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

CELESTE JACOBS, DAVID HALEY,
and GABRIEL A. REYES, individuals,
on behalf of themselves and on behalf of
all persons similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No. 23-CIV-05852

**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 7, 2026

Hearing Time: 2:00 p.m.

*[Hearing scheduled by Order dated March 12,
2026]*

Judge: Hon. Nicole S. Healy

Dept: 28

Date Filed: December 11, 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”), a true and correct copy of which
4 is attached as Exhibit #2 to the Declaration of Kyle R. Nordrehaug (“Nordrehaug Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated March 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. Plaintiffs Celeste Jacobs, David Haley, and Gabriela A. Reyes (“Plaintiffs”)
9 respectfully move for final approval, including attorneys’ fees, costs and the service awards, and the
10 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 Class Notice to the 4,093 members of the Class, **there was only one (1)**
13 **objection and only three (3) requests for exclusion** from the Class, which means that almost the
14 entire Class (99.93%) has elected to participate in the Settlement. Nordrehaug Decl. ¶4. This is a
15 positive response from the Class evidencing their collective approval of the settlement. The only
16 objection is a boilerplate objection which provides no substance and no basis to change this Court’s
17 conclusion that the Settlement is “fair and reasonable”. As a result, Plaintiffs respectfully submit that
18 the settlement should be finally approved for the same reasons that the Court preliminarily approved
19 the settlement as fair, reasonable, and adequate.

20 **II. THE SETTLEMENT BEFORE THE COURT**

21 As consideration for this Settlement, the Gross Settlement Amount to be paid by DPR
22 Construction, Inc. (“Defendant”) is Four Million Five Hundred Thousand Dollars (\$4,500,000).
23 (Agreement at ¶ 6.1.) Under the Settlement, the Gross Settlement Amount consists of the following
24 elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class

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 who
28 were classified as non-exempt in the State of California at any time during the Class Period.” The Class
 Period is December 11, 2019 through May 27, 2025. (Preliminary Approval Order, at ¶6).

1 Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses
2 Payment; (4) the Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties
3 payment. (Agreement at ¶ 6.2.) The Gross Settlement Amount does not include Defendant's share of
4 payroll taxes. (Agreement at ¶ 2.22, 7.4.) The Gross Settlement Amount shall be all-in with no
5 reversion to Defendant. (*Id.*) Nordrehaug Decl. at ¶3(b). The following is a table of the key financial
6 terms of the Settlement and the proposed deductions:

7 **\$4,500,000** (Gross Settlement Amount)

- 8 - \$15,000 (Plaintiffs' proposed collective service awards - \$5,000 each)
- 9 - \$16,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$1,500,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 11 - \$100,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$27,990 (Administration Expenses Payment)

13 **\$2,841,010** (Net Settlement Amount)

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

16 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
17 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
18 is "fair, adequate and reasonable" (Preliminary Approval Order at ¶4.) In sum, the Settlement valued
19 at \$4,500,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
20 that liability and class certification in this case were far from certain in light of the defenses asserted
21 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
22 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
23 reasonable and adequate, and should be finally approved. Nordrehaug Decl. ¶3(j).

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

26 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal.App.4th 259,
27 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
28 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

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

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

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

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

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

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

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

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

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

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

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

19 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
20 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
21 wrongdoing or legal liability arising out of the conduct alleged in the Action. Defendant also asserts
22 that this case should not proceed as a class action. Plaintiffs and Class Counsel have determined that
23 it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in
24 accordance with this Settlement, based upon the experience of Class Counsel who has previously
25 litigated similar claims against other employers. Nordrehaug Decl. ¶7(a).

26 The Parties attended an arms-length mediation session with Hon. Brian C. Walsh (ret.), a
27 respected jurist and experienced mediator of wage and hour class actions, in order to reach this
28 Settlement. In preparation for the mediation, Defendant provided Class Counsel with payroll and

1 employment data and other information regarding the Class Members, various internal documents, and
2 other compensation and employment-related materials. Class Counsel analyzed the data with the
3 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
4 mediator. Following the all-day mediation, the Parties agreed to the Settlement, which was
5 memorialized in the form of a Memorandum of Understanding. Nordrehaug Decl. ¶7(b).

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

11 From March of 2025 to August of 2025, the settlement agreement and exhibits thereto were
12 finalized and executed. On March 12, 2026, the Court granted the Motion for Preliminary Approval,
13 and entered the Order granting preliminary approval of the settlement as fair and reasonable to the
14 Class. Nordrehaug Decl. ¶7(c).

15 3. Class Counsel Is Experienced in Similar Litigation

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

25 4. There is One (1) Objection and Only Three (3) Requests for Exclusion

26 The reaction of the Class unequivocally supports approval of the Settlement. On April 27, 2026,
27 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
28 class member with the terms of the Settlement, including notice of the claims at issue and the financial

1 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
2 how individual settlement awards would be calculated, and the specific, estimated payment amount to
3 that individual. See Declaration of Madely Nava ("Nava Decl.") at ¶ 7, Exh. A. In disseminating the
4 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
5 Approval Order. The Administrator received one written objection and received only three (3) requests
6 for exclusion. Nava Decl. at ¶¶ 11-12. The one objection is attached to the Nava Decl. as Exhibit B.
7 As such, 99.93% of the Class will participate in the Settlement and will be sent a settlement check.
8 Nava Decl. at ¶¶ 14-16; Nordrehaug Decl. ¶4.

9 The one objection received is a boiler plate objection which provides no basis to deny approval
10 of the Settlement. This Court previously found at preliminary approval that "The \$4,500,000 Settlement
11 is within the ballpark of reasonableness. Class counsel has presented liability and damages estimates
12 based on their expert's evaluation of the records received through discovery and discounted their
13 estimates based on the risks inherent to class action litigation and specific defenses set forth by
14 defendant. Settling now for a lesser amount than might be received at trial is reasonable given those
15 risks, the cost of going forward, and the time value of money." Ruling dated February 25, 2026 [ROA
16 #63]. The objection merely states that "the estimated individual payment is relatively low when
17 compared to the alleged wage and hour violations", however, the Court previously considered the
18 liability and damage estimates for the Class and concluded that the Settlement was a "fair and
19 reasonable" compromise to resolve those claims. The objection also argued that the portion of the
20 Settlement allocated to attorneys' fees was not fair. As discussed below, the represented fee allocation
21 is one-third of the Gross Settlement Amount, which is the average generally awarded in class actions.
22 *See In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558, fn. 13 (2009) ["fee awards in class
23 actions average around one-third of the recovery."]. As such, the objection should be overruled.

24 The fact that there was only one objection strongly supports the fairness, reasonableness and
25 adequacy of the Settlement. *See In re Austrian & German Bank Holocaust Litigation*, 80 F.Supp.2d
26 164, 175 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed
27 as indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119
28 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*

1 *Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
2 settlement should be considered when determining fairness of settlement). Here, where there is only
3 one objection out of over four thousand Class Members, the approval of the class is evident.

4 5. The Strength of Plaintiffs' Case

5 The Action generally alleges that Plaintiffs and other Class Members were not properly paid all
6 overtime wages for hours worked and at the correct rate, were not provided meal and rest periods, were
7 not timely paid earned wages, were not provided reimbursement for required expenses, were not
8 provided accurate itemized wage statements, were not paid all accrued and used sick pay at the correct
9 rate of pay, and were not paid all wages at the time of termination. The Action seeks unpaid wages,
10 penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due and owing
11 to Plaintiffs and the other Class Members by virtue of the foregoing claims. Nordrehaug Decl. ¶5.

12 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
13 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant
14 present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant asserted
15 that Defendant's policies and practices complied with all applicable labor laws. Specifically, Defendant
16 argued that its policies prohibit Class members from working off the clock and Class Members were
17 paid for all time worked. Defendant further argued that it paid all wages, including minimum, overtime
18 double time, and sick pay, at the correct rates of pay. Defendant also argued that its meal and rest
19 period policies fully complied with California law and that Defendant provided Class Members with
20 the opportunity to take their legally required meal and rest breaks. Defendant further argued that the
21 exemption applicable to the construction industry and employees subject to valid collective bargaining
22 agreements under Labor Code §§ 512 and 514 and the applicable Wage Order negates Plaintiffs'
23 overtime and the meal and rest period claims. Further, Defendant argued that the PAGA claims of
24 employees subject to a valid collective bargaining agreement fail because Defendant is exempt, as a
25 construction industry employer, from PAGA penalties under Labor Code § 2699.6. Defendant further
26 argued that there was no failure to pay for business expenses, Class Members were not required to use
27 their cell phones or purchase any supplies or tools to perform their job duties, and any cell phone usage
28 was merely convenient and voluntary such that reimbursement was not legally required. Defendant

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

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

15 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
16 Defendants strongly deny liability for Plaintiffs' principal claim... [...]he gross
17 settlement amount and the Class Members' expected net recovery, after fees and other
costs are deducted, appear to be a reasonable compromise, in light of the risks of
litigation.

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

22 The potential complexity and possible duration of trial also weigh in favor of granting
23 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
24 uncertainty of outcome, and believe defendant would appeal in the event of adverse
25 judgment. A post-judgment appeal would require many years to resolve and delay
26 payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
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.

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

28 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable

1 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
2 of any employees other than themselves. At the time of the mediation, Defendant forcefully opposed
3 the propriety of class certification, arguing that individual issues precluded class certification. Defendant
4 argued that Plaintiffs were not adequate class representatives and Defendant further argued that because
5 there were no unlawful policies or practices that all Class Members were subject to and because Class
6 Members were employed in various positions, locations, and departments, Plaintiffs' claims were not
7 appropriate for class treatment. Further, as demonstrated by the California Supreme Court decision in
8 *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for
9 a class-wide recovery even where the class has been certified. While other cases have approved class
10 certification in wage and hour claims, class certification in this action was hotly disputed and the
11 maintenance of a certified class through trial was by no means a foregone conclusion. Nordrehaug
12 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 Defendant asserted serious and
15 substantial defenses both to liability and to class certification. Currently, the maximum and average
16 class member allocation are \$2,310.51 and \$694.62, respectively. See Nava Decl. ¶ 16. Given the
17 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
18 Settlement is fair, 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 Defendant would post a bond and appeal in the event
22 of an adverse judgment. A post-judgment appeal by Defendant 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 Plaintiffs and Class Counsel recognize the expense and length of a trial against Defendant
27 through possible appeals which could take at least another two or three years. Class Counsel also have
28 taken into account the uncertain outcome, the risk of litigation, especially in complex actions such as

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

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

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

17 *Id.* at *12.

18 7. The Amount Offered in Settlement

19 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
20 to 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
22 favorably to the value of the claims. Based upon 4,090 Participating Class Members who collectively
23 worked 351,666 Workweeks, the Gross Settlement Amount provides an average value of \$1,100 per
24 Class Member and \$12.79 per Workweek and after deductions the Net Settlement Amount provides an
25 average recovery of \$694.62 per Class Member and a recovery of \$8.07 per Workweek. Nordrehaug
26 Decl. at ¶8(d).

27 The calculations to compensate for the amount due for the Class at the time of the mediation
28 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
wages for the employees. The maximum potential damages were calculated to be \$5,005,029 for the

1 alleged unpaid wages for off-the-clock work at 5 minutes per shift, \$3,003,021 for alleged meal period
2 damages based upon a 5% potential violation rate for all shifts worked, \$3,003,021 for alleged rest
3 period damages based upon the same 5% potential violation rate, \$540,660 for alleged unreimbursed
4 cell-phone expenses at \$5 per month. As a result, the total damage valuation was calculated such that
5 Defendant was subject to a maximum damage claim in the amount of \$11,551,731. As to potential
6 penalties, Plaintiffs calculated that potential waiting time penalties were a maximum of \$18,454,800,
7 and potential maximum wage statement penalties were \$9,652,000.³ Defendant vigorously disputed
8 Plaintiffs' calculations and exposure theories. Nordrehaug Decl. at ¶ 8(d).

9 Consequently, the Gross Settlement Amount of \$4,500,000 represents more than 38% 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. The above maximum
14 calculations should then be realistically risk-adjusted in consideration for both the risk of class
15 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
16 settlement as compared to the potential value of claims in this case and the defenses asserted by
17 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.

18
19 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
20 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
21 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
22 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class
23 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
24 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute
25 as to whether and when the wages were due.").

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

⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
settlement where the settlement amount constituted approximately 25% of the estimated overtime
damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
(N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents

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

3 **A. The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund**
4 **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*, 444
10 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
11 of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
12 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
alone." *Vincent*, 557 F.2d at 769.

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

22 First, the fee award representing one-third of the fund clearly falls within that range and is
23 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
24 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market

25 _____
26 approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
27 *Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
28 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 in legal services. In *Laffitte v. Robert Half Int'l*, 1 Cal.5th 480, 503 (2016), the California Supreme
2 Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third
3 (1/3) as a reasonable percentage in a contingent common fund class settlement. See also *In re Consumer*
4 *Privacy Cases*, 175 Cal.App.4th at 558, fn. 13 (“fee awards in class actions average around one-third
5 of the recovery.”) Such similar awards by other Courts are set forth in the Nordrehaug Decl. ¶11.

6 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
7 Here, Plaintiffs and their counsel secured a \$4,500,000 settlement for the benefit of the Class. The
8 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
9 could potentially prevail on the contested issues regarding liability, maintain class certification,
10 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Nordrehaug
11 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
12 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
13 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
14 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
15 **common fund as attorneys' fees has been found to be appropriate.**”)

16 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
17 relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
18 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
19 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
20 Class Counsel would be seeking up to a one-third fee award. Out of 4,093 Class Members, only one
21 Class Member objected.

22 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
23 reward is the attendant risks inherent in the litigation. In *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th
24 553, 580 (2004), the Court held that a “contingent fee must be higher than a fee for the same legal
25 services paid as they are performed. The contingent fee compensates the lawyer not only for the legal
26 services he renders but for the loan of those services.” For Class Counsel, the fees here were wholly
27 contingent in nature and the case presented far more risk than the usual contingent fee case. Among the
28 risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendant

1 who had retained a premier and highly experienced defense firm. **Counsel retained on a contingency**
2 **fee basis, whether in private matters or in class action litigation, is entitled to a premium above**
3 **their hourly rate in order to compensate for both the risks and the delay in payment.** *See e.g.*
4 *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts "must" apply a risk
5 enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply
6 risk multiplier). The contingent risk is also multi-faceted. First, there is the fact that the work is done
7 on a contingency. Second, there is risk of litigation, because at least half of the cases we prosecute on
8 a contingent basis fail to result in a class-wide recovery. Another group of cases failure to recovery
9 sufficiently to cover the contingent investment by Class Counsel, that is the recovery is less than the
10 lodestar incurred by Class Counsel. These two contingent risks explain why "[m]ultipliers in the 3-4
11 range are common". *Boone v. Amazon.Com Servs., LLC*, 2024 U.S. Dist. LEXIS 203185, at *54 (E.D.
12 Cal. 2024).

13 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
14 the requested attorneys' fee of one third equal to \$1,500,000 is also established by reference to Class
15 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
16 **that through September 10, 2026, Class Counsel's total lodestar is \$323,597.50, with significant**
17 **additional fees still to be incurred to complete final approval and the settlement process.** (*See*
18 *Nordrehaug Decl.* at ¶12 and Exhibit #3.) The requested fee award is therefore currently equivalent
19 to Class Counsel's total lodestar with a reasonable multiplier cross-check, and there will be additional
20 lodestar incurred by Class Counsel to complete the settlement process and manage the settlement
21 distribution and reports. (*Nordrehaug Decl.* at ¶12.) The rates used by my firm are addressed in
22 *Nordrehaug Decl.* at ¶¶ 12 and 12(a). Such a multiplier cross-check is reasonable as it is within the
23 range of multipliers approved in other cases.⁶ As noted in *Laffitte*, the lodestar multiplier cross-check
24

25 ⁶ *See Johnson v. Brennan*, 2011 U.S. Dist. LEXIS 105775 (S.D.N.Y. 2011) ("Courts regularly award
26 lodestar multipliers from two to six times lodestar"); *Buccellato v. At&T Operations, Inc.*, 2011 U.S.
27 Dist. LEXIS 85699, at *4 (N.D. Cal. 2011) (4.3 multiplier is reasonable); *Laffitte, supra*, 1 Cal. 5th at
28 487 (approving 1/3 fee award with multiplier of 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
Cal.App.4th 278 (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."); *In re Sutter*

1 “does not override the trial court's primary determination of the fee as a percentage of the common
2 fund” and Courts may only consider adjustment when the “cross-check is extraordinarily high or low”.
3 *Laffitte, supra*, 1 Cal. 5th at 505. Because the multiplier cross-check is within the accepted range, it is
4 not “extraordinarily high” so as to justify an adjustment of the percentage under *Laffitte, supra*, 1 Cal.
5 5th at 505. For such reasons, Class Counsel’s request for attorneys’ fees in the amount of one-third of
6 the common fund is reasonable and should be approved.

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

8 The Agreement provides at paragraph 6.2(b), that Class Counsel may seek a “Class Counsel
9 Litigation Expenses Payment of not more than Sixteen Thousand Dollars and No Cents (\$16,000).”
10 Class Counsel requests reimbursement for incurred litigation expenses and costs in the amount of
11 \$16,000. Class Counsel have incurred expenses of \$16,298.53 based upon counsel's billing records;
12 therefore, this requested amount is equal to the allocation in the Agreement. These litigation expenses
13 include the expenses incurred for filing fees, mediation expenses, expert expenses (Berger Consulting),
14 legal research charges (Lexis Nexis), and attorney service charges (OneLegal and Knox), all of which
15 are costs normally billed to and paid by the client. The details of the litigation expenses incurred are
16 set forth the Nordrehaug Decl. at ¶13 and Exhibit #3. These costs were reasonably incurred in the
17 prosecution of the Action. (Nordrehaug Decl. at ¶13.) Because these costs were reasonable and
18 necessary to the successful prosecution of these claims, the request is reasonable and should be granted.

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

20 Plaintiffs respectfully submit that for their service as the only class representatives, Plaintiffs
21 should be awarded the agreed service award of \$5,000 each in accordance with the Agreement for their
22 time, risk and effort expended on behalf of the Class as the class representatives. (Agreement at ¶
23 6.2(a)(1); Preliminary Approval Order at ¶5.) Defendant has agreed to this payment and there have been
24 no objections to the requested service award. The Nordrehaug Decl., at ¶14, provides a long list of
25 higher service awards approved in California, which further supports the request in this case. The
26

27 *Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as “fair
28 and reasonable); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53);
Taylor v. FedEx Freight, Inc., 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

1 Plaintiffs' Declarations are attached as Exhibits #7, 8 and 9 to the Nordrehaug Decl.

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

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

21 **VI. CONCLUSION**

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

25 Respectfully submitted,

26 Dated: September 10, 2026

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOU

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Attorneys for Plaintiffs