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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

ROBERT SHANNON, BRENELL
WHITFIELD, and ADRIANA VALDEZ,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

BURTON RESTAURANTS, LLC; HIGH
PERFORMANCE HOSPITALITY LLC;
and DOES 1-20, inclusive,
Defendants.

Case No. **37-2022-00025778-CU-OE-CTL**

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

Hearing Date: October 18, 2024
Hearing Time: 8:30 a.m.
[Hearing scheduled by Order dated April 18, 2024]

Judge: Hon. Blaine Bowman
Dept.: C-74

Action Filed: June 30, 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 and Collective Action Settlement Agreement and Release (the “Agreement”), a true and correct
4 copy 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 April 18, 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. Plaintiffs Robert Shannon, Brenell Whitfield, and Adriana Valdez
9 (“Plaintiffs”) respectfully move for final approval, including attorneys’ fees, costs and the service award,
10 and the proposed entry of the Final Approval Order and Judgment, submitted herewith. The settlement
11 represents an excellent result for the Class and avoids the delays, risks, and costs of further litigation.
12 After disseminating the notice to the 1,377 members of the Class, there were **no objections** and no
13 requests for exclusion from the Class, which means that the entire Class (100%) has elected to
14 participate in the Settlement. Blumenthal Decl. ¶4. This is a positive response from the Class evidencing
15 their collective approval of the settlement. As a result, Plaintiffs respectfully submit that the settlement
16 should be finally approved for the same reasons that the Court preliminarily approved the settlement as
17 fair, reasonable, and adequate.

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

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
20 Burton Restaurants, LLC and High Performance Hospitality LLC (“Defendants”) is Seven Hundred and
21 Fifty Thousand Dollars (\$750,000) (“Gross Settlement Amount”), as set forth in the Agreement. Under
22 the Settlement, the Gross Settlement Amount consists of the following elements: (1) all amounts payable
23 to Participating Individuals; (2) Fee Award and Class Counsel’s Costs Award; (3) Administration Costs;
24 (4) the Service Awards to the Plaintiffs; and (5) the PAGA Settlement Amount. (Agreement at ¶ 1.23.)

25
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” consists of “all individuals who were employed by Defendants as non-exempt
28 employees in California at any time from January 3, 2018 to March 30, 2023.” (Preliminary Approval
Order at ¶ 4.)

1 Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not include Defendants' share of payroll
2 taxes. (Agreement at ¶¶ 1.23, 10.6.) The Gross Settlement Amount shall be all-in with no reversion to
3 Defendants. (Agreement at ¶ 1.23.) Blumenthal Decl. ¶3(b). The following is a table of the key financial
4 terms of the Settlement and the proposed deductions:

5 **\$750,000** (Gross Settlement Amount)

- 6 - \$30,000 (Plaintiffs' proposed service awards not to exceed \$10,000 each)
- 7 - \$25,000 (Class Counsel's Costs Award - not to exceed amount)
- 8 - \$250,000 (Class Counsel Fee Award - not to exceed 1/3 of settlement)
- 9 - \$50,000 (PAGA Settlement Amount - 75% to LWDA / 25% to Aggrieved Employees)
- 10 - \$18,750 (Administration Costs)

11 **\$376,250** (Net Settlement Amount)

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

14 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
15 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
16 is "fair, adequate and reasonable". (Preliminary Approval Order at ¶ 2.) In sum, the Settlement valued
17 at \$750,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
18 that liability and class certification in this case were far from certain in light of the defenses asserted by
19 Defendants. Given the complexities of this case, the defenses asserted, the uncertainty of class
20 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
21 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

22 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL** 23 **OF CLASS ACTION SETTLEMENTS**

24 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
25 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
26 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
27 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
28 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 act
9 intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced
10 in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*, 48 Cal. App.
11 4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the proposed
12 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 two years of litigation, the Parties engaged in the investigation of
11 the claims, including the production of documents, class data, and other information, allowing for the
12 full and complete analysis of liabilities and defenses to the claims in this Action. The procedural history
13 and investigation performed was detailed at length in support of the motion for preliminary approval.
14 The Settlement was the product of one arms-length mediation and contentious negotiations through an
15 all-day mediation presided over by Carl J. West. 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 an experienced and well-respected mediator. Defendants have expressly denied and continue to deny
20 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
21 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
22 Claims of the Class in accordance with this Settlement, based upon the experience of Class Counsel who
23 has previously litigated similar claims against other employers. Blumenthal Decl. ¶7(a).

24 The Parties attended an arms-length mediation session with Carl J. West, a respected and
25 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
26 for the mediation, Defendants provided Class Counsel with payroll, time and employment data, a sample
27 of meal and rest break attestations, along with other information regarding the Class Members, various
28 internal documents, and other compensation and employment-related materials. Class Counsel analyzed

1 the data with the assistance of damages expert Berger Consulting and prepared and submitted a
2 mediation brief to the mediator. Following this all-day mediation, the Parties agreed to this Settlement.
3 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 August 2023 to October 2023, the settlement agreement and exhibits thereto were
10 finalized and executed. On April 18, 2024, the Court granted the Motion for Preliminary Approval, and
11 entered the Order granting preliminary approval 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 motions
18 in state and federal courts throughout California. The experience of counsel and class action cases
19 managed and settled by the Class Counsel in this action is provided to the Court in the Blumenthal Decl.
20 at Exhibit #1, the Declaration of Jessica Campbell at ¶¶ 15-27. Class Counsel have participated in every
21 aspect of the settlement discussions and have concluded the settlement is fair, adequate and reasonable
22 and in the best interests of the Class. 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 May 16, 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 Taylor Mitzner [“Mitzner Decl.”], ¶ 5, 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. Mitzner Decl. ¶¶9-10. As such, the entire Class (100%) will participate in the Settlement
5 and will be sent a settlement check. See Mitzner Decl. at ¶ 12; 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.”); *Stoetznern 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 Plaintiffs’ Case

15 The Action generally alleges that Plaintiffs 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 Plaintiffs 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 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
25 Defendants asserted that Defendants’ practices complied with all applicable Labor laws. Defendants
26 argued that Class Members were paid for all time worked and that all work time was properly recorded.
27 Defendants maintained there was no miscalculation of the regular rate when paying wages to the
28 Plaintiffs and the Class. Defendants contend that its meal and rest period policies fully complied with

1 California law and Defendants did not fail to provide the opportunity for legally required meal and rest
2 breaks as Defendants were “not obligated to police meal breaks.” *Brinker v. Superior Court*, 53 Cal. 4th
3 1004, 1040 (2012). Finally, Defendants could argue that the Supreme Court decision in *Brinker v.*
4 *Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class
5 certifiability as to the meal and rest period claims. Defendants also argue that based on its facially lawful
6 practices, Defendants acted in good faith and without willfulness, which if accepted would negate the
7 claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendants' defenses
8 could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these
9 defenses could be overcome, Defendants maintain these defenses have merit and therefore present a
10 serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

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

16 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
17 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the strength of Plaintiff's case, legal
18 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
19 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

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

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

27 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to
28 obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf

1 of any employees other than themselves. At the time of the mediation, Defendants forcefully opposed
2 the propriety of class certification, arguing that individual issues precluded class certification. Further,
3 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
4 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the
5 class has been certified. While other cases have approved class certification in wage and hour claims,
6 class certification in this action was hotly disputed and the maintenance of a certified class through trial
7 was by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

8 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
9 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
10 substantial defenses both to liability and to class certification. The maximum and average Participating
11 Class Member settlement shares are \$1,560.09 and \$182.16, respectively. *See* Mitzner Decl. ¶15. There
12 are also a total of 170 Collective Members who returned a Claim Form. Mitzner Decl. at ¶ 16. The
13 maximum and average Collective Member settlement shares \$2,199.28 and \$727.75. Mitzner Decl. at
14 ¶ 16. Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal,
15 the proposed Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal
16 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 Defendants would post a bond and appeal in the event
20 of an adverse judgment. A post-judgment appeal by Defendants 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 Plaintiffs and Class Counsel recognize the expense and length of a trial against Defendants
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 this
27 one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and alleged
28 defenses to, the claims asserted in the Action. Moreover, post-trial motions and appeals would have

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

9 In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and
10 likely duration of further litigation likewise favors the settlement. Regardless of how this
11 Court might have ruled on the merits of the legal issues, the losing party likely would
12 have appealed, and the parties would have faced the expense and uncertainty of litigating
13 an appeal. "The expense and possible duration of the litigation should be considered in
14 evaluating the reasonableness of [a] settlement." See *In re Mego Financial Corp.*
15 *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 Defendants' defenses to
20 Plaintiffs' 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 favorably
22 to the value of the claims.

23 The calculations to compensate for the amount due for the Class at the time of the mediation
24 were calculated by Berger Consulting, Plaintiffs' damage expert. Plaintiffs' unpaid overtime claim was
25 potentially worth up to approximately \$50,000 based on Defendants' records. This claim was based on
26 Plaintiffs' theory that Defendants failed to include retention bonuses in the overtime rate of Class
27 Members and failed to pay for time spent watching mandatory training videos. Plaintiffs found a violation
28 rate of 28.9% for the meal period claim, which resulted in potential damages of approximately \$620,000.
Plaintiffs felt this claim was relatively strong, but discounted the claim for settlement based on
Defendants' arguments that it made meal periods available but was "not obligated to police meal breaks."

1 Plaintiffs' theory of liability for rest break violation was based on Defendants' allegedly unlawful practice
2 of requiring Plaintiffs and Class Members to work through their rest periods. This
3 claim was potentially worth approximately \$200,000. However, this claim would have relied heavily
4 on Class Member testimony. Defendants surely would have obtained opposing declarations confirming
5 its defenses. Plaintiffs' Counsel also considered the arguable presence of various penalties, and weighed
6 the potential recoveries against probable defenses. Specifically, Defendants could argue that Plaintiffs
7 could not prove the "willful" prong needed to obtain waiting time penalties under Lab. Code § 203.
8 Additionally, Defendants could argue that Plaintiffs could not show that Class Members suffered an
9 "injury" as a result of wage statement violations, as required by Labor Code § 226, or that the wage
10 statements correctly reflected the wages paid. Moreover, Plaintiffs would not recover any of these
11 derivative penalties if they failed to prove the underlying claims. *Id.* Thus, although these penalty claims
12 could have reached approximately \$3,000,000 combined if Plaintiffs prevailed on every claim, they were
13 heavily discounted.³ Defendants vigorously disputed Plaintiffs' calculations and exposure theories.

14 Consequently, the Gross Settlement Amount of \$750,000 represents a reasonable percentage of
15 recovery considering the maximum value of the alleged damages at issue in this case at the time this
16 Settlement was negotiated.⁴ Importantly, the recent decision that good faith belief of compliance by the
17 employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely
18 negate the claims for waiting time and wage statement penalties, even if wages were owed to the class.
19 The above maximum calculations should then be adjusted in consideration for both the risk of class
20 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
21

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

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 Bekam at ¶14 filed in support of the Motion for Preliminary Approval.

1 settlement as compared to the potential value of claims in this case and the defenses asserted by
2 Defendants, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
3 Blumenthal Decl. ¶8(d).

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

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

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

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

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 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
2 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
3 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
4 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

16 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
17 Here, Plaintiffs and their counsel secured a \$750,000 settlement for the benefit of the Class and none of
18 the Class Members elected to opt out. Similarly, not one Class Member objected. The Settlement was
19 possible only because Class Counsel was able to convince Defendants that Plaintiffs could potentially
20 prevail on the contested issues regarding liability, maintain class certification, overcome difficulties in
21 proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In successfully
22 navigating these hurdles Class Counsel displayed the necessary skills in both wage and hour and class
23 action litigation. Moreover, as discussed above, there were significant risks to the contingent litigation.
24 See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case,**
25 **where recovery is uncertain, an award of one-third of the common fund as attorneys' fees has**
26 **been found to be appropriate.**”)

27 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
28 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,

1 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
2 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
3 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

4 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
5 reward is the attendant risks inherent in the litigation. For Class Counsel, the fees here were wholly
6 contingent in nature and the case presented far more risk than the usual contingent fee case. Among the
7 risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendants
8 who had retained a premier and highly experienced defense firm. **Counsel retained on a contingency**
9 **fee basis, whether in private matters or in class action litigation, is entitled to a premium above**
10 **their hourly rate in order to compensate for both the risks and the delay in payment.** *See e.g.*
11 *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts "must" apply a risk
12 enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply
13 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 \$250,000 is also established by reference to Class
16 Counsel's lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
17 through September 25, 2024, Class Counsel's total lodestar is \$328,045.00, 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 [lodestar of \$122,920]; Declaration of Jessica Campbell at ¶30 [lodestar of \$205,125])
20 The requested fee award is therefore significantly less than Class Counsel's total lodestar, representing
21 a “negative multiplier”, and there will be additional lodestar incurred by Class Counsel to complete the
22 settlement process and manage the settlement distribution and reports. (Blumenthal Decl. at ¶12.) Such
23 a lodestar cross-check is below the range of positive multipliers approved in other cases such as *Laffitte*
24 and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

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

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 1.7, that Class Counsel may seek a Class Counsel's Costs
5 Award "up to Twenty-Five Thousand Dollars (\$25,000)...." Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$22,632.75 based upon counsel's billing records.
7 These litigation expenses include the expenses incurred for filing fees, mediation expenses, expert
8 expenses (Berger Consulting), and attorney service charges (Knox, OneLegal), docket document
9 downloading charges, and cumulative copies, faxes, scans, and postage charges, all of which are costs
10 normally billed to and paid by the client.⁷ The details of the litigation expenses incurred are set forth the
11 Blumenthal Decl. at ¶13 and Exhibits #3 [expenses of \$5,203.60], the Declaration of Campbell at ¶32,
12 Exhibit 1 [expenses of \$17,429.15]. Because these costs were reasonable and necessary to the successful
13 prosecution of these claims, the request is reasonable and should be granted.

14 **C. The Service Awards Are Reasonable and Should be Approved**

15 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
16 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
17 risk and effort expended on behalf of the Class as the class representatives. (Agreement at ¶1.4.)
18 Defendants have agreed to this payment and there have been no objections to the requested service
19 awards. The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in
20 California in similar cases, which further supports the request in this case. The Plaintiffs' Declarations
21 in support of these requests are attached as Exhibits #5, 6, and 7 to the Blumenthal Decl.

22 As the representatives of the Class, Plaintiffs performed their duties to the Class admirably and
23 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,
24 responding to numerous requests, searching for documents, working with counsel, and reviewing the

25
26 ⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
27 F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging, photocopying,
28 long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits,
documents scanning, and visual equipment are typically recoverable." *Rutti v. Lojack Corp., Inc.*, 2012
WL 3151077, at *12 (C.D. Cal. 2012).

1 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, Plaintiffs are also
2 providing a comprehensive release as part of the Settlement, far beyond the class release. The Plaintiffs’
3 Declarations detail the involvement, stress and risks they undertook as a result of this Action. Plaintiffs
4 also assumed the serious risk that they might possibly be liable for costs and fees to Defendants, as well
5 as the reputational risk of being “blacklisted” by other future employers for having filed a class action
6 on behalf of employees. (Blumenthal Decl. at ¶15.) Without the Plaintiffs’ participation, cooperation
7 and information, no other employees would be receiving any benefit. (Blumenthal Decl. at ¶¶ 15-16).

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

18 **VI. CONCLUSION**

19 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness
20 established in California law and should therefore be finally approved as fair, reasonable and adequate
21 and requests entry of the Final Approval Order and Judgment, submitted herewith.

22 Respectfully submitted,

23 Dated: September 25, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

24 By: /s/ Kyle Nordrehaug
25 Kyle R. Nordrehaug, Attorneys for Plaintiff
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