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

DEVAN WATSON and SEDATE
PHILEMON, individuals, on behalf of
themselves and on behalf of all
persons similarly situated,

Plaintiff,

vs.

SAN DIEGO DIALYSIS SERVICES,
INC., a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2024-00002851-CU-OE-CTL

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

Hearing Date: November 14, 2025
Hearing Time: 10:15 a.m.

*[Hearing scheduled by Order dated June 27,
2025]*

Judge: Hon. Wendy M. Behan
Dept.: 66

Date Action Filed: January 22, 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 Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated June 27, 2025 (“Preliminary Approval Order”),
6 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 Devan Watson and Sadate Philemon (“Plaintiffs”) respectfully
9 move for final approval, including attorneys’ fees, costs and the service awards, and the proposed entry
10 of the Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent
11 result for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the
12 Class Notice to the 855 members of the Class, **to date there have been no objections and no requests**
13 **for exclusion** from the Class, which means that the entire Class (100%) has elected to participate in
14 the Settlement. Blumenthal Decl. ¶4. This is a positive response from the Class evidencing their
15 collective approval of the settlement. As a result, Plaintiffs respectfully submit that the settlement
16 should be finally approved for the same reasons that the Court preliminarily approved the settlement
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 San
20 Diego Dialysis Services, Inc. (“Defendant”) is One Million Five Hundred Thousand Dollars
21 (\$1,500,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of
22 the following elements: (1) payment of the Individual Class Payments to the Participating Class
23 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
24 Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and

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 non-exempt employee at any time during the Class Period.” The Class
 Period is November 7, 2019 through October 7, 2024. (Preliminary Approval Order, at ¶5).

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

\$1,500,000	(Gross Settlement Amount)
- \$20,000	(Plaintiffs' proposed service award not to exceed amount)
- \$45,000	(Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$500,000	(Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$30,000	(PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$12,550	(Administration Expenses Payment - not to exceed amount)
\$892,450	(Net Settlement Amount)

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

The Settlement is fair, adequate and reasonable to the class and should be finally approved for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement is "fair, adequate and reasonable" (Preliminary Approval Order at ¶3.) In sum, the Settlement valued at \$1,500,000 is an excellent result for the Class. This result is particularly favorable in light of the fact that liability and class certification in this case were far from certain in light of the defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

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

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

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

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

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

14 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
15 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
16 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether the
17 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
22 experience and views of counsel, the presence of a governmental participant, and the reaction of the
23 class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
24 128 (2008) (internal citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186
25 Cal.App.4th 399, 408 (2010).

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

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

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

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

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

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

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

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

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

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

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

9 From February of 2025 to May of 2025, the settlement agreement and exhibits thereto were
10 finalized and executed. On June 27, 2025, the Court granted the Motion for Preliminary Approval, and
11 entered the Order granting preliminary approval of the settlement as fair and reasonable to the Class.
12 Blumenthal Decl. ¶7(c).

13 3. Class Counsel Is Experienced in Similar Litigation

14 Class Counsel in this matter has extensive class action experience and has represented thousands
15 of persons in class actions including employment litigation, wage and hour class actions, and complex
16 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
17 claims similar to this case and have been approved as experienced class counsel during contested
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 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 July 28, 2025,
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 Nick Castro (“Castro Decl.”) at ¶ 7, Exh. A. In disseminating the
2 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
3 Approval Order. The Administrator has not received any written objections and has not received any
4 requests for exclusion. Castro Decl. at ¶¶ 11-12. As such, 100% of the Class will participate in the
5 Settlement and will be sent a settlement check. Castro Decl. at ¶ 13; 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 Plaintiffs’ Case

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

22 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
23 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant
24 present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant asserted
25 that Defendant's practices complied with all applicable Labor laws. Defendant argued that Class
26 Members were paid for all time worked and that work time was properly recorded. Defendant
27 maintained there was no underpayment of overtime wages to the Plaintiffs and the Class. Defendant
28 contends that its meal and rest period policies fully complied with California law and that Defendant

1 did not fail to provide the opportunity for legally required meal and rest breaks. Defendant could argue
2 that its payment of significant meal period premiums is evidence of its lawful practices. Defendant
3 contends that there was no failure to pay for business expenses and any cell phone usage was merely
4 convenient and voluntary such that reimbursement was not legally required. Finally, Defendant has
5 an argument that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
6 weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period
7 claims. Defendant also argues that based on its facially lawful practices, Defendant acted in good faith
8 and without willfulness, which if accepted would negate the claims for waiting time penalties and/or
9 inaccurate wage statements. *See e.g. Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065
10 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and accurate
11 wage statement in compliance with the requirements of section 226, then it has not knowingly and
12 intentionally failed to comply with the wage statement law.") If successful, Defendant's defenses could
13 eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses
14 could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk
15 to recovery by the Class. Blumenthal 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
23 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
24 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

25 The potential complexity and possible duration of trial also weigh in favor of granting
26 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
27 uncertainty of outcome, and believe defendant would appeal in the event of adverse
28 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
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

1 recovery through full adjudication.

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

4 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
5 to obtain a certified class and maintain the certified class through trial, and thereby not recover on
6 behalf of any employees other than themselves. At the time of the mediation, Defendant forcefully
7 opposed the propriety of class certification, arguing that individual issues precluded class certification.
8 Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
9 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even
10 where the class has been certified. While other cases have approved class certification in wage and
11 hour claims, class certification in this action was hotly disputed and the maintenance of a certified class
12 through trial was by no means a foregone conclusion. Blumenthal 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 \$1,721.49 and \$1,043.80, respectively. *See* Castro Decl. ¶ 13. 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. Blumenthal Decl. at ¶8(e).

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

20 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
21 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event
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
24 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
25 outweigh an uncertain result three or more years in the future. Blumenthal 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. Blumenthal 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
13 how this Court might have ruled on the merits of the legal issues, the losing party likely
14 would have appealed, and the parties would have faced the expense and uncertainty of
15 litigating an appeal. "The expense and possible duration of the litigation should be
16 considered in evaluating the reasonableness of [a] settlement."

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 855 Participating Class Members who collectively
23 worked 133,233 Workweeks, the Gross Settlement Amount provides a value of \$1,754 per Class
24 Member and \$11.25 per Workweek and, after deductions, the Net Settlement Amount provides an
25 average recovery of \$1,043.80 per Class Member and \$6.69 per Workweek. Blumenthal 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, Plaintiffs' damage expert. As to the Class whose claims are at
28 issue in this Action, Plaintiffs used this expert to analyze the data and determine the potential unpaid
wages for the employees. The maximum potential damages were calculated to be \$514,145 for alleged
underpaid overtime wages, \$951,535 for the alleged unpaid wages for off-the-clock work at ten minutes

1 per week, \$4,333,409 for alleged meal period damages based upon a 37% potential violation rate for
2 all shifts worked observed in the time records and after deducting for meal premiums already paid by
3 Defendant, \$5,676,198 for alleged rest period damages based upon the 37% violation rate for shifts
4 worked that was observed for meal period records, \$161,820 for alleged unreimbursed cell-phone
5 expenses at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was
6 calculated such that Defendant was subject to a maximum damage claim in the amount of \$11,637,107.
7 As to potential penalties, Plaintiffs calculated that potential waiting time penalties were a maximum
8 of \$1,989,709, and potential maximum wage statement penalties were \$3,196,000.³ Defendant
9 vigorously disputed Plaintiffs' calculations and exposure theories. Blumenthal Decl. at ¶ 8(d).

10 Consequently, the Gross Settlement Amount of \$1,500,000 represents more than 12.8% of the
11 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
12 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
13 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
14 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
15 calculations should then be realistically risk-adjusted in consideration for both the risk of class
16 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
17 settlement as compared to the potential value of claims in this case and the defenses asserted by
18 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.

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

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

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
8 percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple*
9 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); *Boeing Co.*
10 *v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir.
11 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread
12 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear
13 the entire 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
19 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
20 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
21 fund created"). Under the percentage of the fund method, a court's objective remains to "mimic the
22 market" in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

23 First, the fee award representing one-third of the fund clearly falls within that range and is
24 consistent with other rulings of other courts and comprehensive surveys of class action settlements and

25 _____
26 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
27 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
28 approximately 10% of 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 fee awards. Attorneys' fees awards of one-third of the fund are within the expected range in the market
2 in legal services. In *Laffitte v. Robert Half Int'l*, 1 Cal.5th 480, 503 (2016), the California Supreme
3 Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third
4 (1/3) as a reasonable percentage in a contingent common fund class settlement. Such similar awards
5 by other Courts are set forth in the Blumenthal Decl. ¶11.

6 Second, the results delivered by Class Counsel also support the requested percentage of the
7 fund. Here, Plaintiffs and their counsel secured a \$1,500,000 settlement for the benefit of the Class and
8 none of the Class Members elected to opt out. Similarly, not one Class Member objected. The
9 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
10 could potentially prevail on the contested issues regarding liability, maintain class certification,
11 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
12 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
13 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
14 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
15 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
16 **common fund as attorneys' fees has been found to be appropriate.**”)

17 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
18 relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
19 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
20 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class
21 that Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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. For Class Counsel, the fees here were wholly
24 contingent in nature and the case presented far more risk than the usual contingent fee case. Among the
25 risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendant
26 who had retained a premier and highly experienced defense firm. **Counsel retained on a contingency**
27 **fee basis, whether in private matters or in class action litigation, is entitled to a premium above**
28 **their hourly rate in order to compensate for both the risks and the delay in payment.** See e.g.

1 *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts "must" apply a risk
2 enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to
3 apply risk multiplier).

4 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
5 the requested attorneys' fee of one-third equal to \$400,000 is also established by reference to Class
6 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
7 **that through October 20, 2025, Class Counsel's total lodestar is \$250,615.00, with significant**
8 **additional fees still to be incurred to complete final approval and the settlement process.** (*See*
9 Blumenthal Decl. at ¶12 and Exhibit #3.) The requested fee award is therefore currently equivalent
10 to Class Counsel's total lodestar with a reasonable multiplier cross-check of less than 2, and there will
11 be additional lodestar incurred by Class Counsel to complete the settlement process and manage the
12 settlement distribution and reports. (Blumenthal Decl. at ¶12.) Such a lodestar cross-check is below
13 positive multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d
14 1043, 1051 (9th Cir. 2002).⁶ Because the multiplier cross-check is within this accepted range it is not
15 "extraordinarily high" so as to justify an adjustment of the percentage under *Laffitte, supra*, 1 Cal. 5th
16 at 505. For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the
17 common fund is reasonable and should be approved.

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

19 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
20 Litigation Expenses Payment of not more than \$45,000." Class Counsel requests reimbursement for
21 incurred litigation expenses and costs in the amount of \$42,144.64. Class Counsel have incurred
22 expenses of \$42,144.64 based upon counsel's billing records; therefore, this requested amount is less
23 than the allocation in the Agreement. These litigation expenses include the expenses incurred for filing

24
25 ⁶ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
26 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
27 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
28 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
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); *Taylor v. Fedex Freight,*
Inc., 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

1 fees, mediation expenses, expert expenses (Berger Consulting and DM&A), Belaire-West opt-out
2 notice expenses (Apex), court docket download charges, and attorney service charges (OneLegal and
3 Knox), all of which are costs normally billed to and paid by the client. The details of the litigation
4 expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3. These costs were
5 reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.) Because these costs
6 were reasonable and necessary to the successful prosecution of these claims, the request is reasonable
7 and should be granted.

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

9 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
10 be awarded the agreed service award of \$10,000 each in accordance with the Agreement for their time,
11 risk and effort expended on behalf of the Class as the class representatives. (Agreement at ¶ 3.2(a).)
12 Defendant has agreed to these payments and there have been no objections to the requested service
13 award. The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in
14 California in similar cases, which further supports the request in this case. The Plaintiffs' Declarations
15 in support of the request are attached as Exhibits #5 and 6 to the Blumenthal Decl.

16 As the representatives of the Class, Plaintiffs performed their duties to the Class admirably and
17 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,
18 responding to numerous requests, searching for documents, working with counsel, and reviewing the
19 settlement documentation. (Blumenthal Decl. at ¶ 14.) As set forth in the Agreement, Plaintiffs are
20 also providing a comprehensive release as part of the Settlement, far beyond the class release. The
21 Plaintiffs' Declaration detail the involvement, stress and risks they undertook as a result of this Action.
22 Plaintiffs also assumed the serious risk that they might possibly be liable for costs and fees to
23 Defendant, as well as the reputational risk of being "blacklisted" by other future employers for having
24 filed a class action on behalf of employees. (Blumenthal Decl. at ¶15.) Without the Plaintiffs'
25 participation, cooperation and information, no other employees would be receiving any benefit.
26 (Blumenthal Decl. at ¶¶ 15-16).

27 The payment of service awards to successful class representatives is appropriate and the amount
28 is within the currently awarded range for similar settlements. *See, e.g., Andrews v. Plains All Am.*

1 *Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (service awards of \$15,000 each
2 are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal.
3 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
4 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
5 \$351); *Louie, supra*, 2008 WL 4473183 at *7 (awarding \$25,000 service award to each of six plaintiffs
6 in overtime class action); *Glass, supra*, 2007 WL 221862 at *16-17 (awarding \$25,000 service award).
7 Accordingly, Class Counsel respectfully requests approval of the Class Representative Service Payment
8 in accordance with the Agreement.

9 **VI. CONCLUSION**

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

13 Respectfully submitted,

14 Dated: October 20, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP**

15 By: /s/ Kyle Nordrehaug
16 Kyle R. Nordrehaug,
Attorneys for Plaintiffs