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

ISAAC RODRIGUEZ, MARIA
ALVAREZ, CECILIO GUZMAN
VIVEROS, KATE LOPEZ and
GILBERTO SERRATOR MORENO,
individuals, on behalf of themselves and
on behalf of all persons similarly situated,

Plaintiffs,

vs.

FEGHALI FOODS, a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE No. BCV-23-100142

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

Hearing Date: October 1, 2024

Hearing Time: 8:30 a.m.

[Hearing scheduled by Order dated May 30, 2024]

Judge: Hon. T. Mark Smith
Dept.: T-2

Action Filed: January 17, 2023

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 May 30, 2024 (“Preliminary Approval Order”),
6 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. Plaintiffs Isaac Rodriguez, Maria Alvarez, Cecilio Guzman Viveros, Kate
9 Lopez, and Gilberto Serrato Moreno (“Plaintiffs”) respectfully move for final approval, including
10 attorneys’ fees, costs and the service award, and the proposed entry of the Final Approval Order and
11 Judgment, submitted herewith. The settlement represents an excellent result for the Class and avoids
12 the delays, risks, and costs of further litigation. After disseminating the notice to the members of the
13 Class, there were **no objections and only two (2) requests for exclusion**, which means that nearly the
14 entire Class (99.88%) has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a
15 positive response from the Class evidencing their collective approval of the settlement. As a result,
16 Plaintiffs respectfully submit that the class settlement should be finally approved for the same reasons
17 that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

18 **II. THE SETTLEMENT BEFORE THE COURT**

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
20 Feghali Foods ("Defendant") is Eight Hundred Thousand Dollars (\$800,000). (Agreement at ¶¶ 1.25
21 and 3.1.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
22 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
23 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4)
24 the Class Representative Service Payments to Plaintiffs; and (5) the PAGA Penalties. (Agreement at
25 _____

26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals who are or previously were employed by Defendant in
28 California and classified as a non-exempt employee at any time during the Class Period.” The “Class
Period” is defined as “February 16, 2020 through May 30, 2024.” (Preliminary Approval Order at ¶5.)

¶ 1.25.) 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:

\$800,000 (Gross Settlement Amount)

- \$50,000 (Plaintiffs' proposed service awards not to exceed \$10,000 each)
- \$30,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$266,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$50,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$18,400 (Administration Expenses Payment)

\$384,634 (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, adequate, and reasonable." (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued at \$800,000 is an excellent result for the Class. This result is particularly favorable in light of the fact that liability and class certification in this case were far from certain 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.")

The court must decide whether the proposed settlement falls within the range of reasonable settlements, taking into account that settlements are compromises between the parties reflecting subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See*

1 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to be
2 judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs
3 prevailed at trial.”) In *Wershba*, the Court explained that “the merits of the underlying class claims are
4 not a basis for upsetting the settlement of a class action.” *Id.*; see also *7-Eleven, supra*, at 1150.

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

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

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

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

1 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
2 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*
3 “Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing,
4 gross approximations and rough justice.' [Citation omitted.]” *Id.*

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

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

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

10 Over the course of nearly two years of litigation, the Parties engaged in the investigation of the
11 claims, including the production of documents, class data, and other information, allowing for the full
12 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
13 investigation performed was detailed at length in support of the motion for preliminary approval. The
14 Settlement was the product of one arms-length mediation and contentious negotiations, both during and
15 after mediation, presided over by mediator Tagore Subramaniam, Esq.. The details of the litigation are
16 set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

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

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

24 The Parties attended an arms-length mediation session with Tagore Subramaniam, Esq., a
25 respected and experienced mediator of wage and hour class actions, in order to reach this Settlement.
26 In preparation for the mediation, Defendant provided Plaintiffs and Class Counsel with redacted payroll
27 and employment data and other information regarding the Class Members, various internal documents,
28 and other compensation and employment-related materials. Class Counsel analyzed the data with the

1 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
2 mediator. Following the all-day mediation session, with after arms' length negotiations both during and
3 after the mediation, the Parties agreed to this Settlement based upon a mediator's proposal. Blumenthal
4 Decl. ¶7(b).

5 The fact that the settlement was negotiated with the assistance of an experienced mediator
6 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
7 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
8 2007) ("The settlement was negotiated and approved by experienced counsel on both sides of the
9 litigation, with the assistance of a well-respected mediator with substantial experience in employment
10 litigation[, and] this factor supports approval of the settlement").

11 From February 2024 to April 2024, the settlement agreement and exhibits thereto were finalized
12 and executed. On May 30, 2024, the Court issued its Order granting preliminary approval of the
13 settlement as fair, adequate, and reasonable to the Class. Blumenthal Decl. ¶7(c).

14 3. Class Counsel is Experienced in Similar Litigation

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

24 4. There Are No Objections and Only Two (2) Requests for Exclusion

25 The reaction of the Class unequivocally supports approval of the Settlement. On July 2, 2024,
26 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
27 class member with the terms of the Settlement, including notice of the claims at issue and the financial
28 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,

1 how individual settlement awards would be calculated, and the specific, estimated payment amount to
2 that individual. See Declaration of Madely Nava (“Nava Decl.”) ¶ 7, Exh. A. In disseminating the
3 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
4 Approval Order. Significantly, there have been no objections and only two (2) requests to opt-out.
5 Nava Decl. at ¶¶ 11-12. As such, nearly the entire Class (99.88%) will participate in the Settlement and
6 will be sent a settlement check. See Nava Decl. at ¶¶ 13-15; Blumenthal Decl. ¶4.

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

15 5. The Strength of Plaintiffs’ Case

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

24 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
25 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant
26 present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant asserted
27 that Defendant’s practices complied with all applicable Labor laws. Defendant argued that Class
28 Members were properly paid for all time worked and that all work time was properly recorded.

1 Defendant maintained there was no miscalculation of the regular rate when paying wages to the
2 Plaintiffs and the Class. Defendant contends that its meal and rest period policies fully complied with
3 California law and Defendant did not fail to provide the opportunity for legally required meal and rest
4 breaks. Defendant could argue that its payment of meal period premiums is evidence of its lawful
5 practices. Defendant contend that there was no failure to pay for business expenses and any cell phone
6 usage was merely convenient and voluntary such that reimbursement was not legally required. Finally,
7 Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
8 (2012) and the existence of arbitration agreements, weakened Plaintiffs' claims, on liability, class-wide
9 damages, and class certifiability as to the meal and rest period claims. Defendant also contends that
10 Plaintiff's pursuit of class-wide relief is further challenged because Defendant could enforce arbitration
11 agreements with class action waivers. Defendant also argues that based on its facially lawful practices,
12 Defendant acted in good faith and without willfulness, which if accepted would negate the claims for
13 waiting time penalties and/or inaccurate wage statements. If successful, Defendant's defenses could
14 eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses
15 could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk
16 to recovery by the Class. Blumenthal Decl. ¶8(a).

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

19 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
20 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
21 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.

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

26 The potential complexity and possible duration of trial also weigh in favor of granting
27 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
28 uncertainty of outcome, and believe defendant would appeal in the event of adverse
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

1 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees,
2 the actual recovery confers substantial benefits on the class that outweigh the potential
recovery through full adjudication.

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

5 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
6 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
7 of any employees other than themselves. At the time of the mediation, Defendant forcefully opposed
8 the propriety of class certification, arguing that individual issues precluded class certification.
9 Defendant contended that the existence of arbitration agreements with class waivers could be a threat
10 to class certification and/or the recovery of class-wide damages. Further, as demonstrated by the
11 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
12 are significant hurdles to overcome for a class-wide recovery even where the class has been certified.
13 While other cases have approved class certification in wage and hour claims, class certification in this
14 action was hotly disputed and the maintenance of a certified class through trial was by no means a
15 foregone 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 member
19 allocation (in addition to their Individual PAGA Payment) are \$1,235.46 and \$223.02, respectively. *See*
20 *Nava Decl.* ¶ 15. Given the complexities of this case, the defenses, along with the uncertainties of proof
21 and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally approved.
22 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 Plaintiffs 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, Plaintiffs and Class Counsel have determined that the
10 Settlement set forth in the Agreement is in the best interest of the Class. Blumenthal Decl. ¶8(c).

11 Although Plaintiffs 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 Plaintiffs' 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 1,726 Class Members who collectively worked an
27 estimated 71,038 workweeks, the Gross Settlement Amount provides an average value of \$463 per
28 Class Member and \$11.26 per workweek and after deductions the Net Settlement Amount provides an
average recovery of \$223.02 per Class Member and a recovery of \$5.41 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, Plaintiffs' damage expert. As to the Class whose claims are at
3 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
4 wages for the employees. For the Class, the maximum potential damages were calculated to be
5 \$121,111 for the alleged unpaid overtime premium wages, \$1,187,057 for the alleged unpaid wages for
6 off-the-clock work at 1 hour per workweek, \$2,763 for the alleged unpaid wages due to miscalculation
7 of the regular rate when paying wages, \$9,183 for the alleged underpayment of meal period premiums
8 and sick pay, \$199,154 for alleged meal period damages based upon a 10% potential violation rate for
9 shifts worked and after deducting the meal premiums actually paid by Defendant, \$3,554,307 for alleged
10 rest period damages based upon a 76.8% potential violation rate for shifts worked observed in the time
11 records, \$159,235 for alleged unreimbursed business expenses for personal cell phone usage at \$5 per
12 month. As a result, the total damage valuation was calculated that Defendant was subject to a maximum
13 damage claim in the amount of \$5,232,810. As to potential penalties, Plaintiffs calculated that potential
14 waiting time penalties were a maximum of \$3,137,331, and potential wage statement penalties were a
15 maximum of \$1,406,200.³ Defendant vigorously disputed Plaintiffs' calculations and exposure theories.
16 Blumenthal Decl. ¶8(d).

17 Consequently, the Gross Settlement Amount of \$800,000 represents more than 15% of the
18 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
19 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
20 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
21

22 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
23 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
24 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
25 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class
26 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
27 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute
28 as to whether and when the wages were due.").

⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
Plaintiffs 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 Kyle Nordrehaug at ¶33 filed in support of Plaintiffs'
Motion for Preliminary Approval..

1 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
2 calculations should then be adjusted in consideration for both the risk of class certification and the risk
3 of establishing class-wide liability on all claims. Given the amount of the settlement as compared to
4 the potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair
5 and reasonable.⁵ Clearly, the goal of this litigation has been met. Blumenthal Decl. ¶8(d).

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

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

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

19 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
20 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
21 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*
22 *Robert Half Int'l*, 1 Cal.5th 480, 503 (2016) ("We join the overwhelming majority of federal and state

23
24 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
25 settlement where the settlement amount constituted approximately 25% of the estimated overtime
26 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
27 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
28 approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full 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 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
2 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
3 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
4 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
5 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

13 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
14 Here, Plaintiffs and their counsel secured a \$800,000 settlement for the benefit of the Class, and not one
15 Class Member objected. The Settlement was possible only because Class Counsel was able to convince
16 Defendant that Plaintiffs could potentially prevail on the contested issues regarding liability, maintain
17 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
18 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
19 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
20 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
21 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
22 **one-third of the common fund as attorneys' fees has been found to be appropriate.**”)

23 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
24 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
25 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
26 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
27 Class Counsel would be seeking a one-third fee award. Again, there were no objections.
28

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

3 No one expects a lawyer whose compensation is contingent upon his success to charge, when
4 successful, as little as he would charge a client who had agreed to pay for his services, regardless
5 of success. Nor, particularly in complicated cases producing large recoveries, is it just to make
6 a fee depend solely on the reasonable amount of time expended.
7 495 F.2d 448, 470 (2d Cir. 1974).

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

17 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
18 the requested attorneys' fee of one-third equal to \$266,666 is also established by reference to Class
19 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
20 through September 4, 2024, Class Counsel's total lodestar is **\$205,186.25**, with significant additional
21 fees still to be incurred to complete final approval and the settlement process. Blumenthal Decl. at ¶12
22 and Exhibit #3. The requested fee award is therefore currently equivalent to Class Counsel's total
23 lodestar with a reasonable multiplier of less than 1.3, and there will be additional lodestar incurred by
24 Class Counsel to complete the settlement process and manage the settlement distribution and reports.
25 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases
26 such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

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

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

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

4 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
5 Litigation Expenses Payment of not more than \$30,000." Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$30,000. Class Counsel have incurred
7 \$30,676.10 based upon counsel's billing records, which is more than the requested award. These
8 litigation expenses include the expenses incurred for filing fees, mediation expenses, expert expenses
9 (Berger Consulting), and attorney service charges (Knox, OneLegal), deposition expenses, and research
10 charges (LexisNexis), all of which are costs normally billed to and paid by the client.⁷ The details of
11 the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3. These costs
12 were reasonably incurred in the prosecution of the Action. Blumenthal Decl. at ¶13. Because these costs
13 were necessary to the successful prosecution of these claims, the request should be granted.

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

15 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
16 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
17 risk 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 awards.
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 Declarations of Plaintiffs are
21 submitted in support of this request and is attached as Exhibits #5, 6, 7, 8 and 9 to the Blumenthal Decl.

22 _____
23 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez*
24 *v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved
25 range of 2 to 4); *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,
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 As the representative of the Class, Plaintiffs performed their duties to the Class admirably and
2 without exception. Plaintiffs 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. Plaintiffs' Declarations detail the involvement,
5 stress and risks they undertook as a result of this Action. Plaintiffs also assumed the serious risk that
6 they might possibly be liable for costs and fees to Defendant, as well as the reputational risk of being
7 "blacklisted" by other future employers for having filed a class action on behalf of employees.
8 Blumenthal Decl. at ¶15. Without the Plaintiffs' participation, cooperation and information, no other
9 employees would be receiving any benefit. Blumenthal Decl. at ¶¶ 15-16.

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

21 **VI. CONCLUSION**

22 Plaintiffs respectfully submit 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: September 6, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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