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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

ERIC HARROLD, an individual, on
behalf of himself, and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

SPARTAN EDUCATION GROUP, LLC,
a Limited Liability Corporation, and
DOES 1 through 50, inclusive,

Defendants.

Case No. **CVRI2300320**

**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: July 30, 2024

Hearing Time: 8:30 a.m.

*[Hearing scheduled by Order dated March 8,
2024]*

Judge: Hon. Harold W. Hopp

Dept: 1

Action Filed: January 19, 2023

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement(collectively the “Agreement”), a true and correct copy
4 of which is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹
5 In accordance with the Preliminary Approval Order dated March 8, 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 Eric Harrold (“Plaintiff”) respectfully submits 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 only two (2) requests for exclusion**, which
13 means that nearly the entire Class (98.92%) has elected to participate in the Settlement. Blumenthal
14 Decl. ¶4. This is a positive response from the Class evidencing their collective approval of the
15 settlement. As a result, Plaintiff respectfully submits that the class settlement should be finally
16 approved for the same reasons that the Court preliminarily approved the settlement as fair, reasonable,
17 and adequate.

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

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
20 Spartan Education Group, LLC (“Defendant”) is Four Hundred Thousand Dollars (\$400,000).
21 (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross Settlement Amount consists of the
22 following elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA
23 PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses
24 Payment; (iv) the Class Representative Service Payment; and (v) the Administration Expenses Payment.

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 “January 19, 2019 through January 5, 2024.” (Preliminary Approval Order at ¶ 6.)

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

\$400,000 (Gross Settlement Amount)

- \$15,000 (Plaintiff's proposed service award not to exceed amount)
- \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$133,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$10,000 (PAGA Penalties - 75% to LWDA / 25% to Allegedly Aggrieved Employees)
- \$6,500 (Administration Expenses Payment)

\$210,167 (Net Settlement Amount)

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

The Settlement is fair, adequate and reasonable to the class and should be finally approved for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 4.) In sum, the Settlement valued at \$400,000 is an excellent result for the Class. This result is particularly favorable in light of the fact that liability and class certification in this case were far from certain in light of the defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Berger Consulting and prepared and submitted a mediation brief to the mediator. Following this all-day
2 mediation, the Parties agreed to this Settlement based on a mediator's proposal, which was
3 memorialized in the form of a Memorandum of Understanding. Blumenthal Decl. ¶7(b).

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

10 From October 2023 to January 2024, the settlement agreement and exhibits thereto were
11 finalized and executed. Plaintiff filed his Motion for Preliminary Approval of Class Settlement, and the
12 Court issued a tentative ruling in advance of February 27, 2024, which requested the Parties appear at
13 the hearing to discuss various issues. Supplemental briefing was provided and at the continued hearing
14 on March 8, 2024, the Court granted preliminary approval of the settlement as fair and reasonable to
15 the Class. Blumenthal Decl. ¶7(c).

16 3. Class Counsel is Experienced in Similar Litigation

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

26 4. There Are No Objections and Only Two Requests for Exclusion

27 The reaction of the Class unequivocally supports approval of the Settlement. On April 19, 2024,
28 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each

1 class member with the terms of the Settlement, including notice of the claims at issue and the financial
2 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
3 how individual settlement awards would be calculated, and the specific, estimated payment amount to
4 that individual. See Declaration of Madely Nava ("Nava Decl.") at ¶ 7, Exh. A. In disseminating the
5 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
6 Approval Order. Significantly, there have been no objections and only two (2) requests to opt-out.
7 Nava Decl. ¶¶11-12. As such, nearly the entire Class (98.92%) will participate in the Settlement and
8 will be sent a settlement check. See Nava Decl. at ¶¶ 13-15. Blumenthal Decl. ¶4.

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

17 5. The Strength of Plaintiff's Case

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

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

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

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

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

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

24 The potential complexity and possible duration of trial also weigh in favor of granting
25 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
26 uncertainty of outcome, and believe defendant would appeal in the event of adverse
27 judgment. A post-judgment appeal would require many years to resolve and delay
28 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.

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

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

12 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
13 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
14 substantial defenses both to liability and to class certification. The maximum and average class member
15 allocation (in addition to their Individual PAGA Payment) are \$4,054.32 and \$1,146.91, respectively.
16 *See Nava Decl.* ¶15. Given the complexities of this case, the defenses, along with the uncertainties of
17 proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
18 approved. Blumenthal Decl. at ¶8(e).

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

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

26 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant
27 through possible appeals which could take at least another two or three years. Class Counsel also have
28 taken into account the uncertain outcome, the risk of litigation, especially in complex actions such as

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

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

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

19 *Id.* at *12.

20 7. The Amount Offered in Settlement

21 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
22 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
23 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
24 favorably to the value of the claims. Based upon 183 Participating Class Members who collectively
25 worked 13,426 Workweeks, the Gross Settlement Amount provides an average value of \$2,185 per
26 Class Member and \$29.79 per Workweek and after deductions the Net Settlement Amount provides
27 an average recovery of \$1,146.91 per Class Member and a recovery of \$15.65 per Workweek. The 25%
28 allocation of the PAGA Penalties will be distributed to the 112 Aggrieved Employees who worked
3,263 pay periods during the PAGA Period (Agreement at ¶4.1), resulting in an average Individual
PAGA Payment of \$22.45 per Aggrieved Employee and \$.77 per PAGA Pay Period. Blumenthal Decl.
at ¶8(d).

1 The calculations to compensate for the amount due to the Class Members at the time the
2 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
3 mediation. Class Counsel analyzed the data for putative class members and determined the potential
4 maximum damages for the class claims. For the Class, the maximum potential damages for off-the-
5 clock work were calculated to be \$510,656 based on 1 hour per workweek with 71.8% of these unpaid
6 OTC hours at the overtime rate, \$82,266 for alleged missed meal period damages based upon potential
7 8.9% violation rate observed in the time records for shifts and after deduction of meal period premiums
8 actually paid by Defendant, \$131,306 for alleged missed rest period damages based upon the same 8.9%
9 violation rate for all shifts, \$16,915 for alleged unreimbursed business expenses for personal cell phone
10 usage at \$5 per month. As a result, the total damage valuation was calculated that Defendant was
11 subject to a maximum damage claim in the amount of \$741,142. As to potential statutory penalties,
12 Plaintiff calculated that potential waiting time penalties were a maximum of \$590,250, and the potential
13 wage statement penalties were a maximum of \$237,200.³ The valuations and reductions in the realistic
14 value of the claims were discussed more fully in paragraph 6 of the Declaration of Kyle Nordrehaug
15 filed in support of preliminary approval. Blumenthal Decl. ¶8(d).

16 Consequently, the Gross Settlement Amount represents more than 50% of the maximum value
17 of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴ In addition, the
18 above maximum calculations should then be adjusted in consideration for both the risk of class
19 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
20 settlement as compared to the potential value of claims in this case and the defenses asserted by
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 wages were owed given
25 Defendant's position that Plaintiff was properly compensated and classified. *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.").

26 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
27 Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The
28 PAGA claim was addressed in the Declaration of Kyle Nordrehaug at ¶33 filed in support of
preliminary approval.

1 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
2 Blumenthal Decl. ¶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”). Such similar awards by other Courts
10 are set forth in the Blumenthal Decl. ¶11.

11 Second, the results delivered by Class Counsel also support the requested percentage of the
12 fund. Here, Plaintiff and his counsel secured a \$400,000 settlement for the benefit of the Class and none
13 of the Class elected to opt out. Similarly, not one Class Member objected. The Settlement was possible
14 only because Class Counsel was able to convince Defendant that Plaintiff could potentially prevail on
15 the contested issues regarding liability, maintain class certification, overcome difficulties in proof as
16 to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In successfully
17 navigating these hurdles Class Counsel displayed the necessary skills in both wage and hour and class
18 action litigation. Moreover, as discussed above, there were significant risks to the contingent litigation.
19 See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case,**
20 **where recovery is uncertain, an award of one-third of the common fund as attorneys' fees has**
21 **been found to be appropriate.**”)

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

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

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

5 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$400,000 has been created.
6 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
7 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
8 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
9 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
10 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
11 the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
12 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
13 Cir. 2016) (abuse of discretion not to apply risk multiplier).

14 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
15 the requested attorneys' fee of one-third equal to \$133,333 is also established by reference to Class
16 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence
17 that through July 3, 2024, Class Counsel's total lodestar is \$203,175.00**, with significant additional
18 fees still to be incurred to complete final approval and the settlement process. Blumenthal Decl. at ¶12
19 and Exhibit #3. The requested fee award is therefore less than Class Counsel's total lodestar,
20 representing a negative multiplier, and there will be additional lodestar incurred by Class Counsel to
21 complete the settlement process and manage the settlement distribution and reports. Blumenthal Decl.
22 at ¶12. Such a negative multiplier is below the range of positive multipliers approved in other cases
23 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

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 fair and reasonable and should be approved.

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

4 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
5 Litigation Expenses Payment of not more than \$25,000." Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$24,285.63. Class Counsel have incurred
7 \$24,285.63 based upon counsel's billing records; therefore, this requested amount is less than the "not
8 to exceed" amount of \$25,000. These litigation expenses include the expenses incurred for filing fees,
9 mediation expenses, expert expenses (Berger Consulting), attorney service charges (Knox, OneLegal),
10 and research charges (LexisNexis), all of which are costs normally billed to and paid by the client.⁷ The
11 details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3.
12 These costs were reasonably incurred in the prosecution of the Action. Blumenthal Decl. at ¶13.
13 Because these costs were reasonable and necessary to the successful prosecution of these claims, the
14 request is reasonable and should be granted.

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

16 Plaintiff respectfully submit that for his service as the class representative, Plaintiff should be
17 awarded the agreed service award of \$15,000, in accordance with the Agreement for his time, risk and
18 effort expended on behalf of the Class as the class representative. (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 Declaration of Plaintiff is submitted
22 in support of this request and is attached as Exhibit #6 to the Blumenthal Decl.

23 As the representative of the Class, Plaintiff performed his duty to the Class admirably and
24 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,

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 responding to numerous requests, searching for documents, working with counsel, and reviewing the
2 settlement documentation. Blumenthal Decl. at ¶ 14. As set forth in the Agreement, the Plaintiff is also
3 providing a comprehensive release as part of the Settlement, far beyond the class release. The
4 Declaration of Plaintiff details the involvement, stress and risks he undertook as a result of this Action.
5 Plaintiff also assumed the serious risk that he might possibly be liable for costs and fees to Defendant,
6 as well as the reputational risk of being “blacklisted” by other future employers for having filed a class
7 action on behalf of fellow former employees. Blumenthal Decl. at ¶ 15. Without the Plaintiff’s
8 participation, cooperation and information, no other employees would be receiving any benefit.
9 Blumenthal Decl. at ¶¶ 15-16.

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

20 Accordingly, Class Counsel respectfully request approval of the requested Class Representative Service
21 Payment in accordance with the Agreement.

22 **VI. CONCLUSION**

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

26 Respectfully submitted,

27 Dated: July 3, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Attorneys for Plaintiff