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

JILEEA JORDAN, an individual, on
behalf of herself and on behalf of all
persons similarly situated, and on behalf
of the State of California as a private
attorney general,

Plaintiffs,

vs.

WAX CENTER PARTNERS
INTERMEDIATE HOLDCO LLC, a
Limited Liability Company; WAX
CENTER PARTNERS HOLDCO LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **22CV018596**

**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 13, 2024

Hearing Time: 1:30 p.m.

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Judge: Hon. Noel Wise
Dept.: 21

Action Filed: September 27, 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 26, 2024 (“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 Jileea Jordan (“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, currently there are **no objections and only one request for exclusion**.³
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 Plaintiff and Defendants Wax Center Partners Intermediate Holdco LLC and Wax Center
19 Partners Holdco LLC (“Defendants”) reached a full and final settlement of the above-captioned action,
20 which is embodied in the Agreement filed concurrently with the Court. As consideration for this
21 Settlement, the non-reversionary Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars
22 (\$750,000) (the “Gross Settlement Amount”) is to be paid by Defendants, as set forth in the Agreement.

23 ¹ Capitalized terms are defined in the Agreement.

24
25 ²The “Class” is defined as “all non-exempt employees who worked in California for Defendants Wax
26 Center Partners Intermediate Holdco LLC and/or Wax Center Partners Holdco LLC at any time during
27 the Class Period.” The “Class Period” is defined as “September 27, 2028, through August 17, 2023.”
(Preliminary Approval Order at 3:19-22/)

28 ³ The Response Deadline is July 22, 2024, so the final figures from the notice process will be
provided to this Court after this deadline and in advance of the hearing on this motion.

(Agreement at ¶ 1.23.) The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will be made in full and final settlement of the Released Class Claims in exchange for the payments to Participating Class Members from the Net Settlement Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative Service Payment, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.23.) Blumenthal Decl. ¶3(a). The following is a table of the key financial terms of the Settlement and the proposed deductions:

\$750,000 (Gross Settlement Amount)

- \$10,000 (Plaintiff's proposed service award not to exceed \$10,000 each)
- \$17,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$250,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$16,000 (Administration Expenses Payment - not to exceed amount)

\$442,000 (Net Settlement Amount)

The specific details of the Settlement terms were discussed in the Motion for Preliminary Approval and are set forth again in the Declaration of Blumenthal at ¶¶ 3(b)-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, adequate, and reasonable". (Preliminary Approval Order at 2:19-23.) In sum, the Settlement valued at \$750,000 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 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

17 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
18 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
19 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
20 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The
21 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
22 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
23 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
24 offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience
25 and views of counsel, the presence of a governmental participant, and the reaction of the class members
26 to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
27 (internal citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th
28 399, 408 (2010).

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

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

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

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

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

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

21 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
22 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
23 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
24 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
25 Claims of the Class in accordance with this Settlement. Class Counsel are experienced and qualified
26 to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and
27 Class Counsel are particularly experienced in wage and hour employment class actions, as Class
28 Counsel has previously litigated and certified similar claims against other employers. Blumenthal Decl.

¶7(a).

The Parties attended an arms-length mediation session with Louis Marlin, a respected jurist and experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation for the mediation, Defendant provided Class Counsel with payroll and employment data and other information regarding the Class Members, various internal documents, and other compensation and employment-related materials. Class Counsel analyzed the data with the assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator. Following this all-day mediation, the Parties agreed to this Settlement. Blumenthal Decl. ¶7(b).

The fact that the settlement was negotiated with the assistance of an experienced mediator supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal. 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the litigation, with the assistance of a well-respected mediator with substantial experience in employment litigation[, and] this factor supports approval of the settlement”).

From June 2023 to September 2023, the settlement agreement and exhibits thereto were finalized and executed, and then presented by motion to this Court for preliminary approval. In response to the Court’s initial ruling, an amended settlement agreement was executed to correct issues identified by the Court. On March 26, 2024, the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

3. Class Counsel is Experienced in Similar Litigation

Class Counsel in this matter has extensive class action experience and has represented thousands of persons in class actions including employment litigation, wage and hour class actions, and complex litigation. Class Counsel has previously litigated wage and hour class actions involving employees and claims similar to this case and have been approved as experienced class counsel during contested motions in state and federal courts throughout California. As such, Class Counsel is experienced and knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2. Class Counsel have participated in every aspect of the settlement discussions and have concluded the settlement is fair, adequate and reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

1 4. There Are No Objections and One Request for Exclusion

2 The reaction of the Class unequivocally supports approval of the Settlement. On May 23, 2024,
3 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
4 class member with the terms of the Settlement, including notice of the claims at issue and the financial
5 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
6 how individual settlement awards would be calculated, and the specific, estimated payment amount to
7 that individual. See Declaration of Cassandra Polites (the Administrator). In disseminating the notice,
8 the Administrator followed the notice procedures authorized by the Court in its Preliminary Approval
9 Order. To date, there have been no objections and only one request for exclusion. The response
10 deadline is July 22, 2024, after which the final figures will be provided in advance of the hearing on this
11 motion in the forthcoming Declaration of Cassandra Polites. Blumenthal Decl. ¶4.

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

20 5. The Strength of Plaintiff's Case

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

28 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*

1 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
2 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
3 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
4 argued that Class Members were paid for all time worked and that all work time was properly recorded.
5 Defendants contend that its meal and rest period policies fully complied with California law and
6 Defendants did not fail to provide the opportunity for legally required meal and rest breaks. Defendants
7 could argue that its payment of significant meal period premiums is evidence of lawful practices.
8 Defendants contend that there was no failure to pay for business expenses and any cell phone usage was
9 merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendants
10 could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
11 weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period
12 claims. Defendants also argue that based on its facially lawful practices, Defendants acted in good faith
13 and without willfulness, which if accepted would negate the claims for waiting time penalties and/or
14 inaccurate wage statements. If successful, Defendants' defenses could eliminate or substantially reduce
15 any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendants
16 maintain these defenses have merit and therefore present a serious risk to recovery by the Class.
17 Blumenthal Decl. ¶8(a).

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

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

25 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
26 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
27 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
28 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

11 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
12 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
13 of any employees other than herself. At the time of the mediation, Defendants forcefully opposed the
14 propriety of class certification, arguing that individual issues precluded class certification. Further, as
15 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
16 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class
17 has been certified. While other cases have approved class certification in wage and hour claims, class
18 certification in this action was hotly disputed and the maintenance of a certified class through trial was
19 by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

20 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
21 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
22 substantial defenses both to liability and to class certification. Currently, the maximum and average
23 class member allocation are \$3,031.17 and \$535.75, respectively. Given the complexities of this case,
24 the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
25 reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

27 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
28 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event
of an adverse judgment. A post-judgment appeal by Defendant would have required many more years
to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
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 continuing to litigate and trying
3 this Action against Defendants through possible appeals which could take several years. Class Counsel
4 has also taken into account the uncertain outcome and risk of litigation, especially in complex class
5 actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of
6 proof under, and alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions
7 and appeals would have been inevitable. Costs would have mounted and recovery would have been
8 delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class Counsel
9 believe that the Settlement confers substantial benefits upon the Class. Based upon their evaluation,
10 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
11 interest of the Class Members. Blumenthal Decl. ¶8(c).

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

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

24 *Id.* at *12.

25 7. The Amount Offered in Settlement

26 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
27 to Plaintiff's claims. The Declaration of Nordrehaug submitted in support of preliminary approval
28 discussed the value of the class claims in detail. The calculations to compensate for the amount due for
the Class at the time of the mediation were calculated by Berger Consulting, Plaintiff's damage expert.
As to the Class whose claims are at issue in this Action, Plaintiff used the expert to analyze the data and
determine the potential unpaid wages for the employees. The maximum potential damages were

1 calculated to be \$1,032,397 for the alleged unpaid wages due to off-the-clock work at 1 hour per week,
2 \$7,744 for the alleged unpaid wages due to the regular rate miscalculation applicable to vacation payout,
3 \$656,590 for alleged meal period damages based upon a 44% potential violation rate for shifts worked
4 and after deducting the meal premiums (\$144,115) actually paid by Defendant, \$1,879,015 for alleged
5 rest period damages based upon the same potential 44% violation rate observed for meal periods,
6 \$65,003 for alleged unreimbursed business expenses for personal cell phone usage at \$5 per month.
7 Decl. Nordrehaug, ¶6. As a result, the total damage valuation was calculated that Defendant was
8 subject to a maximum damage claim in the amount of \$3,575,746. As to potential penalties, Plaintiff
9 calculated that potential waiting time penalties were a maximum of between \$309,797 and \$1,469,141,
10 depending on the predicate violation giving rise to the penalty, and potential maximum wage statement
11 penalties were \$968,100.⁴ Defendants vigorously disputed Plaintiff's calculations and exposure
12 theories. Blumenthal Decl. ¶8(d).

13 Consequently, the Gross Settlement Amount of \$750,000 represents more than 20% of the
14 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
15 The above maximum calculations should then be adjusted in consideration for both the risk of class
16 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
17 settlement as compared to the potential value of claims in this case and the defenses asserted by
18 Defendants, this settlement is fair and reasonable.⁶ Clearly, the goal of this litigation has been met.

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

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

⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
settlement where the settlement amount constituted approximately 25% of the estimated overtime

1 Blumenthal Decl. ¶8(d).

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

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

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

14 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
15 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
16 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*
17 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state
18 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
19 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
20 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
21 created"). Under the percentage of the fund method, a court's objective remains to "mimic the market"

22
23 _____
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 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

2 First, the fee award representing one-third of the fund clearly falls within that range and is
3 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
4 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market
5 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
6 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
7 "[m]ost fee awards were between 25 percent and 35 percent"). In *Laffitte*, the Court expressly approved
8 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

9 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
10 Here, Class Counsel secured a \$750,000 settlement for the benefit of the Class. The Settlement was
11 possible only because Class Counsel was able to convince Defendant that Plaintiff could potentially
12 prevail on the contested issues regarding liability, maintain class certification, overcome difficulties in
13 proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In
14 successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and
15 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
16 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
17 2013) ("**Like this case, where recovery is uncertain, an award of one-third of the common fund
18 as attorneys' fees has been found to be appropriate.**")

19 Third, "the response of the class members to attorneys' fee notice, though not decisive, is
20 relevant to the ... reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
21 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's "approximation of the
22 market" for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
23 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

26 No one expects a lawyer whose compensation is contingent upon his success to charge, when
27 successful, as little as he would charge a client who had agreed to pay for his services, regardless
28 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.

1 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$750,000 has been created.
2 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
3 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
4 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
5 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class**
6 **action litigation, is entitled to a premium above their hourly rate in order to compensate for both**
7 **the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
8 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
9 Cir. 2016) (abuse of discretion not to apply risk multiplier).

10 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
11 the requested attorneys' fee of one-third equal to \$250,000 is also established by reference to Class
12 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
13 through July 19, 2024, Class Counsel's total lodestar is \$171,568.75, with significant additional fees
14 still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
15 Exhibit #3.) The requested fee award is therefore currently equivalent to Class Counsel's total lodestar
16 with a reasonable multiplier of less than 1.5, and there will be additional lodestar incurred by Class
17 Counsel to complete the settlement process and manage the settlement distribution and reports.
18 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases
19 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷

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

22
23
24 ⁷ 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 v. Apple*
27 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
28 *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).

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

2 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a “a Class Counsel
3 Litigation Expense of no more than \$17,000”. Class Counsel requests reimbursement for incurred
4 litigation expenses and costs in the amount of \$17,000 based upon counsel’s billing records which
5 evidence total expenses of \$17,121.25. These litigation expenses include the expenses incurred for filing
6 fees, mediation expenses, expert fees (Berger Consulting Group), attorney service charges (One Legal),
7 Lexis charges, and delivery expenses, all of which are costs normally billed to and paid by the client.⁸
8 The details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3.
9 Because these costs were reasonably incurred and necessary to the successful prosecution of these
10 claims, the request is reasonable and should be granted.

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

12 Plaintiff respectfully submit that for her service as the only class representative, Plaintiff should
13 be awarded the agreed service award of \$10,000, in accordance with the Agreement for her time, risk
14 and effort expended on behalf of the Class. (Agreement at ¶ 56(a).) Defendant has agreed to this
15 payment and there have been no objections to the requested service award. The Blumenthal Decl., at
16 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
17 further supports the request in this case. The Declaration of the Plaintiff is submitted in support of this
18 request and is attached as Exhibit #6 to the Blumenthal Decl.

19 As the sole representative of the Class, Plaintiff performed her duty to the Class admirably and
20 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
21 responding to numerous requests, searching for documents, working with counsel, and reviewing the
22 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, the Plaintiff is
23 also providing a comprehensive release as part of the Settlement, far beyond the class release. The
24 Declaration of the Plaintiff details the involvement, stress and risks she undertook as a result of this

25
26 ⁸ Nontaxable costs are properly awarded where authorized by the parties’ agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, “[e]xpenses such as reimbursement for travel, meals, lodging,
28 photocopying, long-distance telephone calls, computer legal research, postage, courier service,
mediation, exhibits, documents scanning, and visual equipment are typically recoverable.” *Rutti v.*
Lojack Corp., Inc., 2012 WL 3151077, at *12 (C.D. Cal. 2012).

1 Action. Plaintiff also assumed the serious risk that she might possibly be liable for costs and fees to
2 Defendant, as well as the reputational risk of being “blacklisted” by other future employers for having
3 filed a class action on behalf of fellow former employees. (Blumenthal Decl. at ¶15.) Without the
4 Plaintiff’s participation, cooperation and information, no other employees would be receiving any
5 benefit. (Blumenthal Decl. at ¶¶ 15-16).

6 The payment of service awards to successful class representatives is appropriate and the amount
7 of \$10,000 is well within the currently awarded range for similar settlements. *See, e.g., Andrews v.*
8 *Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the
9 requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019
10 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award);
11 *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500
12 where average class member payment was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
13 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs
14 in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007)
15 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
16 Accordingly, Class Counsel respectfully request approval of the requested Class Representative Service
17 Payment in accordance with the Agreement.

18 **VI. CONCLUSION**

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

22 Dated: July 22, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

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