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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MADERA

BRANDY HALE, an individual, on
behalf of herself, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

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

Defendants

Case No. **MCV088135**

**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: August 23, 2024

Hearing Time: 9:00 a.m.

[Hearing scheduled by Order dated March 12, 2024]

Judge: Hon. Brian W. Enos

Dept: 45

Action Filed: December 1, 2022

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated March 12, 20224 (“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 Brandy Hale (“Plaintiff”) respectfully moves for final approval,
9 including attorneys’ fees, costs and the service award, and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class and
11 avoids the delays, risks, and costs of further litigation. After disseminating the notice to the 214
12 members of the Class, **there were no objections and no requests** for exclusion from the Class, which
13 means that the entire Class (100%) has elected to participate in the Settlement. Blumenthal Decl. ¶4.
14 This is a positive response from the Class evidencing their collective approval of the settlement. As
15 a result, Plaintiff respectfully submit that the settlement should be finally approved for the same reasons
16 that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
19 PaleoWest, LLC (“Defendant”) is Eight Hundred Thousand Dollars (\$800,000). (Agreement at ¶¶ 1.22
20 and 3.1.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
21 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
22 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4)
23 the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment.
24 (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who were employed by Defendant in California and
27 classified as a non-exempt employee at any time during the Class Period.” The “Class Period” is
28 defined as “December 1, 2018 through November 23, 2023.”(Preliminary Approval Order at ¶ 6.)

1 Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in
2 with no reversion to Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b). The following is a
3 table of the key financial terms of the Settlement and the proposed deductions:

4 **\$800,000** (Gross Settlement Amount)

- 5 - \$12,500 (Plaintiff's proposed service award not to exceed \$12,500)
- 6 - \$30,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 7 - \$266,666 (Class Counsel Fees Payment - not to exceed 1/3 of Gross Settlement)
- 8 - \$20,000 (PAGA Penalties Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 9 - \$6,250 (Administration Expenses Payment)

7 **\$464,584** (Net Settlement Amount)

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

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

18 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL** 19 **OF CLASS ACTION SETTLEMENTS**

20 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
21 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
22 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
23 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
24 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

25 The court must decide whether the proposed settlement falls within the range of reasonable
26 settlements, taking into account that settlements are compromises between the parties reflecting
27 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See*
28 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be

1 judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs
2 prevailed at trial.”) In *Wershba*, the Court explained that “the merits of the underlying class claims are
3 not a basis for upsetting the settlement of a class action.” *Id.*; see also *7-Eleven, supra*, at 1150.

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

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

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

25 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
26 Due regard should be given to what is otherwise a private consensual agreement between the parties.
27 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement
28 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that

1 the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately,
2 the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
3 approximations and rough justice.' [Citation omitted.]” *Id.*

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

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

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

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

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

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

23 The Parties attended an arms-length mediation session with Mark Rudy, Esq., a respected and
24 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
25 for the mediation, Defendant provided to Plaintiff and Class Counsel payroll and employment data and
26 other information regarding the Class Members, various internal documents, and other compensation
27 and employment-related materials. Class Counsel analyzed the data with the assistance of damages
28 expert Berger Consulting and prepared and submitted a mediation brief to the mediator. Following this

1 all-day mediation, the Parties agreed to this Settlement based upon a mediator’s proposal. Blumenthal
2 Decl. ¶7(b).

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

8 From August 2023 to November 2023, the settlement agreement and exhibits thereto were
9 finalized and executed. On March 12, 2024, the Court granted the Motion for Preliminary Approval,
10 and entered the Order granting preliminary approved of the settlement as fair and reasonable to the
11 Class. Blumenthal Decl. ¶7(c).

12 3. Class Counsel is Experienced in Similar Litigation

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

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

23 The reaction of the Class unequivocally supports approval of the Settlement. On April 10, 2024,
24 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
25 class member with the terms of the Settlement, including notice of the claims at issue and the financial
26 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
27 how individual settlement awards would be calculated, and the specific, estimated payment amount to
28 that individual. See Declaration of Madely Nava [“Nava Decl.”], ¶ 7, Exh. A. In disseminating the

1 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
2 Approval Order. Significantly, there have been no objections and no requests to opt-out. Nava Decl.
3 ¶¶11-12. As such, the entire Class (100.00%) will participate in the Settlement and will be sent a
4 settlement check. See Nava Decl. at ¶¶ 13-15; Blumenthal Decl. ¶4.

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

13 5. The Strength of Plaintiff's Case

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

21 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
22 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
23 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
24 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all
25 work time was properly recorded and paid for and that there was no miscalculation of the regular rate.
26 Defendant contended that their meal and rest period policies complied with California law and
27 Defendant did not fail to provide the opportunity for legally required meal and rest breaks. Defendant
28 showed that some meal and rest period premiums were paid, which could be argued established the

1 lawfulness of their practices. As to expense reimbursement, Defendant contended that it did not fail to
2 provide reimbursement for necessary business expenses and that claimed expenses were incurred
3 voluntarily and/or for the convenience of employees and is therefore not required reimbursement.
4 Defendant argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed*
5 *Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*,
6 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on liability, value, and class certifiability as to
7 the meal and rest period claims. Defendant also argued that based on their facially lawful policies, they
8 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
9 penalties and/or inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th
10 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a complete
11 and accurate wage statement in compliance with the requirements of section 226, then it has not
12 knowingly and intentionally failed to comply with the wage statement law.") If successful, Defendant's
13 defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that
14 these defenses could be overcome, Defendant maintains these defenses have merit and therefore present
15 a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

18 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
19 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
20 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.

21 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007
22 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
23 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
24 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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

1 recovery through full adjudication.

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

4 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
5 to obtain class certification and thereby not recover on behalf of any employees other than himself.
6 Defendant argued that the individual experience of each putative class member varied with respect to
7 the claims. Defendant could also contest class certification by arguing injury and good faith were case-
8 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
9 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019)
10 (affirming denial of certification of break claims). Finally, even if class certification was successful,
11 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
12 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the
13 class has been certified. While other cases have approved class certification in wage and hour claims,
14 class certification in this action would have been hotly disputed and was by no means a foregone
15 conclusion. Blumenthal Decl. ¶8(b).

16 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
17 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
18 substantial defenses both to liability and to class certification. The maximum and average Class
19 Member allocation (in addition to their Individual PAGA Payment) are \$13,219.16 and \$2,170.95,
20 respectively. *See Nava Decl. ¶15.* Given the complexities of this case, the defenses, along with the
21 uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should
22 be finally approved. Blumenthal Decl. at ¶8(e).

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

24 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
25 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event
26 of an adverse judgment. A post-judgment appeal by Defendant would have required many more years
27 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
28 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh

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

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

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

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

21 *Id.* at *12.

22 7. The Amount Offered in Settlement

23 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
24 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
25 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
26 favorably to the value of the claims. Based upon 214 Participating Class Members who collectively
27 worked 8,000 Workweeks, which were the estimated class figures at mediation, the Gross Settlement
28 Amount provides a value of \$3,738 per Class Member and \$99 per Workweek and after deductions, the
Net Settlement Amount provides an average recovery of \$2,170.95 per Class Member and a recovery
of \$57.97 per Workweek. Blumenthal Decl. at ¶8(d).

1 The calculations to compensate for the amount due for the Class at the time of the mediation
2 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
3 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
4 wages for the employees. For the Class, the maximum value of the claim for unpaid wages due to
5 alleged miscalculation of the regular rate for overtime was \$7,181, the maximum value of the claim for
6 unpaid wages due to alleged off-the-clock work was \$341,273, the maximum potential damages for
7 unpaid meal premiums were estimated to be \$623,689 based upon a 100% violation rate in the absence
8 of proper records and after deduction for meal premiums paid, the maximum potential rest period
9 damages were estimated to be \$1,152,677 based upon a 100% violation rate, and the maximum
10 potential damages for failure to provide expense reimbursement were calculated to be \$8,800. In total,
11 the damages for the Class were calculated to have a maximum potential total value of \$17,755,870. In
12 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties was
13 \$1,006,510, and the maximum value of the potential waiting time penalties was \$176,150.³ Defendant
14 vigorously disputed Plaintiff's calculations and exposure theories. Blumenthal Decl. at ¶ 8(d).

15 Consequently, the Gross Settlement Amount represents more than 37% of the potential
16 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
17 full at trial.⁴ The use of 100% violation rate for meal and rest periods likely overstates the damages for
18 these claims as Class Members would have received some breaks. Importantly, The recent decision that
19 good faith belief of compliance by the employer in *Naranjo*, *supra*, 15 Cal. 5th at 1065, could
20 completely negate the claims for waiting time and wage statement penalties, even if wages were owed
21

22 ³ 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 Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest
25 periods or other wages were owed given Defendant's position that Plaintiff and Class Members were
26 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 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
28 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
Declaration of Kyle Nordrehaug at ¶ 33 filed in support of the motion for preliminary approval.

1 to the Class. The above maximum calculations should then be adjusted in consideration for both the
2 risk of class certification and the risk of establishing class-wide liability on all claims. Blumenthal
3 Decl. ¶8(d). Given the amount of the Settlement as compared to the potential value of the claims, the
4 Settlement is most certainly fair and reasonable.⁵ Clearly, the goal of this litigation has been met.

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

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

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

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

24 ⁵ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 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).

1 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
2 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
3 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

4 First, the fee award representing one-third of the fund clearly falls within that range and is
5 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
6 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
7 in legal services. In *Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016), the California Supreme
8 Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third
9 (1/3) as a reasonable percentage in a contingent common fund class settlement. Such similar awards by
10 other Courts are set forth in the Blumenthal Decl. ¶11.

11 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
12 Here, Plaintiff and her counsel secured a \$800,000 settlement for the benefit of the Class and none of
13 the Class Members elected to opt out. Similarly, not one Class Member objected. The Settlement was
14 possible only because Class Counsel was able to convince Defendant that Plaintiff could potentially
15 prevail on the contested issues regarding liability, maintain class certification, overcome difficulties in
16 proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In successfully
17 navigating these hurdles Class Counsel displayed the necessary skills in both wage and hour and class
18 action litigation. Moreover, as discussed above, there were significant risks to the contingent litigation.
19 See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case,**
20 **where recovery is uncertain, an award of one-third of the common fund as attorneys' fees has**
21 **been found to be appropriate.**”)

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

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

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

5 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$800,000 has been created.
6 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
7 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
8 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
9 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
10 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
11 the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
12 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
13 Cir. 2016) (abuse of discretion not to apply risk multiplier).

14 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
15 the requested attorneys' fee of one-third equal to \$266,666 is also established by reference to Class
16 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
17 through July 30, 2024, Class Counsel's total lodestar is \$172,943.75, with significant additional fees
18 still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
19 Exhibits #3 and 4.) The requested fee award is therefore currently equivalent to Class Counsel's total
20 lodestar with a reasonable multiplier of 1.5, 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).⁶ For such

24 ⁶ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
25 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
26 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
27 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
28 *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).

1 reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the common fund is
2 reasonable and should be approved.

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

4 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
5 Litigation Expenses Payment of not more than \$30,000." Class Counsel have incurred \$19,374.70
6 based upon counsel's billing records which is less than the "not to exceed" amount of \$30,000. Class
7 Counsel therefore requests reimbursement for litigation expenses in the amount of \$19,374.70. These
8 litigation expenses include the expenses incurred for filing fees, mediation expenses, expert expenses
9 (Berger Consulting), and attorney service charges (Knox, OneLegal), research charges (LexisNexis),
10 and appearance fees (CourtCall), all of which are costs normally billed to and paid by the client.⁷ The
11 details of the expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3. Because these
12 expenses were reasonably incurrent and necessary to the successful prosecution of these claims, the
13 request is reasonable and should be granted.

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

15 Plaintiff respectfully submits that for her service as the class representatives, Plaintiff should
16 be awarded the agreed service award of \$12,500, in accordance with the Agreement for her time, risk
17 and effort expended on behalf of the Class as the class representatives. (Agreement at ¶ 3.2(a).)
18 Defendant has agreed to this payment and there have been no objections to the requested service award.
19 The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California
20 in similar cases, which further supports the request in this case. The Plaintiff's Declaration is
21 submitted in support of these requests and is attached as Exhibit #6 to the Blumenthal Decl. **Notably,**
22 **the highest Class Member payment exceeds this requested award.**

23 As the representative of the Class, Plaintiff performed her duties to the Class admirably and
24 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,

25
26 ⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging,
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 responding to numerous requests, searching for documents, working with counsel, and reviewing the
2 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, Plaintiff is also
3 providing a comprehensive release as part of the Settlement, far beyond the class release. The Plaintiff's
4 Declaration details the involvement, stress and risks she undertook as a result of this Action. Plaintiff
5 also assumed the serious risk that she might possibly be liable for costs and fees to Defendant, as well
6 as the reputational risk of being "blacklisted" by other future employers for having filed a class action
7 on behalf of employees. (Blumenthal Decl. at ¶15.) Without the Plaintiff's participation, cooperation
8 and information, no other employees would be receiving any benefit. (Blumenthal Decl. at ¶¶ 15-16).

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

24 Dated: July 30, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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Kyle R. Nordrehaug
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