

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Jeffrey S. Herman (State Bar #280058)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858) 551-1223
Facsimile: (858) 551-1232
Email: Kyle@bamlawca.com
Website: www.bamlawca.com

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA**

ASHAEL RESENDIZ, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

CANYON RESTAURANT, LTD., L.P., a
Limited Partnership; REUNION BOAT
KITCHEN, L.P., a Limited Partnership;
REUNION SANTA BARBARA, LLC, a
Limited Liability Company; REUNION
DOS LAGOS, INC., A Corporation, Scott
McIntosh, an Individual, and DOES 1
through 50, inclusive,

Defendants.

CASE No. **24CV00190**

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

Hearing Date: October 5, 2026

Hearing Time: 10:00 a.m.

[Hearing scheduled by Order dated May 12, 2026]

Judge: Hon. Colleen K. Sterne

Dept.: 5

Date Action Filed: January 16, 2024

Trial Date: Not set

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1 **I. INTRODUCTION**

2 The Parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”).¹ In accordance
5 with the Order Granting Motion for Preliminary Approval dated May 12, 2026 (“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 Ashael Resendiz (“Plaintiff”) respectfully submits this motion for
9 final approval, including attorneys’ fees, costs and the service award, and the proposed entry of the Final
10 Approval Order and Judgment, submitted herewith. The settlement represents an excellent result for
11 the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice to
12 the members of the Class, there were **no objections and no request for exclusion**, which means that
13 the entire Class (100%) has elected to participate in the Settlement. Nordrehaug Decl. ¶4. This is a
14 positive response from the Class evidencing their collective approval of the settlement. As a result,
15 Plaintiff respectfully submits that the class settlement should be finally approved for the same reasons
16 that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

17 **II. THE SETTLEMENT BEFORE THE COURT**

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
19 Canyon Restaurant, LTD, L.P., Reunion Boat Canyon, L.P., Reunion Santa Barbara, LLC, Reunion Dos
20 Lagos, Inc., and Scott McIntosh (“Defendants”) is Seven Hundred Twenty Five Thousand Dollars
21 (\$725,000) (the “Gross Settlement Amount”). (Agreement at ¶¶ 1.21 and 3.1.) Under the Settlement,
22 the Gross Settlement Amount consists of the following elements: (1) Individual Class Payments; (2)
23 Individual PAGA Payments; (3) the LWDA PAGA Payment; (4) Class Counsel Fees Payment; (5)
24 Class Counsel Litigation Expenses Payment; (6) Class Representative Service Payment; and (7)

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who are or previously were employed by Defendants in
27 California and classified as a non-exempt employee at any time during the Release Period.”
28 (Preliminary Approval Order at ¶ 5.) The “Release Period” is defined as “September 27, 2022 through
January 18, 2026.” *Id.*

Administration Expenses Payment. (Agreement at ¶ 1.21.) Nordrehaug Decl. ¶3(a). The Gross Settlement Amount does not include Defendants' share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.) Nordrehaug Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and the proposed deductions:

\$725,000 (Gross Settlement Amount)

- \$15,000 (Plaintiff's proposed service award - not to exceed amount)
- \$35,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$241,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$11,475 (Administration Expenses Payment)

\$406,859 (Net Settlement Amount)

The specific details of the Settlement were discussed in the Motion for Preliminary Approval and are set forth again in the Nordrehaug Decl. 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 ¶ 3.) In sum, the Settlement valued at \$725,000 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 Defendants. 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. Nordrehaug 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 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, both during
15 and after mediation, presided over by mediator, Louis Marlin, Esq. The details of the litigation are set
16 forth in the Nordrehaug 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 continues to deny
20 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff 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
23 who has previously litigated similar claims against other employers. Nordrehaug Decl. ¶7(a).

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

1 all-day mediation session, with after arm's length negotiations both during and after the mediation, the
2 Parties agreed to this Settlement based upon a mediator's proposal. Nordrehaug Decl. ¶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").

9 From December 2025 to February 2026, the Agreement and exhibits thereto were finalized and
10 executed. On May 11, 2026, the Court granted Plaintiff's Motion for Preliminary and on May 12, 2026,
11 the Court entered the Order granting preliminary approved of the settlement as fair, adequate, and
12 reasonable to the Class. Nordrehaug Decl. ¶7(c).

13 3. Class Counsel is Experienced in Similar Litigation

14 Class Counsel in this matter has extensive class action experience and has represented thousands
15 of persons in class actions including employment litigation, wage and hour class actions, and complex
16 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
17 claims similar to this case and have been approved as experienced class counsel during contested
18 motions in state and federal courts throughout California. The experience of counsel and class action
19 cases managed and settled by the Class Counsel in this action is provided to the Court in the
20 Nordrehaug 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. Nordrehaug 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 June 8, 2026,
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 award 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 Missy Carey (“Carey Decl.”) ¶ 7, Exh. A. In disseminating the
2 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
3 Approval Order. Significantly, there have been no objections and no requests for exclusion. Carey Decl.
4 ¶¶ 11-12. As such, the entire Class (100%) will participate in the Settlement and will be sent a
5 settlement check. See Carey Decl. at ¶¶ 14-16; Nordrehaug 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 paid all wages at the time of termination, and were not provided sick pay at the correct rate
20 of pay. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable
21 or legal relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the
22 foregoing claims. Nordrehaug Decl. ¶5.

23 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
24 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
25 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
26 Defendants asserted that Defendants’ practices complied with all applicable Labor laws. Defendants
27 argued that Class Members were paid for all time worked. Defendants contend that its meal and rest
28 period policies fully complied with California law and Defendants did not fail to provide the

1 opportunity for legally required meal and rest breaks. Defendants could argue that their payment of
2 meal premiums is evidence of its lawful practices and good faith. Defendants contend that there was
3 no failure to pay for business expenses and any cell phone usage was merely convenient and voluntary
4 such that reimbursement was not legally required. Finally, Defendants could argue that the Supreme
5 Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on
6 liability, value, and class certifiability as to the meal and rest period claims. Defendants also argue that
7 based on their facially lawful practices, Defendants acted in good faith and without willfulness, which
8 if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. See
9 e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (May 6, 2024) ("if an employer
10 reasonably and in good faith believed it was providing a complete and accurate wage statement in
11 compliance with the requirements of section 226, then it has not knowingly and intentionally failed to
12 comply with the wage statement law.") Defendants' defenses could eliminate or substantially reduce
13 any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendants
14 maintain these defenses have merit and therefore present a serious risk to recovery by the Class.
15 Nordrehaug Decl. ¶8(a).

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

18 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
19 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
20 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.

21 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); see also *Browning v. Yahoo!, Inc.*, 2007
22 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
approval.").

23 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
uncertainty of outcome, and believe defendant would appeal in the event of adverse
26 judgment. A post-judgment appeal would require many years to resolve and delay
payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
27 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees,
the actual recovery confers substantial benefits on the class that outweigh the potential
28 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 certify a class and maintain that certification through trial, and thereby not recover on behalf of any
5 employees other than himself. At the time of the mediation, Defendants forcefully opposed the
6 propriety of class certification, arguing that individual issues precluded class certification and that the
7 existence of arbitration agreements would prevent class certification. Further, as demonstrated by the
8 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
9 are significant hurdles to overcome for a class-wide recovery even where the class has been certified.
10 While other cases have approved class certification in wage and hour claims, class certification in this
11 action was hotly disputed and the maintenance of a certified class through trial was by no means a
12 foregone conclusion. Nordrehaug Decl. ¶8(b).

13 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
14 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
15 substantial defenses both to liability and to class certification. The maximum and average class member
16 allocations are \$2,836.77 and \$435.14, respectively. *See* Carey Decl. ¶16. Given the complexities of this
17 case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
18 reasonable and adequate, and should be finally approved. Nordrehaug 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 Defendants would post a bond and appeal in the event
22 of an adverse judgment. A post-judgment appeal by Defendants would have required many more years
23 to 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. Nordrehaug Decl. ¶8(c).

26 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendants
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
this one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and

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

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

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

16 *Id.* at *12.

17 7. The Amount Offered in Settlement

18 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses
19 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
20 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
21 favorably to the value of the claims. Based upon 935 Participating Class Members who collectively
22 worked an estimated 27,107 pay periods, the Gross Settlement Amount provides an average value of
23 \$775 per Class Member and \$26.75 per pay period and, after deductions, the Net Settlement Amount
24 provides an average recovery of \$435.14 per Class Member and a recovery of \$15 per pay period.
25 Nordrehaug Decl. at ¶8(d).

26 The calculations to compensate for the amount due for the Class at the time of the mediation
27 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
28 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
wages for the employees. For the Class, the maximum potential damages were calculated to be
\$1,006,704 for the alleged unpaid wages for off-the-clock work at 1 hour per week, \$156,668 for the
alleged unpaid overtime, \$425,436 for alleged missed meal period damages based upon a 28.6%

1 violation rate observed in the time records and after deduction of meal premiums already paid by
2 Defendants, \$3,455,316 for alleged rest period damages based upon a 98.4% maximum violation rate
3 observed in the records, \$166,255 for alleged unreimbursed cell-phone expenses at \$5 per month. Decl.
4 Nordrehaug, ¶6. As a result, the total damage valuation was calculated such that Defendants were
5 subject to a maximum damage claim in the amount of \$5,210,378. As to potential penalties, Plaintiff
6 calculated that potential waiting time penalties were a maximum of \$2,276,370 and potential maximum
7 wage statement penalties were \$2,310,300.³ Defendants vigorously disputed Plaintiff's calculations and
8 exposure theories. Nordrehaug Decl. ¶8(d).

9 Consequently, the Gross Settlement Amount of \$725,000 represents more than 13.9% of the
10 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
11 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
12 *Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056, 1065 (2024), could completely negate the claims for
13 waiting time and wage statement penalties, even if wages were owed to the Class. In addition, as to the
14 rest break claim which was the highest valued claim, the use of a 98.4% violation rate almost certainly
15 overstates these damages because Class Members likely received some of their rest breaks. The above
16 maximum calculations should then be realistically risk-adjusted in consideration for both the risk of
17 class certification and class-wide liability on all claims. Given the amount of the settlement as compared
18 to the potential value of claims in this case and the defenses asserted by Defendants, this settlement is

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 Defendants, including, a good faith dispute defense as to whether any premium wages for meal or
25 rest periods or other wages were owed given Defendants' position that Plaintiff and Class Members
26 were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010)
27 ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to
28 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,
28 Plaintiff did not included the PAGA claim in this discussion of the value of the class claims. The
PAGA claim was addressed in the Declaration of Kyle Nordrehaug at ¶33 filed in support of Plaintiff's
Motion for Preliminary Approval.

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

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

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

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

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

23
24 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving the
25 settlement amount of approximately 25% of the estimated overtime damages for the class);
26 *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015)
27 (granting approval where "the proposed Total Settlement Amount represents approximately 10% of
28 what class might have been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016
WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action settlement amounting to 8.1%
of full 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 First, the fee award representing one-third of the fund clearly falls within that range and is
2 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
3 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market
4 in legal services. See *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558, fn. 13 (2009)
5 ["[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is
6 used, fee awards in class actions average around one-third of the recovery."]; Fitzpatrick, *An Empirical*
7 *Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010)
8 (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25
9 percent and 35 percent"). In *Laffitte*, the Court expressly approved of a one-third fee award. Such
10 similar awards by other Courts are set forth in the Nordrehaug Decl. at ¶11.

11 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
12 Here, Plaintiff and his counsel secured a \$725,000 settlement for the benefit of the Class, and not one
13 Class Member objected. The Settlement was possible only because Class Counsel was able to convince
14 Defendants that Plaintiff could potentially prevail on the contested issues regarding liability, maintain
15 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
16 be. Nordrehaug Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
17 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
18 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
19 F.R.D. 431, 449 (E.D. Cal. 2013) ("**Like this case, where recovery is uncertain, an award of**
20 **one-third of the common fund as attorneys' fees has been found to be appropriate.**")

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

26 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney's fees
27 reward is the attendant risks inherent in the litigation. Here, it is clear that a settlement fund of \$725,000
28 has been created. For Class Counsel, the fees here were wholly contingent in nature and the case

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

8 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
9 the requested attorneys' fee of one-third equal to \$241,666 is also established by reference to Class
10 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence
11 that through September 8, 2026, Class Counsel's total lodestar is \$248,217.50, with significant
12 additional fees still to be incurred to complete final approval and the settlement process.**
13 Nordrehaug Decl. at ¶12 and Exhibit #3. The requested fee award is therefore less than Class Counsel's
14 total loadstar (i.e. representing a "negative" multiplier), and there will be additional lodestar incurred
15 by Class Counsel to complete the settlement process and manage the settlement distribution and reports.
16 Nordrehaug Decl. at ¶12. Such a negative cross-check is well below the range of positive multipliers
17 approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir.
18 2002).⁶ As noted in *Laffitte*, the lodestar multiplier cross-check "does not override the trial court's
19 primary determination of the fee as a percentage of the common fund" and Courts may only consider
20 adjustment when the "cross-check is extraordinarily high or low." *Laffitte, supra*, 1 Cal.5th at 505.
21 Here, where the cross-check is below the range, it is not extraordinarily high requiring adjustment. For
22 such reasons, Class Counsel's request for attorneys' fees is reasonable and should be approved.

23
24 ⁶ See *Laffitte, supra*, 1 Cal.5th at 487 (approving 1/3 fee award with 2.13 multiplier); *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 2.52 multiplier as "fair and reasonable"); *Chavez*
v. Netflix, Inc., 162 Cal.App.4th 43, 66 (2008) (affirming 2.53 multiplier 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 **B. The Reimbursement of Litigation Expenses**

2 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a “Class Counsel
3 Litigation Expenses Payment of not more than \$35,000.” Based upon its billing records, Class Counsel
4 requests reimbursement for incurred litigation expenses and costs in the amount of \$24,534.27, which
5 is less than the “not-to-exceed” amount of \$35,000. These litigation expenses include filing fees
6 (superior court and court of appeal), mediation expenses, expert expenses (Berger Consulting), charges
7 for documents purchased from the Court, attorney service charges (Knox and OneLegal) and FedEx
8 delivery charges, all of which are costs normally billed to and paid by the client.⁷ The details of the
9 litigation expenses incurred are set forth the Nordrehaug Decl. at ¶13 and Exhibit #3. These costs were
10 reasonably incurred in the prosecution of the Action. Nordrehaug Decl. at ¶13. Because these costs
11 were necessary to the successful prosecution of these claims, the request should be granted.

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

13 Plaintiff respectfully submit that for his service as the class representatives, Plaintiff should be
14 awarded the agreed service award of \$15,000, in accordance with the Agreement for his time, risk and
15 effort expended on behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).) Defendants
16 has agreed to this payment and there have been no objections to the requested service award. The
17 Nordrehaug Decl., at ¶14, provides a long list of equivalent service awards approved in California in
18 similar cases, which further supports the request in this case. The Plaintiff’s Declarations are submitted
19 in support of this request.

20 As the sole representative of the Class, Plaintiff performed his duties to the Class admirably and
21 without exception. Plaintiff worked extensively with Class Counsel during the course of the years of
22 litigation, responding to numerous requests, searching for documents, working with counsel, and
23 reviewing the settlement documentation. Nordrehaug Decl. at ¶ 14. Plaintiff’s Declaration details the
24 involvement, stress and risks he undertook as a result of this Action. Plaintiff also assumed the serious
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 risk that he might possibly be liable for costs and fees to Defendants, as well as the reputational risk of
2 being “blacklisted” by other future employers for having filed a class action on behalf of employees.
3 Nordrehaug Decl. at ¶15. Without the Plaintiff’s participation, cooperation and information, no other
4 employees would be receiving any benefit. Nordrehaug Decl. at ¶¶ 15-16.

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

16
17 **VI. CONCLUSION**

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

21 Respectfully submitted,

22 Dated: September 8, 2026 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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