Order”), the approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiff Abel Young (“Plaintiff”) respectfully submits this memorandum
9 in support of the unopposed motion for final approval and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class
11 and avoids the delays, risks, and costs of further litigation. After disseminating the notice to the
12 members of the Class, there were **no objections and no requests for exclusion** from the Settlement.
13 Blumenthal Decl. ¶4. This is a positive response from the Class evidencing their collective approval
14 of the settlement. As a result, Plaintiff respectfully submits that the class settlement should be finally
15 approved for the same reasons that the Court preliminarily approved the settlement as fair, reasonable,
16 and adequate.

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

18 The following is a table of the key financial terms of the Settlement and the proposed
19 deductions:

20 **\$500,000** (Gross Settlement Amount)
21 - \$10,000 (Plaintiff’s proposed service award not to exceed \$10,000)
22 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
23 - \$166,666 (Class Counsel Fees Payment - not to exceed one-third of the Gross
24 Settlement Amount)
25 - \$5,000 (PAGA Penalties - 75% to LWDA / 25% to Allegedly Aggrieved Employees)
26 - \$11,500 (Administration Expenses Payment - not to exceed amount)
27 **\$281,834** (Net Settlement Amount)

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “All current and former employees who worked for [Defendant TABC
27 Inc.] TABC in a non-exempt position in California at any time from August 9, 2018 through April 7,
28 2023.” (Preliminary Approval Order at ¶11.)

1 Plaintiff and Defendant TABC Inc. ("TABC") reached a full and final settlement of the
2 above-captioned action, which is embodied in the Agreement filed concurrently with the Court. As
3 consideration for this Settlement, the Gross Settlement Amount is Five Hundred Thousand Dollars
4 (\$500,000) to be paid by TABC, as set forth in the Agreement. The Gross Settlement Amount will
5 settle all issues pending in the Action between the Parties and will be made in full and final settlement
6 of the released claims. The Gross Settlement Amount includes all payments of Individual Class
7 Payments to the Participating Class Members, the Administration Expenses Payment to the
8 Administrator, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to
9 Class Counsel, the Class Representative Service Payment to Plaintiff, and the PAGA Penalties payment
10 to the California Labor and Workforce Development Agency (the "LWDA") and the Allegedly
11 Aggrieved Employees. Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include the
12 employer's share of payroll taxes which will be separately paid by TABC. The Settlement is all-in with
13 no reversion to TABC and no need for Class Members to submit claim forms. Blumenthal Decl. ¶3(b).

14 The specific details of the Settlement terms were discussed in the Motion for Preliminary
15 Approval and are 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, finding that the settlement
18 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶¶ 11 and 12.) In sum, the
19 Settlement valued at \$500,000 is an excellent result for the Class. This result is particularly favorable
20 in light of the fact that liability and class certification in this case were far from certain in light of the
21 defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, the
22 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
23 settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

26 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
27 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
28 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*

1 v. *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
2 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

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

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

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

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

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

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

16 Over the course of nearly a year of litigation, the Parties engaged in the investigation of the
17 claims, including the production of documents, class data, and other information, allowing for the full
18 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history
19 and investigation performed was detailed at length in support of the motion for preliminary approval.
20 The Settlement was the product of arms-length and contentious negotiations through an all-day
21 mediation presided over by Louis Marlin, a respected and experience mediator of wage and hour class
22 actions. The details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(h).

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

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

1 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
2 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has
3 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

4 The Parties attended an arms-length mediation session with Louis Marlin, a respected and
5 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
6 for the mediation, Defendant provided Class Counsel with necessary information for the members of
7 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiff
8 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
9 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
10 agreed to this Settlement. 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; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
14 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
15 litigation, with the assistance of a well-respected mediator with substantial experience in employment
16 litigation[, and] this factor supports approval of the settlement”).

17 From February 2023 to April 2023, the settlement agreement and exhibits thereto were finalized
18 and executed, and then presented by motion to this Court for preliminary approval. On August 7, 2023,
19 the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the
20 Class. Blumenthal Decl. ¶7(c).

21 3. Class Counsel is Experienced in Similar Litigation

22 Class Counsel in this matter has extensive class action experience and has represented thousands
23 of persons in class actions including employment litigation, wage and hour class actions, and complex
24 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
25 claims similar to this case and have been approved as experienced class counsel during contested
26 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
27 knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2. Class Counsel have participated in
28

1 every aspect of the settlement discussions and have concluded the settlement is fair, adequate and
2 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

4 The reaction of the Class unequivocally supports approval of the Settlement. On September 21,
5 2023, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
6 each class member with the terms of the Settlement, including notice of the claims at issue and the
7 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
8 sought, how individual settlement awards would be calculated, and the specific, estimated payment
9 amount to that individual. See Declaration of Nick Castro ("Castro Decl.") at ¶ 7, Exh. A. In
10 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
11 its Preliminary Approval Order. Significantly, there have been no objections and no requests for
12 exclusion. Castro Decl. at ¶¶ 11-12. As such, the entire Class will participate in the Settlement and
13 will be sent a settlement check. See Castro Decl. at ¶¶ 13-14; Blumenthal Decl. ¶4.

14 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
15 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
16 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
17 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
18 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
19 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
20 settlement should be considered when determining fairness of settlement). Here, where there are no
21 objections, the approval of the class is evident.

22 5. The Strength of Plaintiff's Case

23 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
24 overtime wages for hours worked, were not provided meal and rest periods, were not timely paid earned
25 wages, were not provided reimbursement for required expenses, were not provided accurate itemized
26 wage statements, were not paid all wages at the time of termination. The Action seeks unpaid wages,
27 penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and owing
28

1 to Plaintiff and the other Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by TABC
4 present serious threats to the claims of the Plaintiff and the other Class Members. TABC maintains that
5 its practices complied with all applicable wage and hour laws. TABC maintains that all Class Members'
6 work time was properly recorded and compensated and that there was no miscalculation of the regular
7 rate. TABC maintains that its meal and rest period policies and practices provide Class Members with
8 meal and rest periods that exceed the requirements of California law. Specifically, TABC contends that
9 meal periods were highly regimented, that employees took 35-minute meal periods, and, if anything,
10 TABC overpaid premiums by automatically paying them for all short/late/missed meal periods reflected
11 in the time records. Moreover, the vast majority of Class Members work pursuant to a collective
12 bargaining agreement that meets the requirements of Labor Code §514, and thus precludes Plaintiff's
13 and those Class Members' claims for alleged unpaid overtime. As to expense reimbursement, TABC
14 maintains that it did not fail to provide reimbursement for necessary business expenses because, among
15 other things, TABC provides its employees with all necessary personal protective equipment, and
16 employees are not required to use their personal cell phones to perform their work. TABC maintains
17 that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v.*
18 *Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85
19 (2021), seriously weaken Plaintiff's claims in terms of liability and value, and preclude his claims from
20 proceeding on a class or representative basis. TABC also maintains that a good-faith dispute and
21 absence of willfulness would negate the claims for waiting time penalties and failure to provide
22 accurate itemized wage statements. If successful, TABC's defenses could eliminate or substantially
23 reduce any recovery to the Class. While Plaintiff believes that these defenses could be overcome,
24 TABC maintains these defenses have merit and therefore present a serious risk to recovery by the Class.
25 Blumenthal Decl. ¶8(a).

26 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, 2009
27 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009), explained in approving an overtime class action settlement:
28

1 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
2 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
3 Associates were misclassified as exempt. In addition to the uncertainties raised by
4 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
5 Defendants notes that the question of an employer's duty to provide rest and meal
6 periods is an open one, signaling even less certainty for Plaintiffs. [...]he gross
7 settlement amount and the Class Members' expected net recovery, after fees and other
8 costs are deducted, appear to be a reasonable compromise, in light of the risks of
9 litigation.

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

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

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

16 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
17 to obtain class certification and thereby not recover on behalf of any employees other than himself.
18 TABC argued that the individual experience of each putative class member varied with respect to the
19 claims, which would preclude the claims from proceeding on a class or representative basis. For
20 instance, Plaintiff's meal and rest period claims would require individualized inquiries into whether
21 each employee took a compliant meal or rest period on a given shift and, if not, why; and Plaintiff's
22 off-the-clock claims would require individualized inquiries into whether each employee ever performed
23 off-the-clock work and, if so, why. Plaintiff is aware of other cases where class certification of similar
24 claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification
25 of rest break claims). Finally, even if class certification was successful, as demonstrated by the
26 California Supreme Court decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014),
27 there are significant hurdles to overcome for a class-wide recovery even where a class has been
28

1 certified. While other cases have approved class certification of wage and hour claims, class
2 certification in this Action would have been hotly disputed and was by no means a foregone conclusion.

3 Blumenthal Decl. ¶8(b).

4 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
5 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
6 substantial defenses both to liability and to class certification. Currently, the maximum and average
7 class member allocations are \$1,252 and \$888, respectively. *See* Castro Decl. ¶ 14. Given the
8 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
9 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

27 Although Plaintiff and Class Counsel believe that their case has merit, which Defendant
28

1 continue to vigorously deny, they recognized the potential risks both sides would face if litigation of
2 these Actions continued. As the federal court held in *Glass*, where the parties faced uncertainties
3 similar to those in this litigation:

4 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
5 and likely duration of further litigation likewise favors the settlement. Regardless of
6 how this Court might have ruled on the merits of the legal issues, the losing party likely
7 would have appealed, and the parties would have faced the expense and uncertainty of
8 litigating an appeal. "The expense and possible duration of the litigation should be
9 considered in evaluating the reasonableness of [a] settlement." See *In re Mego Financial*
10 *Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further
11 litigation is substantial.

12 *Id.* at *12.

13 7. The Amount Offered in Settlement

14 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
15 to Plaintiff's claims. The Declaration of Nordrehaug and Supplemental Declaration of Nordrehaug
16 submitted in support of preliminary approval discussed the value of the class claims in detail.

17 The calculations to compensate for the amount due to the Class Members at the time the
18 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
19 mediation. Class Counsel analyzed the data for putative class members and determined the potential
20 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
21 wages due to the alleged miscalculation of the regular rate for meal premiums and sick pay was
22 \$63,793, the maximum value of the claim for unpaid wages due to alleged off-the-clock work for
23 COVID health screenings at 5 minutes per shift was \$598,991, the maximum potential damages for
24 alleged rest period violations were estimated to be \$1,188,550 based upon one violation per week, and
25 the maximum potential damages for the alleged failure to reimburse business expenses were calculated
26 to be \$50,040. In total, the damages for the Class were calculated to have a maximum potential total
27 value of \$1,901,374. In addition, Plaintiff calculated that the maximum value of the potential waiting
28 time penalties were \$292,723, and the maximum value of the potential wage statement penalties were
\$1,046,600.³ Blumenthal Decl. ¶8(d).

³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses

Consequently, the Gross Settlement Amount represents more than 26% of Plaintiff's calculation of the potential maximum damages at issue for the Class in this case, assuming these amounts could all be proven in full at trial.⁴ The maximum calculations should then be adjusted in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁵ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

V. THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARD SHOULD BE APPROVED⁶

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

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

asserted by TABC, including but not limited to, a good-faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given TABC's position that Plaintiff and 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.").

⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl. Nordrehaug at ¶ 33.

⁵ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents approximately 10% of what class might have been awarded had they succeeded at trial."); *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 verdict 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 full verdict value).

⁶ Pursuant to the Settlement, TABC does not oppose the request for an award of the Class Counsel Fees and Expenses Payment to Class Counsel or the Service Award to Plaintiff.

1 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759,
2 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the Class
3 and to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary
4 does not bear the entire burden 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
10 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
11 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
12 fund created”). Under the percentage of the fund method, a court’s objective remains to “mimic the
13 market” 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. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
18 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
19 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved
20 a one-third fee award. Such similar awards by 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
22 fund. Here, Plaintiff and his counsel secured a \$500,000 settlement for the benefit of the Class. The
23 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiff
24 could potentially prevail on the contested issues regarding liability, maintain class certification,
25 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
26 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
27 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
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1 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
2 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
3 **common fund as attorneys' fees has been found to be appropriate.**”)

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

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

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

13 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$500,000 has been created.
14 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
15 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
16 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
17 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class**
18 **action litigation, is entitled to a premium above their hourly rate in order to compensate for both**
19 **the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
20 (9th Cir. 2016) (courts “must” apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
21 Cir. 2016) (abuse of discretion not to apply risk multiplier).

22 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
23 the requested attorneys’ fee of one-third equal to \$166,666 is also established by reference to Class
24 Counsel’s lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
25 through November 27, 2023, Class Counsel’s total lodestar is \$159,500.00, with significant additional
26 fees still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12
27 and Exhibit #3. The requested fee award is therefore currently equivalent to Class Counsel’s total
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1 lodestar with a modest multiplier of only 1.04, and there will be additional lodestar incurred by Class
2 Counsel to complete the settlement process and manage the settlement distribution and reports.
3 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases
4 such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷

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

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

8 The Agreement provides at paragraph 3.2.2, that Class Counsel may seek a "Class Counsel
9 Litigation Expenses Payment of not more than \$25,000". Class Counsel requests reimbursement for
10 incurred litigation expenses and costs in the amount of \$25,000 based upon counsel's billing records
11 which evidence total expenses of \$16,842.68. The requested expense reimbursement is less than actual
12 expenses incurred. These litigation expenses include the expenses incurred for filing fees, mediation
13 expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One Legal),
14 Caseanywhere charges, and Lexis research and document charges, all of which are costs normally
15 billed to and paid by the client.⁸ The details of the litigation expenses incurred are set forth the
16 Blumenthal Decl. at ¶13 and Exhibit #3. These costs were reasonably incurred in the prosecution of
17 the Action. (Blumenthal Decl. at ¶13.) Because these costs were reasonable and necessary to the
18 successful prosecution of these claims, the request is reasonable and should be granted.

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20 ⁷ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
21 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
22 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
23 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
24 *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 as well within the approved range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S.
Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

25 ⁸ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
26 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging,
27 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
28 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 **C. The Service Award Is Reasonable and Should be Approved**

2 Plaintiff respectfully submit that for his service as the class representatives, Plaintiff should be
3 awarded the agreed service award of \$10,000, in accordance with the Agreement for his time, risk and
4 effort expended on behalf of the Class. (Agreement at ¶ 3.2.1.) Defendant has agreed not to oppose a
5 service award payment to Plaintiff of up to \$10,000 and there have been no objections to the requested
6 service award. The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards
7 approved in California in similar cases, which further supports the request in this case. The Declaration
8 of Young is submitted in support of this request and is attached as Exhibits #5 to the Blumenthal Decl.

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

20 The payment of service awards to successful class representatives is appropriate and the amount
21 of \$10,000 is well within the currently awarded range for similar settlements. *See e.g. Mathein v. Pier*
22 *1 Imps.*, 2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018) (approving two
23 service awards of \$12,500 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
24 173698 (approving \$10,000 service award where class member recovery was \$375); *Bellinghausen v.*
25 *Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$10,000 award). Accordingly,
26 Class Counsel respectfully request approval of the requested Class Representative Service Payment in
27 accordance with the Agreement.

1 **VI. CONCLUSION**

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

5
6 Dated: November 27, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

7 By: /s/ Kyle Nordrehaug
8 Norman B. Blumenthal, Esq.
9 Kyle R. Nordrehaug, Esq.

10 Attorneys for Plaintiff

11 Dated: November 27, 2023

PAUL HASTINGS LLP

12 By: /s/ Zachary P. Hutton
13 Zachary P Hutton, Esq.

14 Attorneys for Defendant
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