

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Email: norm@bamlawca.com

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

RACHEL MACDONALD, an individual,
on behalf of herself and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

BEST FRIENDS ANIMAL SOCIETY, a
Utah Corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: **22STCV37493**

**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: April 22, 2025

Hearing Time: 10:00 a.m.

*[Hearing scheduled by Order dated September 17,
2024]*

Judge: Hon. Kenneth R. Freeman

Dept.: SS-14

Action Filed: November 30, 2022

Trial Date: Not set

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE SETTLEMENT BEFORE THE COURT	1
III.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS.....	2
IV.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.....	3
A.	The Settlement Satisfies the California Test for Fairness.....	4
1.	The Investigation and Analysis of Documents are Sufficient to Allow Counsel and the Court to Act Intelligently	4
2.	The Settlement was Reached Through Arm's Length Bargaining	4
3.	Class Counsel is Experienced in Similar Litigation	5
4.	There Are No Objections and No Requests for Exclusion	6
5.	The Strength of Plaintiff's Case	6
6.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	9
7.	The Amount Offered in Settlement.....	10
V.	THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARD SHOULD BE APPROVED	11
A.	The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund Method.....	11
B.	The Reimbursement of Litigation Expenses.....	14
C.	The Service Award Is Reasonable and Should be Approved	15
VI.	CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases:	Page:
<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i> , 85 Cal. App. 4 th 1135 (2000)	2, 3
<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652 (E.D. Cal. Jun 24, 2008)	5
<i>Andrews v. Plains All Am. Pipeline L.P.</i> , 2022 U.S. Dist. LEXIS 172183, (C.D. Cal. 2022)	15
<i>Barbosa v. Cargill Meat Solutions Corp.</i> , 297 F.R.D. 431 (E.D. Cal. 2013)	13
<i>Barcia v. Contain-A-Way, Inc.</i> , 2009 U.S. Dist. LEXIS 17118 (S. D. Cal. 2009)	8
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	12
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	7
<i>Browning v. Yahoo!, Inc.</i> , 2007 U.S. Dist. LEXIS 86266 (N.D. Cal. Nov. 16, 2007)	8
<i>Cacho v. Eurostar, Inc.</i> , 43 Cal. App. 5th 885 (2019)	8
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2009)	3
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	14
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	3, 4
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454, 459 (9th Cir. 2000)	11
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	8,9
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	12
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330 (N.D.Cal. 2007); <i>aff'd</i> 2009 U.S. App. LEXIS 10328 (9 th Cir. May 14, 2009)	5,9,15
//	

1	<i>Hanlon v. Chrysler Corp.</i> ,	
2	150 F.3d 1011 (9 th Cir. 1998)	7
3	<i>Hopson v. Hanesbrands Inc.</i> ,	
4	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009).	7
5	<i>Huens v. Tatum</i> ,	
6	52 Cal. App. 4 th 259 (1997).	2
7	<i>In re Austrian & German Bank Holocaust Litigation</i> ,	
8	80 F. Supp. 2d 164 (S.D.N.Y. 2000).	6
9	<i>In re Sutter Health Uninsured Pricing Cases</i> ,	
10	171 Cal.App.4th 495 (2009)	14
11	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
12	168 Cal. App. 4th 116 (2008)	3
13	<i>Laffitte v. Robert Half Int'l</i> ,	
14	1 Cal. 5th 480 (2016)	12, 14
15	<i>Laskey v. Int'l Union</i> ,	
16	638 F.2d 954 (6th Cir. 1981)	6
17	<i>Lockheed Martin Corp. v. Superior Ct.</i> ,	
18	29 Cal. 4th 1096, 1108 (2003)	7
19	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
20	2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008)	8, 15
21	<i>Ma v. Covidien Holding, Inc.</i> ,	
22	2014 WL 2472316, (C.D. Cal. 2014)	11
23	<i>Mathein v. Pier 1 Imps.</i> ,	
24	2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018).	15
25	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> ,	
26	186 Cal. App. 4th 399 (2010).	3
27	<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> ,	
28	15 Cal. 5th 1056, 1065 (2024).	7
	<i>Officers for Justice v. Civil Service Com'n</i> ,	
	688 F.2d 615 (9th Cir. 1982)	3
	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
	182 Cal.App.4th 278 (2010).	14
	<i>Reynolds v. Direct Flow Med., Inc.</i> ,	
	2019 U.S. Dist. LEXIS 149865, (N.D. Cal. 2019).	15
	<i>Rutti v. Lojack Corp., Inc.</i> ,	
	2012 WL 3151077 (C.D. Cal. 2012).	14
	//	

1	<i>Salazar v. See's Candy Shops Inc.</i> ,	
2	64 Cal.App.5th 85 (2021)	7
3	<i>Serrano v. Priest</i> ,	
4	20 Cal. 3d 25 (1977)	12
5	<i>Stanger v. China Elec. Motor, Inc.</i> ,	
6	812 F.3d 734 (9th Cir. 2016)	13
7	<i>Stetson v. Grissom</i> ,	
8	821 F.3d 1157 (9th Cir. 2016)	13, 14
9	<i>Stoetzner v. U.S. Steel Corp.</i> ,	
10	897 F.2d 115 (3d. Cir. 1990).	6
11	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
12	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015).	11
13	<i>Swedish Hospital v. Shalala</i> ,	
14	1 F.3d 1261 (D.C. Cir. 1993)	13
15	<i>Taylor v. Fedex Freight, Inc.</i> ,	
16	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016).	14
17	<i>Viceral v. Mistras Grp., Inc.</i> ,	
18	2016 WL 5907869 (N.D. Cal. 2016)	11
19	<i>Vincent v. Hughes Air West, Inc.</i> ,	
20	557 F.2d 759 (9th Cir. 1997)	12
21	<i>Vizcaino v. Microsoft Corp.</i> ,	
22	290 F.3d 1043 (9th Cir. 2002)	14
23	<i>Wershba v. Apple Computer</i> ,	
24	91 Cal. App. 4 th 224 (2001).	3, 12, 14

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 September 17, 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 Rachel MacDonald (“Plaintiff”) respectfully moves for final
9 approval, including attorneys’ fees, costs and the service award, and the proposed entry of the Final
10 Approval Order and Judgment, submitted herewith. The settlement represents an excellent result for
11 the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice to
12 the members of the Class, there were **no objections and no requests for exclusion**, which means that
13 the entire Class (100%) has elected to participate in the Settlement. Blumenthal Decl. ¶ 4. This is a
14 positive response from the Class evidencing their collective approval of the settlement. As a result,
15 Plaintiff respectfully submits that the class 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 Four Hundred Seventy
19 Thousand Dollars (\$470,000) to be paid by Defendant Best Friends Animal Society ("Defendant")
20 (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, The Gross Settlement Amount will settle all
21 issues pending in the Action between the Parties and will be made in full and final settlement of the
22 released claims. The Gross Settlement Amount includes all payments of Individual Class Payments to
23 the Participating Class Members, the Administration Expenses Payment to the Administrator, the Class
24 Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, the Class

25
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “all individuals who were employed by Defendant in California and
28 classified as a non-exempt employee at any time during the Class Period.” The “Class Period” is defined
 as “November 30, 2018 through December 11, 2023.” (Preliminary Approval Order ¶ 6.)

1 Representative Service Payment to Plaintiff, and the PAGA Penalties payment to the California Labor
2 and Workforce Development Agency (the "LWDA") and the Aggrieved Employees. (Agreement at
3 ¶ 1.22.) Blumenthal Decl. ¶ 3(a). The Gross Settlement Amount does not include Defendant's share
4 of payroll taxes. (Agreement at ¶ 1.22.) The Gross Settlement Amount shall be all-in with no reversion
5 to Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶ 3(b). The following is a table of the key
6 financial terms of the Settlement and the proposed deductions:

7 **\$470,000** (Gross Settlement Amount)

- 8 - \$12,500 (Plaintiff's proposed service award not to exceed amount)
- 9 - \$26,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$156,666 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 11 - \$10,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$7,500 (Administration Expenses Payment)

13 **\$257,334** (Net Settlement Amount)

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

16 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
17 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
18 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
19 at \$470,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
20 that liability and class certification in this case were far from certain in light of the defenses asserted
21 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
22 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
23 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

26 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
27 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
28 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); *see also*
26 *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th 399, 408 (2010).

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

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
3 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
4 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*
5 “Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing,
6 gross 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 more than a year of litigation, the Parties engaged in the investigation of the
13 claims, including the production of documents, class data, and other information, allowing for a
14 complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
15 investigation performed was detailed in support of the motion for preliminary approval. The Settlement
16 was the product of one arms-length mediation and contentious negotiations through mediation presided
17 over by mediator Steven Serratore, Esq. The details of the litigation are set forth in the Blumenthal
18 Decl. at ¶¶ 6(a)-6(g).

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

20 The 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 in accordance with the Settlement.³ Blumenthal Decl. ¶7(a).

25
26 ³ The release applicable to the Class is tethered to allegations in the Action as the “Released Class
27 Claims” are “all claims that were alleged, or reasonably could have been alleged, based on facts stated
28 in the Operative Complaint which occurred during the Class Period during employment in a nonexempt
position in California.” Participating Class Members do not release any other claims, including claims
for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,

1 The Parties attended an arms-length mediation session with Steven Serratore, a respected and
2 experienced mediator of wage and hour class actions, to reach the Settlement. In preparation for the
3 mediation, Defendant provided Class Counsel with necessary information, including the Class payroll
4 and timekeeping data. Plaintiff analyzed the data with the assistance of a damages expert, Berger
5 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
6 Following the all-day mediation, the Parties agreed to the Settlement, which was memorialized in the
7 form of a Memorandum of Understanding. Blumenthal Decl. ¶7(b).

8 The fact that the settlement was negotiated with the assistance of an experienced mediator
9 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
10 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
11 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
12 litigation, with the assistance of a well-respected mediator with substantial experience in employment
13 litigation[, and] this factor supports approval of the settlement”).

14 From January 2024 to May 2024, the initial settlement agreement and exhibits thereto were
15 finalized and executed. On September 17, 2024, the Court issued its Order granting preliminary
16 approval of the settlement as fair, adequate, and reasonable to the Class. Blumenthal Decl. ¶ 7(c).

17 3. Class Counsel is Experienced in Similar Litigation

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

26
27
28 _____
unemployment insurance, disability, social security, workers' compensation, or claims based on facts
occurring outside the Class Period.” (Agreement at ¶¶ 1.39 and 6.2.)

1 Blumenthal Decl. ¶ 3(j).

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

3 The reaction of the Class unequivocally supports approval of the Settlement. On October 31,
4 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
5 each class member with the terms of the Settlement, including notice of the claims at issue and the
6 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
7 sought, how individual settlement awards would be calculated, and the specific, estimated payment
8 amount to that individual. *See* Declaration of Madely Nava ("Nava Decl.") ¶ 7, Exh. A. In
9 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
10 its Preliminary Approval Order. Significantly, there have been no objections and no requests to opt-out.
11 Nava Decl. ¶¶ 11-12. As such, the entire Class (100%) will participate in the Settlement and will be
12 sent a settlement check. *See* Nava Decl. at ¶¶ 13-15; Blumenthal Decl. ¶ 4.

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

21 5. The Strength of Plaintiff's Case

22 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
23 wages for hours worked, including overtime, and at the correct rate of pay, were not provided meal and
24 rest periods or paid premiums at the correct rate of pay in lieu thereof, were not timely paid earned
25 wages, were not provided reimbursement for required expenses, were not provided accurate itemized
26 wage statements, were not pay all sick wages and the correct rate of pay, and were not paid all wages
27 at the time of termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and
28

1 any other equitable or legal relief allegedly due and owing to Plaintiff and the other Class Members by
2 virtue of the foregoing claims. Blumenthal Decl. ¶ 5.

3 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
4 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant
5 present serious threats to the claims of the Plaintiff and the other Class Members. Defendant maintains
6 that its practices complied with all applicable wage and hour laws. Defendant maintains that all Class
7 Members' work time was properly recorded and compensated and that there was no miscalculation of
8 the regular rate. Defendant contends that its meal and rest period policies and practices provide Class
9 Members with meal and rest periods and that the payment of significant meal premiums is evidence of
10 Defendant's legal compliant practices. As to expense reimbursement, Defendant maintains that it did
11 not fail to provide reimbursement for necessary business expenses because, among other things,
12 employees are not required to use their personal cell phones to perform their work. Defendant could
13 argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp.*
14 *v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th
15 85 (2021), weakened Plaintiff's claims in terms of liability and value, and preclude claims from
16 proceeding on a class or representative basis. Defendant also maintains that a good faith dispute and
17 absence of willfulness would negate the claims for waiting time penalties and/or failure to provide
18 accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.*, 2024 Cal. Lexis 2438,
19 at *3 (May 6, 2024) ("if an employer reasonably and in good faith believed it was providing a complete
20 and accurate wage statement in compliance with the requirements of section 226, then it has not
21 knowingly and intentionally failed to comply with the wage statement law.") If successful, Defendant's
22 defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that
23 these defenses could be overcome, Defendant maintains these defenses have merit and therefore present
24 a serious risk to recovery by the Class. Blumenthal Decl. ¶ 8(a).

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

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

1 settlement amount and the Class Members' expected net recovery, after fees and other
2 costs are deducted, appear to be a reasonable compromise, in light of the risks of
litigation.

3 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
4 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the strength of Plaintiff's case, legal
5 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
6 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

7 The potential complexity and possible duration of trial also weigh in favor of granting
8 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
9 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.

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

12 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
13 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
14 Defendant argued that the individual experience of each putative class member varied with respect to
15 the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiff's
16 meal and rest period claims would require individualized inquiries into whether each employee took
17 a compliant meal or rest period on a given shift and, if not, why. Plaintiff is aware of other cases where
18 class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
19 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,
20 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Association*,
21 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where
22 a class has been certified. While other cases have approved class certification of wage and hour claims,
23 class certification in this Action would have been hotly disputed and was by no means a foregone
24 conclusion. Blumenthal Decl. ¶ 8(b).

25 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
26 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
27 substantial defenses both to liability and to class certification. The maximum and average class member
28

1 allocations (in addition to their Individual PAGA Payment) are \$5,831.91 and \$1,550.20, respectively.
2 *See Nava Decl.* ¶ 15. Given the complexities of this case, the defenses, along with the uncertainties of
3 proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
4 approved. *Blumenthal Decl.* at ¶8(e).

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

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

12 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
13 this Action against Defendant and then litigating a possible appeal that could take several years. Class
14 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
15 class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent problems
16 of proof under, and alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions
17 and appeals would have been inevitable. Costs would have mounted and recovery would have been
18 delayed if not denied, thereby reducing the benefits of an ultimate victory. The Settlement confers
19 substantial benefits upon the Class. Based upon their evaluation, Plaintiff and Class Counsel have
20 determined that the Settlement set forth in the Agreement is in the best interest of the Class Members.
21 *Blumenthal Decl.* ¶ 8(c).

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

26 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
27 and likely duration of further litigation likewise favors the settlement. Regardless of how
28 this Court might have ruled on the merits of the legal issues, the losing party likely
would have appealed, and the parties would have faced the expense and uncertainty of

1 litigating an appeal.

2 *Id.* at *12.

3 7. The Amount Offered in Settlement

4 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
5 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
6 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
7 favorably to the value of the claims. Based upon 166 Participating Class Members who collectively
8 worked an estimated 11,625 workweeks, the Gross Settlement Amount provides an average value of
9 \$2,831 per Class Member and \$40 per workweek and after deductions the Net Settlement Amount
10 provides an average recovery of \$1,550.20 per Class Member and a recovery of \$22.13 per workweek.
11 Blumenthal Decl. at ¶ 8(d).

12 The calculations to compensate for the amount due to the Class Members at the time the
13 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
14 mediation. Class Counsel analyzed the data for putative class members and determined the potential
15 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
16 wages due to the alleged miscalculation of the regular rate applicable to overtime pay and meal
17 premiums was \$29,882, the maximum value of the claim for unpaid wages due to alleged off-the-clock
18 work was \$280,591, the maximum value of unpaid overtime was \$28,023, the maximum potential
19 damages for alleged meal period violations were estimated to be \$70.342 based upon a 11.5% violation
20 rate observed in the time records and after deduction of meal premiums already paid by Defendant, the
21 maximum potential damages for alleged rest period violations were estimated to be \$885,231 based
22 upon an alleged 100% violation rate, and the maximum potential damages for the alleged failure to
23 reimburse business expenses were calculated to be \$13,320 based upon \$5 per month. In total, the
24 damages for the Class were calculated to have a maximum potential total value of \$1,307,389. In
25 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were
26 between \$227,208 and \$358,289, depending on the predicate violation, and the maximum value of the
27
28

1 potential wage statement penalties were \$155,400.⁴ Defendant vigorously disputed Plaintiff's
2 calculations and exposure theories. Blumenthal Decl. ¶ 8(d).

3 Consequently, the Gross Settlement Amount represents more than 35% of Plaintiff's calculation
4 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
5 all be proven in full at trial.⁵ Importantly, the highest valued claim was the rest period claim which was
6 valued at a 100% violation rate, however, class members certainly received some rest periods so this
7 valuation is likely overstated. The maximum calculations should then be realistically risk rated in
8 consideration for both the risk of class certification and the risk of establishing class-wide liability on
9 all claims. Given the amount of the Settlement as compared to the potential value of the claims, the
10 Settlement is most certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met.
11 Blumenthal Decl. ¶ 8(d).

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

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

16
17 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
18 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
19 by Defendant, including but not limited to, a good-faith dispute defense as to whether any premium
20 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and
21 Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576,
584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
dispute as to whether and when the wages were due.").

22 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed at
preliminary approval in the Declaration of Nordrehaug at ¶ 33.

24 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).

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

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

18 First, the fee award representing one-third of the fund clearly falls within that range and is
19 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
20 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market
21 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
22 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
23 "[m]ost fee awards were between 25 percent and 35 percent"). In *Laffitte*, the Court expressly approved
24 of a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

25 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
26 Here, Plaintiff and his counsel secured a \$470,000 settlement for the benefit of the Class, and not one
27 Class Member objected. The Settlement was possible only because Class Counsel was able to convince
28

1 Defendant that Plaintiff could potentially prevail on the contested issues regarding liability, maintain
2 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
3 be. Blumenthal Decl. ¶ 10(f). In successfully navigating these hurdles Class Counsel displayed the
4 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
5 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
6 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
7 **one-third of the common fund as attorneys' fees has been found to be appropriate.**”)

8 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
9 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
10 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
11 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
12 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

13 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
14 reward is the attendant risks inherent in the litigation. Here, it is clear that a settlement fund of \$470,000
15 has been created. For Class Counsel, the fees here were wholly contingent in nature and the case
16 presented far more risk than the usual contingent fee case. Among the risks was the cost inherent in
17 class action litigation, as well as a long battle with a corporate Defendant who had retained a premier
18 and highly experienced defense firm. **Counsel retained on a contingency fee basis, whether in**
19 **private matters or in class action litigation, is entitled to a premium above their hourly rate in**
20 **order to compensate for both the risks and the delay in payment.** See e.g. *Stanger v. China Elec.*
21 *Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts “must” apply a risk enhancement); *Stetson v.*
22 *Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply risk multiplier).

23 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
24 the requested attorneys’ fee of one-third equal to \$156,666 is also established by reference to Class
25 Counsel’s lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
26 **that through March 25, 2025, Class Counsel’s current lodestar is \$155,698.29, with significant**
27 **additional fees still to be incurred to complete final approval and the settlement process.**
28

1 Blumenthal Decl. at ¶ 12 and Exhibits #3. The requested fee award is therefore currently equivalent
2 to Class Counsel's total lodestar, and there will be additional lodestar incurred by Class Counsel to
3 complete the settlement process and manage the settlement distribution and reports. Blumenthal Decl.
4 at ¶ 12. Such a lodestar cross-check is far below the range of multipliers approved in other cases such
5 as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁷

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

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

9 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
10 Litigation Expenses Payment of not more than \$26,000." Class Counsel requests reimbursement for
11 incurred litigation expenses and costs in the amount of \$24,677.29. Class Counsel have incurred
12 \$24,677.29 based upon counsel's billing records, which are detailed and set forth the Blumenthal Decl.
13 at ¶ 13 and Exhibit #3. These litigation expenses include the expenses incurred for filing fees,
14 mediation expenses, expert expenses (Berger Consulting), attorney service charges (Knox, OneLegal),
15 Case Anywhere charges, and charges to download documents from the Court's website, all of which
16 are costs normally billed to and paid by the client.⁸ The These costs were reasonably incurred in the
17 prosecution of the Action. Blumenthal Decl. at ¶ 13. Because these costs were necessary to the
18 successful prosecution of these claims, the request should be granted.

19
20
21 ⁷ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
22 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
23 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
24 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
25 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez*
v. Netflix, Inc., 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 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).

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

2 Plaintiff respectfully submit that for her service as the sole class representative, Plaintiff should
3 be awarded the agreed service award of \$12,500, in accordance with the Agreement for her time, risk
4 and effort expended on behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).)
5 Defendant has agreed to this payment and there have been no objections to the requested service award.
6 The Blumenthal Decl. at ¶ 14, provides a long list of equivalent service awards approved in California
7 in similar cases, which further supports the request in this case. The Plaintiff's Declaration is submitted
8 in support of this request and is attached as Exhibit #5 to the Blumenthal Decl.

9 As the only representative of the Class, Plaintiff performed her duties to the Class admirably and
10 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
11 responding to numerous requests, searching for documents, working with counsel, and reviewing the
12 settlement documentation. Blumenthal Decl. at ¶ 14. The Plaintiff's Declaration details the
13 involvement, stress and risks she undertook as a result of this Action. Plaintiff also assumed the serious
14 risk that she might possibly be liable for costs and fees to Defendant, as well as the reputational risk of
15 being "blacklisted" by other future employers for having filed a class action on behalf of employees.
16 Blumenthal Decl. at ¶ 15. Without the Plaintiff's participation, cooperation and information, no other
17 employees would be receiving any benefit. Blumenthal Decl. at ¶¶ 15-16.

18 The payment of a service award to a successful class representative is appropriate and the
19 amount of \$12,500 is well within the currently awarded range for similar settlements. *See, e.g., Andrews*
20 *v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (service awards
21 of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865,
22 at *19 (N.D. Cal. 2019) (granting \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018
23 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500); *Louie v. Kaiser Foundation Health Plan,*
24 *Inc.*, 2008 WL 4473183, *7 (S.D. Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs);
25 *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service
26 award). Class Counsel respectfully request approval of the Class Representative Service Payment in
27 accordance with the Agreement.
28

1 **VI. CONCLUSION**

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

5 Respectfully submitted,

6 Dated: March 25, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug,

Attorneys for Plaintiff