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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

MARIAH MACIAS, an individual, on
behalf of herself and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

POSITIVE BEHAVIOR SUPPORTS
CORP., a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **34-2023-00337859-CU-OE-GDS**

**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: June 27, 2025

Hearing Time: 9:00 a.m.

*[Hearing scheduled by Order dated February 21,
2025]*

Judge: Hon. Lauri A. Damrell

Dept.: 22

Action Filed: April 12, 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 (the “Agreement”) on February 21, 2025. A true and
4 correct copy of the Agreement is attached as Exhibit #2 to the Declaration of Norman Blumenthal
5 (“Blumenthal Decl.”).¹ In accordance with the Preliminary Approval Order, the approved Class Notice
6 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 Mariah Macias (“Plaintiff”) respectfully moves for final approval,
9 including attorneys’ fees, costs and the service award, and the entry of the proposed Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class
11 in light of the strength of Defendant’s defenses and avoids the delays, risks, and costs of further
12 litigation. After disseminating the notice to the members of the Class, there were **no objections and**
13 **no requests for exclusion**, which means that the entire Class (100%) has elected to participate in the
14 Settlement. Blumenthal Decl. ¶4. This is a positive response from the Class evidencing members’
15 collective approval of the settlement. As a result, Plaintiff respectfully submits that the class settlement
16 should be finally approved for the same reasons that the Court preliminarily approved the settlement
17 as 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 Defendant
20 Positive Behavior Supports Corp. (“Defendant”) is One Million Six Hundred Thousand Dollars
21 (\$1,600,000) (the “Gross Settlement Amount”) (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement,
22 the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class
23 Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel
24 Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative

25 _____
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as ““all individuals who are or previously were employed by Defendant in
28 California and classified as a non-exempt employee at any time during the Class Period.” The “Class
 Period” is “April 12, 2019 to September 20, 2024.” Preliminary Approval Order, ¶ 6.

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

6 **\$1,600,000** (Gross Settlement Amount)

- 7 - \$10,000 (Plaintiff's proposed service award - not to exceed amount)
- 8 - \$18,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 9 - \$533,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 10 - \$50,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 11 - \$17,550 (Administration Expenses Payment)

12 **\$971,117** (Net Settlement Amount)

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

15 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
16 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
17 is "fair, adequate, and reasonable." (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
18 at \$1,600,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
19 that liability and class certification in this case were far from certain based on the defenses asserted by
20 Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
21 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
22 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

25 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
26 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
27 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
28 *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

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 The relevant authorities have repeatedly emphasized that there is a strong initial presumption
7 that the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not
8 substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The
9 presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and
10 the court to act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel
11 is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor*
12 *Co.*, 48 Cal.App.4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that
13 the 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. Ford*
16 *Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service Com'n*, 688
17 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether the settlement
18 is fair. *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117 (2009). “The well-recognized
19 factors that the trial court should consider in evaluating the reasonableness of a class action settlement
20 agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
21 further litigation, the risk of maintaining class action status through trial, the amount offered in
22 settlement, the extent of discovery completed and the stage of the proceedings, the experience and views
23 of counsel, the presence of a governmental participant, and the reaction of the class members to the
24 proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008) (internal
25 citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th 399, 408
26 (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 Were Sufficient to Allow the
10 Court to Grant Final Approval

11 Over the course of over two years 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 details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

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

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

23 The Parties attended an arms-length mediation session with Hon. Brian Walsh (Ret.) on June
24 11, 2024, a respected and experienced mediator of wage and hour class actions, in order to reach this
25 Settlement. In preparation for the mediation, Defendant provided Class Counsel with payroll and
26 employment data and other information regarding the Class Members, various internal documents, and
27 other compensation and employment-related materials. Class Counsel analyzed the data with the
28 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the

1 mediator. The final settlement terms were negotiated and set forth in the Agreement. Blumenthal Decl.
2 ¶7(b).

3 The fact that the settlement was negotiated with the assistance of an experienced mediator
4 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
5 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
6 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
7 litigation, with the assistance of a well-respected mediator with substantial experience in employment
8 litigation[, and] this factor supports approval of the settlement”). Following mediation, in October 2024
9 the Agreement was finalized and executed, and on January 13, 2025 for the Motion for Preliminary
10 Approval was filed. On February 21, 2025, the Court issued its Preliminary Approval Order granting
11 preliminary approved of the settlement as fair, adequate, and reasonable to the Class. Blumenthal Decl.
12 ¶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 other
16 complex litigation. Class Counsel has previously litigated wage and hour class actions involving
17 employees and claims similar to this case and have been approved as experienced class counsel during
18 contested motions in state and federal courts throughout California. The experience of counsel and
19 class action cases managed and settled by the Class Counsel in this action is provided to the Court in
20 the Blumenthal Decl. at Exhibit #1. Class Counsel have participated in every aspect of the settlement
21 discussions and have concluded the settlement is fair, adequate and reasonable and in the best interests
22 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 March 24,
25 2025, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
26 each class member with the terms of the Settlement, including notice of the claims at issue and the
27 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
28 sought, how individual settlement awards would be calculated, and the specific, estimated payment

1 amount to that individual. See Declaration of Cassandra Polites (“Polites Decl.”) ¶ 7, Exh. A. In
2 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
3 its Preliminary Approval Order. Significantly, there have been no objections and no requests to opt-out.
4 Polites Decl. ¶¶ 11-12. As such, the entire Class (100%) will participate in the Settlement and will be
5 sent a settlement check. *See* Polites Decl. at ¶¶ 15-16; 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 (S.D.N.Y.
8 2000) (“If only a small number of objections are received, that fact can be viewed as indicative of the
9 adequacy of the settlement.”); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29
10 objections out of 281 member class “strongly favors settlement”); *Laskey v. Int’l Union*, 638 F.2d 954
11 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed settlement should
12 be considered when determining fairness of settlement). Here, where there are no objections, the
13 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 overtime wages for hours worked and at the correct rate of pay, were not provided meal and rest periods
17 or paid premiums at the correct rate of pay in lieu thereof, were not timely paid earned wages, were not
18 provided reimbursement for required expenses, were not provided accurate itemized wage statements,
19 were not pay all sick wages and the correct rate of pay, and were not paid all wages at the time of
20 termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other
21 equitable or legal relief allegedly due and owing to Plaintiff and the other Class Members by virtue of
22 the foregoing claims. Blumenthal Decl. ¶5.

23 Here, a number of defenses asserted by Defendant present serious threats to the claims of the
24 Plaintiff and the other Class Members. Defendant asserted that Defendant's practices complied with
25 all applicable Labor laws. Defendant argued that Class Members were paid for all time worked and that
26 all work time was properly recorded. Defendant contends that its meal and rest period policies fully
27 complied with California law and Defendant did not fail to provide the opportunity for legally required
28 meal and rest breaks. Defendant contends that there was no failure to pay for business expenses and

1 any cell phone usage was merely convenient and voluntary such that reimbursement was not legally
2 required. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*,
3 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to the
4 meal and rest period claims. Defendant also argues that based on their facially lawful practices,
5 Defendant acted in good faith and without willfulness, which if accepted would negate the claims for
6 waiting time penalties and/or inaccurate wage statements. *See e.g. Naranjo v. Spectrum Sec. Servs.,*
7 *Inc.*, 15 Cal. 5th 1056, 1065 (May 6, 2024) ("if an employer reasonably and in good faith believed it was
8 providing a complete and accurate wage statement in compliance with the requirements of section 226,
9 then it has not knowingly and intentionally failed to comply with the wage statement law.") Defendant's
10 defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that
11 these defenses could be overcome, Defendant maintains these defenses have merit and therefore present
12 a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

13 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
14 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). In a similar wage and hour case, the federal
15 district court in *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009), explained
16 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 behalf
5 of any employees other than themselves. At the time of the mediation, Defendant forcefully opposed
6 the propriety of class certification, arguing that individual issues precluded class certification.
7 Defendant also argued that the existence of arbitration agreements with many class members would
8 preclude certification of the Class. Further, as demonstrated by the California Supreme Court decision
9 in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome
10 for a class-wide recovery even where the class has been certified. While other cases have approved
11 class certification in wage and hour claims, class certification in this action was hotly disputed and the
12 maintenance of a certified class through trial was by no means a foregone conclusion. Blumenthal Decl.
13 ¶8(b).

14 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
15 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
16 substantial defenses both to liability and to class certification. Currently, the maximum and average
17 class member allocation are \$2,468.52 and \$348.32, respectively. *See* Polites Decl. ¶ 16. Given the
18 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
19 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

27 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
28 this Action against Defendant through possible appeals which could take several years. Class Counsel

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

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

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

19 *Id.* at *12.

20 7. The Amount Offered in Settlement Was Fair and Reasonable

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 2,788 Participating Class Members who collectively
25 worked an estimated 112,906 workweeks, the Gross Settlement Amount provides an average value of
26 \$573 per Class Member and \$14 per workweek and after deductions the Net Settlement Amount
27 provides an average recovery of \$348.32 per Class Member and a recovery of \$8.60 per workweek.
28 Blumenthal Decl. at ¶8(d).

The calculations to compensate for the amount due for the Class at the time of the mediation
were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at

1 issue in this Action, Plaintiff used this expert to analyze the data and determine the potential unpaid
2 wages for the employees. The maximum potential damages were calculated to be \$2,721,489 for the
3 alleged unpaid wages due to off-the-clock work at 1 hour per week, \$73,302 for the alleged unpaid
4 wages for sick pay due to the miscalculation of the regular, \$71,904 for the alleged underpaid meal
5 premiums, \$529,931 for alleged meal period damages based upon a 28.8% potential violation rate for
6 shifts observed in the time records, and \$529,931 for alleged rest period damages based upon the same
7 28.8% potential violation rate observed for meal breaks, \$140,355 for alleged unreimbursed business
8 expenses for personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total
9 damage valuation was calculated that Defendant was subject to a maximum damage claim in the
10 amount of \$4,066,912. As to potential penalties, Plaintiff calculated that potential waiting time
11 penalties were a maximum of \$4,287,213, and potential maximum wage statement penalties were
12 \$4,264,100.³ Defendant vigorously disputed Plaintiff's calculations and exposure theories. Blumenthal
13 Decl. ¶8(d).

14 Consequently, the Gross Settlement Amount of \$1,600,000 represents more than 39% of the
15 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated,
16 assuming those amounts could be proven at trial.⁴ Importantly, the recent decision that good faith belief
17 of compliance by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024),
18 could completely negate the claims for waiting time and wage statement penalties, even if wages were
19 owed to the Class. The above maximum calculations should then be adjusted in consideration for both
20 the risk of class certification and the risk of establishing class-wide liability on all claims. Given the

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
27 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
28 and when the wages were due.").

29 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
30 Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The
31 PAGA claim was addressed in the Motion for Preliminary Approval at ¶33 of the Declaration of
32 Nordrehaug.

1 amount of the settlement as compared to the potential value of claims in this case and the defenses
2 asserted by Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has
3 been met. 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 and the Lodestar Cross-Check**

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*, 444
13 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
14 of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
15 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
16 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*, the Court expressly approved
11 of a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

12 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
13 Here, Plaintiff and her counsel secured a \$1,600,000 settlement for the benefit of the Class, and not one
14 Class Member objected. The Settlement was possible only because Class Counsel was able to convince
15 Defendant that Plaintiff could potentially prevail on the contested issues regarding liability, maintain
16 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
17 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
18 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
19 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
20 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
21 **one-third of the common fund as attorneys' fees has 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 that
26 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. Here, it is clear that a settlement fund of

1 \$1,600,000 has been created. For Class Counsel, the fees here were wholly contingent in nature and the
2 case presented far more risk than the usual contingent fee case. Among the risks was the cost inherent
3 in class action litigation, as well as a long battle with a corporate Defendant who had retained a premier
4 and highly experienced defense firm. **Counsel retained on a contingency fee basis, whether in**
5 **private matters or in class action litigation, is entitled to a premium above their hourly rate in**
6 **order to compensate for both the risks and the delay in payment.** See e.g. *Stanger v. China Elec.*
7 *Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v.*
8 *Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply risk multiplier).

9 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
10 the requested attorneys' fee of one-third equal to \$533,333 is also established by reference to Class
11 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
12 **that through June 3, 2025, Class Counsel's lodestar is \$315,297.50, with significant additional fees**
13 **still to be incurred to complete final approval and the settlement process.** Blumenthal Decl. at ¶12
14 and Exhibits #3 and 4. The requested fee award is therefore currently equivalent to Class Counsel's
15 lodestar with a reasonable multiplier cross-check of less than 1.7, and there will be additional lodestar
16 incurred by Class Counsel to complete the settlement process and manage the settlement distribution
17 and reports. Blumenthal Decl. at ¶12. Such cross-check is below the range of positive multipliers
18 approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir.
19 2002).⁶ For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the
20 common fund is fair and reasonable, and should be approved.

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

22 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
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 Litigation Expenses Payment of not more than \$18,000.” Class Counsel requests reimbursement for
2 incurred litigation expenses and costs in the amount of \$18,000. Class Counsel have incurred
3 \$22,973.59 based upon counsel’s billing records, and these litigation expenses include the expenses
4 incurred for filing fees, mediation expenses, expert expenses (Berger Consulting), and attorney service
5 charges (Knox, OneLegal), all of which are costs normally billed to and paid by the client.⁷ The details
6 of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3. These costs
7 were reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.) Because these
8 costs were necessary to the successful prosecution of these claims, the request should be granted.

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

10 Plaintiff respectfully submits that for her service as a class representative, Plaintiff should be
11 awarded the agreed service award of \$10,000, in accordance with the Agreement for her time, risk and
12 effort expended on behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).) Defendant
13 has agreed to this payment and there have been no objections to the requested service award. The
14 Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California in
15 similar cases, which further supports the request in this case. The Plaintiff’s Declaration is submitted
16 in support of this request and is attached as Exhibit #5 to the Blumenthal Decl.

17 As the representative of the Class, Plaintiff performed her duties to the Class admirably and
18 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
19 responding to numerous requests, searching for documents, working with counsel, and reviewing the
20 settlement documentation. (Blumenthal Decl. at ¶ 14.) The Plaintiff’s Declaration details the
21 involvement, stress and risks she undertook as a result of this Action. Plaintiff also assumed the serious
22 risk that she might possibly be liable for costs and fees to Defendant, as well as the reputational risk of
23 being “blacklisted” by other future employers for having filed a class action on behalf of employees.
24 (Blumenthal Decl. at ¶15.) Without the Plaintiff’s participation, cooperation and information, no other

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 employees would be receiving any benefit. (Blumenthal Decl. at ¶¶ 15-16).

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

12 **VI. CONCLUSION**

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

16 Respectfully submitted,

17 Dated: June 3, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

18 By: /s/ Kyle Nordrehaug
19 Kyle R. Nordrehaug
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