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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

DANIEL CHILDERS, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

OPTIONS FOR ALL, INC., a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE No. **37-2022-00043155-CU-OE-CTL**

**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: July 18, 2025

Hearing Time: 10:30 a.m.

*[Hearing scheduled by Order dated September 23,
2024]*

Judge: Hon. Loren G. Freestone

Dept.: C-64

Date Action Filed: November 26, 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 as modified by the Stipulation to Amend the Class
4 Action and PAGA Settlement Agreement (collectively the “Agreement”), a true and correct copy of
5 which is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
6 accordance with the Preliminary Approval Order dated September 23, 2024 (“Preliminary Approval
7 Order”), the approved Class Notice has been disseminated to the Class.²

8 The purpose of this hearing is to determine whether the proposed settlement of the litigation
9 should be finally approved. Daniel Childers (“Plaintiff”) respectfully moves for final approval,
10 including attorneys’ fees, costs and the service award, and the proposed entry of the Final Approval
11 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class and
12 avoids the delays, risks, and costs of further litigation. After disseminating the notice to the 1,243
13 members of the Class, to date **there have been no objections and only 2 requests for exclusion** from
14 the Class, which means that nearly the entire Class (99.8%) has elected to participate in the Settlement.
15 Blumenthal Decl. ¶4. This is a positive response from the Class evidencing their collective approval of
16 the settlement. As a result, Plaintiff respectfully submits that the settlement should be finally approved
17 for the same reasons that the Court preliminarily approved the settlement as fair, reasonable, and
18 adequate.

19 **II. THE SETTLEMENT BEFORE THE COURT**

20 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
21 Options for All, Inc. (“Defendant”) is Seven Hundred Twenty Thousand Dollars (\$720,000) (the “Gross
22 Settlement Amount”)(Agreement at ¶¶ 1.23 and 3.1.) Under the Settlement, the Gross Settlement
23 _____

24 ¹ Capitalized terms are defined in the Agreement.

25 ² The “Class” is defined as “all individuals employed by Defendant in California who were classified
26 as non-exempt at any time during the Class Period.” (Preliminary Approval Order at ¶ 5.) The “Class
27 Period” was revised to September 27, 2019 to October 20, 2023. The original Class Period ended on
28 January 13, 2024, but the Agreement’s escalator clause triggered and Defendant opted to shorten the
 Class Period to end “on the date on which the workweeks reaches 110% of the total estimate stated”
 (Agreement at ¶ 9), which resulted in an October 20, 2023 end to the Class Period (and release period).

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 Plaintiff; and (5) the PAGA Penalties payment. (Agreement at ¶ 1.23.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (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:

\$720,000 (Gross Settlement Amount)

- \$10,000 (Plaintiff's proposed service award not to exceed amount)
- \$42,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$240,000 (Class Counsel Fees Payment - not to exceed 1/3 of the Gross Settlement Amount)
- \$25,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$14,250 (Administration Expenses Payment)

\$388,750 (Net Settlement Amount)

The specific details of the Settlement 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, agreeing that the settlement is "fair, reasonable, and adequate." (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued at \$720,000 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 in light of the defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty 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

1 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

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

1 (2010).

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

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

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

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

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

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

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

28 The Parties attended an arms-length mediation session with Louis Marlin, Esq., a respected and

1 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
2 for the mediation, Defendant provided to Plaintiff and Class Counsel payroll and employment data and
3 other information regarding the Class Members, various internal documents, and other compensation
4 and employment-related materials. Class Counsel analyzed the data with the assistance of damages
5 expert Berger Consulting and prepared and submitted a mediation brief to the mediator. Following this
6 all-day mediation, the Parties agreed to this Settlement based upon a mediator's proposal. Blumenthal
7 Decl. ¶7(b).

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

13 From April 2024 to July 2024, the settlement agreement and exhibits thereto were finalized and
14 executed. On August 30, 2024, the Court heard Plaintiff's Motion for Preliminary Approval and
15 requested revisions to the settlement agreement and the proposed order to address certain concerns
16 raised by the Court. A stipulation to amend the settlement agreement and a revised proposed order were
17 filed on September 19, 2024, and on September 23, 2024, the Court entered the Order granting
18 preliminary approved of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

19 3. Class Counsel is Experienced in Similar Litigation

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

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

2 The reaction of the Class unequivocally supports approval of the Settlement. On January 21,
3 2025, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
4 each class member with the terms of the Settlement, including notice of the claims at issue and the
5 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
6 sought, how individual settlement awards would be calculated, and the specific, estimated payment
7 amount to that individual. See Declaration of Nathalie Hernandez ["Hernandez Decl."], ¶ 7, Exh. A.
8 In disseminating the notice, the Administrator followed the notice procedures authorized by the Court
9 in its Preliminary Approval Order. Significantly, there have been no objections and only two (2)
10 requests to opt-out. Hernandez Decl. ¶¶ 11-12. As such, nearly the entire Class (99.8%) will participate
11 in the Settlement and will be sent a settlement check. See Hernandez Decl. at ¶¶ 13-14 Blumenthal Decl.
12 ¶4.

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

21 5. The Strength of Plaintiff's Case

22 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
23 overtime wages for hours worked and at the correct rate, were not provided meal and rest periods, were
24 not timely paid earned wages, were not provided reimbursement for required expenses, were not
25 provided accurate itemized wage statements, were not paid accrued and used sick pay at the correct rate
26 of pay, and 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 to Plaintiff and the other Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

1 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant
3 present serious threats to the claims of the Plaintiff and the other Class Members. Defendant asserted
4 that Defendant's practices complied with all applicable Labor laws. Defendant argued that Class
5 Members were paid for all time worked and that all work time was properly recorded. Defendant
6 maintained there was no miscalculation of the regular rate when paying wages to the Plaintiff and the
7 Class. Defendant contend that their meal and rest period policies fully complied with California law
8 and that Defendant paid for all missed meal and rest breaks, thus evidencing its lawful policies.
9 Defendant contends that there was no failure to pay for business expenses and any cell phone usage was
10 merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendant
11 could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
12 weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period
13 claims. Defendant also argues that based on its facially lawful practices, Defendant acted in good faith
14 and without willfulness, which if accepted would negate the claims for waiting time penalties and/or
15 inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065
16 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and accurate
17 wage statement in compliance with the requirements of section 226, then it has not knowingly and
18 intentionally failed to comply with the wage statement law.") If successful, Defendant's defenses could
19 eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses
20 could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk
21 to recovery by the Class. Blumenthal Decl. ¶8(a).

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

24 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
25 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
26 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.

27 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007
28 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor

1 approval.”).

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

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

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

13 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
14 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
15 of any employees other than themselves. At the time of the mediation, Defendant forcefully opposed
16 the propriety of class certification, arguing that individual issues precluded class certification. Further,
17 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
18 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the
19 class has been certified. While other cases have approved class certification in wage and hour claims,
20 class certification in this action was hotly disputed and the maintenance of a certified class through trial
21 was by no means a 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 Defendant asserted serious and
24 substantial defenses both to liability and to class certification. The maximum and average Class
25 Member allocation (in addition to their Individual PAGA Payment) are \$1,090.66 and \$312.75,
26 respectively. *See* Hernandez Decl. ¶14. Given the complexities of this case, the defenses, along with
27 the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and
28 should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

1 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 Defendant
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. The Settlement confers substantial benefits upon
11 the Class. Based upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement
12 set forth in the Agreement is in the best interest of the Class. Blumenthal Decl. ¶8(c).

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

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

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 1,241 Participating Class Members who collectively
27 worked 76,615 Workweeks, the Gross Settlement Amount provides a value of \$580 per Class Member
28 and \$9.39 per Workweek and after deductions, the Net Settlement Amount provides an average

1 recovery of \$313.25 per Class Member and a recovery of \$5.07 per Workweek. Blumenthal Decl. at
2 ¶8(d).

3 The calculations to compensate for the amount due for the Class at the time of the mediation
4 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
5 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
6 wages for the employees. The maximum potential damages were calculated to be \$1,748,868 for the
7 alleged unpaid wages for off-the-clock work at one hour per week, \$2,059 for the alleged unpaid wages
8 due to miscalculation of the regular rate when paying overtime, \$95,754 for the alleged underpayment
9 of sick pay and meal and rest premiums due to the alleged miscalculation of the result rate, the alleged
10 missed meal and rest period damages were valued at \$0 as Defendant established that an auto-pay
11 system paid for all such missed breaks which left only the above underpayment claim, \$104,180 for
12 alleged unreimbursed business expenses at \$5 per month. As a result, the total damage valuation was
13 calculated that Defendant were subject to a maximum damage claim in the amount of \$1,950,362. As
14 to potential penalties, Plaintiff calculated that potential waiting time penalties were a maximum of
15 between \$433,555 and \$2,801,431, and potential maximum wage statement penalties were \$1,592,400.³
16 Defendant vigorously disputed Plaintiff's calculations and exposure theories. Blumenthal Decl. at ¶
17 8(d).

18 Consequently, the Gross Settlement Amount of \$720,000 represents more than 36% of the
19 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
20 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
21
22

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

27 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include 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 *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 Defendant, this settlement is fair and reasonable.⁵ Blumenthal Decl. ¶8(d). Clearly, the goal of this
7 litigation has been met.

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 (1977); *Boeing Co. v. Van Gemert*, 444
17 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
18 of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
19 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
20 alone." *Vincent*, 557 F.2d at 769.

22 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
25 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
26 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
27 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
28 a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

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

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

17 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
18 Here, Plaintiff and his counsel secured a \$720,000 settlement for the benefit of the Class and currently
19 only one of the Class Members elected to opt out. Similarly, not one Class Member objected. The
20 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiff could
21 potentially prevail on the contested issues regarding liability, maintain class certification, overcome
22 difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f).
23 In successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and
24 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
25 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
26 2013) ("**Like this case, where recovery is uncertain, an award of one-third of the common fund**
27 **as attorneys' fees has been found to be appropriate.**")

28 Third, "the response of the class members to attorneys' fee notice, though not decisive, is

1 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
2 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
3 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
4 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

7 No one expects a lawyer whose compensation is contingent upon his success to charge, when
8 successful, as little as he would charge a client who had agreed to pay for his services, regardless
of success.

9 495 F.2d 448, 470 (2d Cir. 1974).

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

18 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
19 the requested attorneys’ fee of one-third equal to \$240,000 is also established by reference to Class
20 Counsel’s lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence
21 that through June 23, 2025, Class Counsel’s total lodestar is \$210,222.50, with significant
22 additional fees still to be incurred to complete final approval and the settlement process.**
23 Blumenthal Decl. at ¶12 and Exhibit #3. The requested fee award is therefore currently equivalent to
24 Class Counsel’s total lodestar with a reasonable multiplier cross-check of less than 1.2, and there will
25 be additional lodestar incurred by Class Counsel to complete the settlement process and manage the
26 settlement distribution and reports. Blumenthal Decl. at ¶12. Such lodestar cross-check is well below
27 the range of multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290
28

1 F.3d 1043, 1051 (9th Cir. 2002).⁶ For such reasons, Class Counsel's request for attorneys' fees in the
2 amount of one-third of the common fund is 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 \$42,000." Class Counsel have incurred \$33,668.45 based
6 upon counsel's billing records, which is less than the "not to exceed" amount of \$42,000. Class Counsel
7 therefore requests reimbursement for litigation expenses in the amount of \$33,668.45. These litigation
8 expenses include the expenses incurred for filing fees, mediation expenses, expert expenses (Berger
9 Consulting), and attorney service charges (Knox, OneLegal), and research charges (LexisNexis), all of
10 which are costs normally billed to and paid by the client.⁷ The details of the expenses incurred are set
11 forth in the Blumenthal Decl. at ¶13 and Exhibit #3.

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

13 Plaintiff respectfully submits that for his service as the class representatives, Plaintiff should be
14 awarded the agreed service award of \$10,000, in accordance with the Agreement for his time, risk and
15 effort expended on behalf of the Class as the class representatives. (Agreement at ¶ 3.2(a).) Defendant
16 has agreed to this payment and there have been no objections to the requested service award. The
17 Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California in
18 similar cases, which further supports the request in this case. Plaintiff's Declaration is submitted in
19 support of this request and is attached as Exhibit #4 to the Blumenthal Decl.

21 ⁶ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
22 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
23 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
24 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
25 *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).

26 ⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging, photocopying,
28 long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits,
documents scanning, and visual equipment are typically recoverable." *Rutti v. Lojack Corp., Inc.*, 2012
WL 3151077, at *12 (C.D. Cal. 2012).

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

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

21 **VI. CONCLUSION**

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

25 Respectfully submitted,

26 Dated: June 23, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP**

27 By: /s/ Kyle Nordrehaug
28 Kyle R. Nordrehaug, Attorneys for Plaintiff