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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

MAYA AMERSON, an individual, on
behalf of herself and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

REDDIT, INC., a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. **CGC-22-603466**

**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: October 3, 2024

Hearing Time: 1:30 p.m.

[Hearing scheduled by Order dated May 23, 2024]

Judge: Hon. Daniel A. Flores

Dept.: 306

Action Filed: December 13, 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 May 23, 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. Plaintiff Maya Amerson (“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 a commendable result for the Class
11 and avoids the delays, risks, and costs of further litigation. After disseminating the notice to the 122
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
15 a result, Plaintiff respectfully submits that the settlement should be finally approved for the same
16 reasons 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 to be paid by Defendants
19 Reddit, Inc. ("Defendant") is Five Hundred Twenty-Five Thousand Dollars (\$525,000) (the "Gross
20 Settlement Amount") is to be paid by Defendant, as set forth in the Agreement. Under the Settlement,
21 the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class
22 Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel
23 Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative

24 ¹ Capitalized terms are defined in the Agreement.

25 ² The “Class” consists of “all individuals who are or previously were employed by Defendant in the
26 State of California during the Class Period that either (i) were classified as non-exempt , or (ii) whose
27 positions were classified as exempt during the Class Period but were re-classified as non-exempt during
28 the Class Period.” The “Class Period” is defined as “December 13, 2018 through March 31, 2024”
 (Preliminary Approval Order at ¶ 5.)

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

6 **\$525,000** (Gross Settlement Amount)

- 7 - \$10,000 (Plaintiff's proposed service awards not to exceed amount)
- 8 - \$32,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 9 - \$175,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$9,000 (Administration Expenses Payment - not to exceed amount)

9 **\$284,000** (Net Settlement Amount)

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

12 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
13 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
14 is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
15 at \$525,000 is a commendable result for the Class. This result is particularly favorable in light of the
16 fact that liability and class certification in this case were far from certain in light of the defenses asserted
17 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
18 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
19 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

20 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
21 **OF CLASS ACTION SETTLEMENTS**

22 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
23 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
24 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
25 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
26 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

27 The court must decide whether the proposed settlement falls within the range of reasonable
28 settlements, taking into account that settlements are compromises between the parties reflecting

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

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

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

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

27 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
28 Due regard should be given to what is otherwise a private consensual agreement between the parties.

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

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

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

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

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

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

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

25 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
26 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
27 for the mediation, Defendant provided Class Counsel with payroll, time and employment data, along
28 with and other information regarding the Class Members, various internal documents, and other

1 compensation and employment-related materials. Class Counsel analyzed the data with the assistance
2 of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator.
3 Following this all-day mediation, the Parties agreed to this Settlement. Blumenthal Decl. ¶7(b).

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

9 From January 2024 to April 2024, the settlement agreement and exhibits thereto were finalized
10 and executed. On May 23, 2024, the Court granted the Motion for Preliminary Approval, and entered
11 the Order granting preliminary approved of the settlement as fair and reasonable to the Class.
12 Blumenthal Decl. ¶7(c).

13 3. Class Counsel is Experienced in Similar Litigation

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

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

24 The reaction of the Class unequivocally supports approval of the Settlement. On July 8, 2024,
25 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
26 class member with the terms of the Settlement, including notice of the claims at issue and the financial
27 terms of the settlement, including the attorneys' fees, costs, and service awards that were being sought,
28 how individual settlement awards would be calculated, and the specific, estimated payment amount to

1 that individual. See Declaration of Madely Nava [“Nava Decl.”], ¶ 7, Exh. A. In disseminating the
2 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
3 Approval Order. Significantly, there have been no objections and no requests to opt-out from the
4 Settlement. Nava Decl. ¶¶11-12. As such, the entire Class (100%) will participate in the Settlement and
5 will be sent a settlement check. See Nava Decl. at ¶¶ 13-15; Blumenthal Decl. ¶4.

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

14 5. The Strength of Plaintiff’s Case

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

22 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
23 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
24 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
25 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that
26 Class Members were paid for all time worked and that all work time was properly recorded. Defendant
27 maintained there was no miscalculation of the regular rate when paying wages to the Plaintiff and the
28 Class. Defendant contends that its meal and rest period policies fully complied with California law and

1 Defendant did not fail to provide the opportunity for legally required meal and rest breaks. Defendant
2 could argue that its payment of meal and rest period premiums is evidence of its lawful practices.
3 Defendant contend that there was no failure to pay for business expenses and any cell phone usage was
4 merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendant
5 could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
6 weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period
7 claims. Defendant also argues that based on its facially lawful practices, Defendant acted in good faith
8 and without willfulness, which if accepted would negate the claims for waiting time penalties and/or
9 inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce
10 any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant
11 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.
12 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
19 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
20 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
21 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

1 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
2 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
3 of any employees other than themselves. At the time of the mediation, Defendant forcefully opposed
4 the propriety of class certification, arguing that individual issues precluded class certification. Further,
5 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
6 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the
7 class has been certified. While other cases have approved class certification in wage and hour claims,
8 class certification in this action was hotly disputed and the maintenance of a certified class through trial
9 was not a certain result. Blumenthal Decl. ¶8(b).

10 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
11 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
12 substantial defenses both to liability and to class certification. The maximum and average Individual
13 Class Payments to Participating Class Members are \$10,645.78 and \$2,081.96, respectively. *See Nava*
14 Decl. ¶15. Given the complexities of this case, the defenses, along with the uncertainties of proof and
15 appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally approved.
16 Blumenthal Decl. at ¶8(e).

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

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

24 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant
25 through possible appeals which could take at least another two or three years. Class Counsel also have
26 taken into account the uncertain outcome, the risk of litigation, especially in complex actions such as
27 this one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and
28 alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions and appeals would

1 have been inevitable. Costs would have mounted and recovery would have been delayed if not denied,
2 thereby reducing the benefits of an ultimate victory. The Settlement confers substantial benefits upon
3 the Class. Based upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement
4 set forth in the Agreement is in the best interest of the Class. Blumenthal Decl. ¶8(c).

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

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

17 *Id.* at *12.

18 7. The Amount Offered in Settlement

19 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
20 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
21 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
22 favorably to the value of the claims. Based upon 122 Class Members who collectively worked an 9,591
23 Workweeks, the Gross Settlement Amount provides an average value of \$4,303 per Class Member and
24 \$54.73 per workweek and after deductions the Net Settlement Amount provides an average recovery
25 of \$2,081.96 per Class Member and a recovery of \$26.48 per workweek, with the nine individuals with
26 safeguard claims receiving an additional \$3,500 each. Blumenthal Decl. at ¶8(d).

27 The calculations to compensate for the amount due for the Class at the time of the mediation
28 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
wages for the employees. The maximum potential damages were calculated to be \$957,524 for the
alleged unpaid wages for off-the-clock work at 1 hour per week, \$3,668 for the alleged unpaid overtime

1 wages due to miscalculation of the regular rate when paying wages, \$2,117 for the alleged
2 underpayment of meal period premiums and sick pay, \$1,382,329 for alleged meal period damages
3 based upon a 50% potential violation rate for shifts worked and after deducting the meal premiums
4 actually paid by Defendant, \$1,435,075 for alleged rest period damages based upon the same 50%
5 potential violation rate for shifts worked and, \$16,255 for alleged unreimbursed business expenses for
6 personal cell phone usage at \$5 per month. As a result, the total damage valuation was calculated that
7 Defendant was subject to a maximum damage claim in the amount of \$3,796,968. As to potential
8 penalties, Plaintiff calculated that potential waiting time penalties were a maximum of between
9 \$110,269 and \$710,625, and potential maximum wage statement penalties were \$355,150.³ Defendant
10 vigorously disputed Plaintiff's calculations and exposure theories.

11 Consequently, the Gross Settlement Amount of \$525,000 represents more than 13.8% of the
12 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
13 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
14 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
15 waiting time and wage statement penalties, even if wages were owed to the class. The above maximum
16 calculations should then be adjusted in consideration for both the risk of class certification and the risk
17 of establishing class-wide liability on all claims. As to the "safeguard claim" for the nine individuals,
18 their settlement amount of \$3,500 is based upon the similar settlements with Facebook and YouTube
19 which paid \$1,000 and \$3,284 per person, respectively. Given the amount of the settlement as
20 compared to the potential value of claims in this case and the defenses asserted by Defendant, this
21

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

27 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California, the
28 PAGA claim is not included in the value of the class claims. The PAGA claim was addressed in the
Declaration of Nordrehaug at ¶33 filed in support of the Motion for Preliminary Approval.

1 settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met. Blumenthal Decl.
2 ¶8(d).

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*,
12 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The
13 purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation
14 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
15 burden alone." *Vincent*, 557 F.2d at 769.

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

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

1 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
2 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
3 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

4 First, the fee award representing one-third of the fund clearly falls within that range and is
5 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
6 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
7 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
8 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
9 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte v. Robert Half Int’l*, 1 Cal.
10 5th 480, 503 (2016), The California Supreme Court both (1) joined the majority of federal and state
11 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
12 members, the trial court in its equitable powers awards class counsel a fee out of that fund, and (2)
13 expressly approved of one-third as a reasonable percentage in a contingent common fund class
14 settlement. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

15 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
16 Here, Plaintiff and her counsel secured a \$525,000 settlement for the benefit of the Class and none of
17 the Class Members elected to opt out. Similarly, not one Class Member objected. The Settlement was
18 possible only because Class Counsel was able to convince Defendant that Plaintiff could potentially
19 prevail on the contested issues regarding liability, maintain class certification, overcome difficulties in
20 proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In
21 successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and
22 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
23 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
24 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the common fund**
25 **as attorneys' fees has been found to be appropriate.**”)

26 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
27 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
28 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the

1 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
2 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

13 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
14 the requested attorneys’ fee of one-third equal to \$175,000 is also established by reference to Class
15 Counsel’s lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
16 through September 10, 2024, Class Counsel’s total lodestar is \$189,118.75, with significant additional
17 fees still to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12
18 and Exhibit #3.) The requested fee award is therefore less than Class Counsel’s total lodestar,
19 representing a “negative multiplier”, and there will be additional lodestar incurred by Class Counsel to
20 complete the settlement process and manage the settlement distribution and reports. (Blumenthal Decl.
21 at ¶12.) Such a negative multiplier is below the range of multipliers approved in other cases such as
22 *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

23
24 ⁶ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
25 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
26 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
27 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
28 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as “fair and reasonable”); *Chavez*
v. Netflix, Inc., 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved
range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26
multiplier).

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

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

4 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
5 Litigation Expenses Payment of not more than \$32,000." Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$30,172.88. Class Counsel have incurred
7 expenses in the amount of \$30,172.88 based upon counsel's billing records; therefore, this requested
8 amount is equal to the amount actually incurred by Class Counsel. These litigation expenses include
9 the expenses incurred for filing fees, mediation expenses, expert expenses (Berger Consulting), and
10 attorney service charges (Knox, OneLegal, File&Serve Express), and research charges (LexisNexis),
11 all of which are costs normally billed to and paid by the client.⁷ The details of the litigation expenses
12 incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3. (Blumenthal Decl. at ¶13.) Because
13 these costs were reasonable and necessary to the successful prosecution of these claims, the request is
14 reasonable and should be granted.

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

16 Plaintiff respectfully submits that for her service as the class representative, Plaintiff should be
17 awarded the agreed service award of \$10,000 in accordance with the Agreement for her time, risk and
18 effort expended on behalf of the Class as the class representatives. (Agreement at ¶ 3.2(a).) Defendant
19 has agreed to this payment and there have been no objections to the requested service award. The
20 Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California in
21 similar cases, which further supports the request in this case. The Plaintiff's Declaration in support of
22 this request is attached as Exhibit #5 to the Blumenthal Decl. Notably, this requested service award
23 compares favorably to the payments to the Class, which are as high as \$10,000.

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

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

21 **VI. CONCLUSION**

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

25 Respectfully submitted,

26 Dated: September 10, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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