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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SANTA CLARA**
16

17 JENNIFER WONG, an individual, on
18 behalf of herself, and on behalf of all
19 persons similarly situated,

20 Plaintiff,

21 vs.

22 NURSE LOGISTICS, INC., a California
23 Corporation; and DOES 1 through 50,
24 inclusive,

25 Defendants.

CASE No. **22CV408939**

**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: January 29, 2025

Hearing Time: 1:30 p.m.

[Hearing scheduled by Order dated August 27 ,
2024]

Judge: Hon. Theodore C. Zayner

Dept: 19

Date Filed: June 24, 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 August 27, 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 Jennifer Wong (“Plaintiff”) respectfully moves for final approval,
9 including attorneys’ fees, costs and the service award, and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class and
11 avoids the delays, risks, and costs of further litigation. After disseminating the Class Notice to the 757
12 members of the Class, **there were no objections and no requests for exclusion** from the Class, which
13 means that the entire Class (100%) has elected to participate in the Settlement. Blumenthal Decl. ¶4.
14 This is a positive response from the Class evidencing their collective approval of the settlement. As a
15 result, Plaintiff respectfully submits that the settlement should be finally approved for the same reasons
16 that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

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

18 As consideration for this Settlement, the Gross Settlement Amount is One Million Two Hundred
19 Fifty Thousand Dollars and Zero Cents (\$1,250,000.00) (Agreement at ¶¶ 1.20 and 3.1.) Under the
20 Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the
21 Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and
22 Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class
23

24 ¹ Capitalized terms are defined in the Agreement.

25 ² The “Class” is defined as “all individuals who currently work or previously worked as a nurse and
26 an independent contractor in the State of California and who were paid by Defendant or its affiliate
27 Nurse Registry, Inc. at any time during the Class Period.” The “Class Period” is defined as “December
28 16, 2018 through October 5, 2023.” (Preliminary Approval Order at ¶ 5.)

1 Representative Service Payment to Plaintiff and Plaintiff's Individual Settlement Payment; and (5) the
2 PAGA Penalties payment. (Agreement at ¶ 1.20.) Blumenthal Decl. ¶3(a). The Gross Settlement
3 Amount does not include Defendant's share of payroll taxes on the portion of the Individual Class
4 Payments allocated to wages. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with
5 no reversion to Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b). The following is a table of
6 the key financial terms of the Settlement and the proposed deductions:

7 **\$1,250,000 (Gross Settlement Amount)**

- 8 - \$7,500 (Plaintiff's reduced service award amount)
- 9 - \$500 (Plaintiff's Individual Settlement Payment)
- 10 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 11 - \$416,666 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 12 - \$25,000 (PAGA Penalties - 75% to LWDA / 25% to PAGA Members)
- 13 - \$11,500 (Administration Expenses Payment amount)

14 **\$763,834 (Net Settlement Amount)**

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

17 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
18 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
19 is "fair, reasonable, and adequate." (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
20 at \$1,250,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
21 that liability and class certification in this case were far from certain in light of the defenses asserted
22 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
23 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
24 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

27 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal.App.4th 259,
28 265 (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

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

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

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

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

28 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.

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

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

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

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

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

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

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

26 The Parties attended an arms-length mediation session with Tripper Ortman, Esq., an
27 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
28 for the mediation, Defendant provided to Plaintiff and Class Counsel pay and shift data and other

1 information regarding the Class Members, various internal documents, and other compensation and
2 related materials. Class Counsel analyzed the data with the assistance of damages expert Berger
3 Consulting and prepared and submitted a mediation brief to the mediator. Following this all-day
4 mediation, the Parties agreed to this Settlement based upon a mediator's proposal. Blumenthal Decl.
5 ¶7(b).

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

11 From November 2023 to July 2024, the settlement agreement and exhibits thereto were
12 finalized and executed. On August 21, 2024, the Court granted the Motion for Preliminary Approval,
13 and on August 27, 2024 the Court filed the Order granting preliminary approved of the settlement as
14 fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

15 3. Class Counsel is Experienced in Similar Litigation

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

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

26 The reaction of the Class unequivocally supports approval of the Settlement. On September 30,
27 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
28 each class member with the terms of the Settlement, including notice of the claims at issue and the

1 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
2 sought, how individual settlement awards would be calculated, and the specific, estimated payment
3 amount to that individual. See Declaration of Madely Nava ["Nava Decl."], ¶ 7, Exh. A. In
4 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
5 its Preliminary Approval Order. Significantly, there have been **no objections and no requests to opt-**
6 **out.** Nava Decl. ¶¶11-12. As such, the entire Class (100.00%) will participate in the Settlement and
7 will be sent a settlement check. See Nava Decl. at ¶¶ 13-15; Blumenthal Decl. ¶4.

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

16 5. The Strength of Plaintiff's Case

17 The Action generally alleges that Plaintiff and other Class Members were misclassified as
18 independent contractors, were not properly paid all overtime wages for hours worked and at the correct
19 rate, were not provided meal and rest periods, were not timely paid earned wages, were not provided
20 reimbursement for required expenses, were not provided accurate itemized wage statements, and were
21 not paid all wages at the time of termination. The Action seeks unpaid wages, penalties, attorney fees,
22 litigation costs, and any other equitable or legal relief allegedly due and owing to Plaintiff and the other
23 Class Members by virtue of the foregoing 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 Plaintiff and the other Class Members. Defendant maintains
27 that its practices complied with California law. Defendant maintains that the nurses were properly
28 classified as independent contractors and that Class Members' time was properly compensated. As to

1 expense reimbursement, Defendant maintains that it did not fail to provide reimbursement for necessary
2 business expenses because, among other things, nurses were independent contractors and are not
3 required to use their personal cell phones to perform their work. Defendant could argue that the
4 decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior*
5 *Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021),
6 weakened Plaintiff's claims in terms of liability and value, and preclude claims from proceeding on a
7 class or representative basis. Defendant also maintains that a good faith defense as to its classification
8 would negate the claims for waiting time penalties and/or failure to provide accurate itemized wage
9 statements. See e.g. *Naranjo v. Spectrum Sec. Servs.*, 15 Cal. 5th 1056, 1065 (May 6, 2024). If
10 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
11 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
12 have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

15 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
16 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
17 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.

18 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007 U.S.
19 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
approval.").

20 As recognized in another decision approving settlement of an overtime wage class action:

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

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

28 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable

1 to obtain class certification and thereby not recover on behalf of any nurse other than herself. Defendant
2 forcefully opposed the propriety of class certification and argued that the individual experience of each
3 putative class member varied with respect to the claims, which would preclude the claims from
4 proceeding on a class basis. For instance, Plaintiff's meal and rest period claims would require
5 individualized inquiries into whether each nurse took a compliant meal or rest period on a given shift
6 and, if not, why. Plaintiff is aware of other cases where class certification of similar claims was denied.
7 *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification of rest break
8 claims). Finally, even if class certification was successful, as demonstrated by the California Supreme
9 Court decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014), there are significant
10 hurdles to overcome for a class-wide recovery even where a class has been certified. While other cases
11 have approved class certification of wage and hour claims, class certification in this Action would have
12 been hotly disputed and was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

13 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
14 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
15 substantial defenses both to liability and to class certification. The maximum and average Class
16 Member allocation (in addition to their Individual PAGA Payment) are \$8,827.96 and \$1,009.03,
17 respectively. *See Nava Decl. ¶15*. Given the complexities of this case, the defenses, along with the
18 uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should
19 be finally approved. Blumenthal Decl. at ¶8(e).

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

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

27 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant
28 through possible appeals which could take at least another two or three years. Class Counsel also have

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

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

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

18 *Id.* at *12.

19 7. The Amount Offered in Settlement

20 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
21 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
22 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
23 favorably to the value of the claims. Based upon 757 Participating Class Members who collectively
24 worked 21,285 Workweeks, which were the estimated class figures at mediation, the Gross Settlement
25 Amount provides a value of \$1,651.25 per Class Member and \$58 per Workweek and after deductions,
26 the Net Settlement Amount provides an average recovery of \$1009.02 per Class Member and a recovery
27 of \$35.88 per Workweek. Blumenthal Decl. at ¶8(d).

28 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

1 wages for the nurses. For the Class, the maximum value of the claim for unpaid wages due to alleged
2 overtime work was \$3,516,645, the maximum value of unpaid wages due to alleged off-the-clock work
3 was \$3,707,049, the maximum potential damages for alleged meal period violations were estimated to
4 be \$2,413,878 based upon a 100% violation rate, the maximum potential damages for alleged rest
5 period violations were estimated to be \$2,833,104 based upon the same 100% violation rate, and the
6 maximum potential damages for the alleged failure to reimburse business expenses were calculated to
7 be \$359,650 based upon \$50 per month. In total, the damages for the Class were calculated to have a
8 maximum potential total value of \$12,830,326. In addition, Plaintiff calculated that the maximum value
9 of the potential waiting time penalties was \$7,882,48, and the maximum value of the potential wage
10 statement penalties were \$832,300.³ Defendant vigorously disputed Plaintiff's calculations and exposure
11 theories. Blumenthal Decl. at ¶ 8(d).

12 Consequently, the Gross Settlement Amount represents more than 9.7% of Plaintiff's calculation
13 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
14 all be proven in full at trial.⁴ The 100% alleged violation rate for meal and rest breaks likely overstates
15 the value of these claims as the Class Members assuredly received some meal and rest breaks.
16 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
17 *Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056, 1065 (2024), could completely negate the claims for
18 waiting time and wage statement penalties, even if wages were owed to the class. The maximum
19 calculations should then be realistically risk rated in consideration for both the risk of class certification
20 and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as
21

22 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code §§ 203 and 226, these
23 claims were subject to additional, separate defenses asserted by Defendant, including, a good faith
24 dispute defense as to whether any premium wages for meal or rest periods or other wages were owed
25 given Defendant's position that Class Members were properly classified and compensated. *See*
26 *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 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁵
2 Clearly, the goal of this litigation has been met.

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

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

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

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

23 ⁵ See *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015)
24 (granting final approval where "the proposed Total Settlement Amount represents approximately 10%
25 of what class might have been awarded had they succeeded at trial."); *Dunleavy v. Nadler (In re Mego*
26 *Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of a class settlement
27 which represented "roughly one-sixth of the potential recovery".) See also *Viceral v. Mistras Grp., Inc.*,
28 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. In *Laffitte v. Robert Half Int'l*, 1 Cal.5th 480, 503 (2016), the California Supreme
6 Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third
7 (1/3) as a reasonable percentage in a contingent common fund class settlement. Such similar awards by
8 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, Plaintiff and her counsel secured a \$1,250,000 settlement for the benefit of the Class and none
11 of the Class Members elected to opt out. Similarly, not one Class Member objected. The Settlement was
12 possible only because Class Counsel was able to convince Defendant that Plaintiff could potentially
13 prevail on the contested issues regarding liability, maintain class certification, overcome difficulties in
14 proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In successfully
15 navigating these hurdles Class Counsel displayed the necessary skills in both wage and hour and class
16 action litigation. Moreover, as discussed above, there were significant risks to the contingent litigation.
17 See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case,**
18 **where recovery is uncertain, an award of one-third of the common fund as attorneys' fees has**
19 **been found to be appropriate.**”)

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

25 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
26 reward is the attendant risks inherent in the litigation. For Class Counsel, the fees here were wholly
27 contingent in nature and the case presented far more risk than the usual contingent fee case. Among the
28 risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendant

1 who had retained a premier and highly experienced defense firm. **Counsel retained on a contingency**
2 **fee basis, whether in private matters or in class action litigation, is entitled to a premium above**
3 **their hourly rate in order to compensate for both the risks and the delay in payment.** *See e.g.*
4 *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts "must" apply a risk
5 enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply
6 risk multiplier).

7 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
8 the requested attorneys' fee of one-third equal to \$416,666 is also established by reference to Class
9 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
10 **that through January 2, 2025, Class Counsel's total lodestar is \$218,321.25, with significant**
11 **additional fees still to be incurred to complete final approval and the settlement process.**
12 (Blumenthal Decl. at ¶12 and Exhibit #3.) The requested fee award is therefore currently equivalent
13 to Class Counsel's total lodestar with a reasonable multiplier of 1.9, and there will be additional lodestar
14 incurred by Class Counsel to complete the settlement process and manage the settlement distribution
15 and reports. (Blumenthal Decl. at ¶12.) Such a lodestar cross-check is below the range of multipliers
16 approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir.
17 2002).⁶ For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the
18 common fund is reasonable and should be approved.

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

20 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
21 Litigation Expenses Payment of not more than \$25,000." Class Counsel have incurred \$25,328.17
22 based upon counsel's billing records, which is greater than the "not to exceed amount" of \$25,000.
23 Class Counsel, therefore, requests reimbursement for litigation expenses in the capped amount of

24
25 ⁶ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
26 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
27 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
28 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In 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); *Taylor v. Fedex Freight,*
Inc., 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

1 \$25,000. These litigation expenses include the expenses incurred for filing fees, mediation expenses,
2 expert expenses (Berger Consulting), and attorney service charges (Knox, OneLegal), and research
3 charges and (LexisNexis), all of which are costs normally billed to and paid by the client.⁷ The details
4 of the expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3. Because these
5 expenses were reasonably incurred and necessary to the successful prosecution of these claims, the
6 request is reasonable and should be granted.

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

8 Plaintiff respectfully submits that for her service as the only class representative, Plaintiff should
9 be awarded a service award in accordance with the Agreement for her time, risk and effort expended
10 on behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).) At preliminary approval, this
11 Court already reduced the service award amount to \$7,500. Plaintiff notes that this reduced amount is
12 **less** than some Class Members are receiving from the Plaintiff's prosecution of this matter. The
13 Blumenthal Decl., at ¶14, provides a long list of higher service awards approved in California in similar
14 cases, which further supports the request in this case. Plaintiff's Declaration is submitted in support of
15 this request and is attached as Exhibit #5 to the Blumenthal Decl.

16 As the sole representative of the Class, Plaintiff performed her duties to the Class admirably and
17 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
18 responding to numerous requests, searching for documents, working with counsel, and reviewing the
19 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, Plaintiff is also
20 providing a comprehensive release as part of the Settlement, far beyond the class release. The Plaintiff's
21 Declaration details the involvement, stress and risks she undertook as a result of this Action. Plaintiff
22 also assumed the serious risk that she might possibly be liable for costs and fees to Defendant, as well
23 as the reputational risk of being "blacklisted" by future employers for having filed a class action on
24 behalf of employees. (Blumenthal Decl. at ¶15.) Without the Plaintiff's participation, cooperation and
25

26 ⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging, 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 information, no other nurses would be receiving any benefit. (Blumenthal Decl. at ¶¶ 15-16).

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

12 **VI. CONCLUSION**

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

16 Respectfully submitted,

17 Dated: January 2, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP**

18 By: /s/ Kyle Nordrehaug
19 Kyle R. Nordrehaug
Attorneys for Plaintiff