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

NICHOLAS KALUZA, an individual, on
behalf of himself and on behalf of all
persons similarly situated, and on behalf
of the State of California, as a private
attorney general,

Plaintiffs,

vs.

BOEING AEROSPACE OPERATIONS,
INC., a Delaware Corporation; and DOES
1-50, Inclusive,

Defendants.

CASE NO.: **37-2022-00004602-CU-OE-CTL**
[Consolidated with Case No.
37-2022-00004879-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: July 26, 2024
Hearing Time: 9:00 a.m.
[Hearing scheduled by Order dated March 4, 2024]
Judge: Hon. Michael T. Smyth
Dept.: 67

Action Filed: February 4, 2022
Trial Date: Not set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class 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 March 4, 2024 (“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. Plaintiff Nicholas Kaluza (“Plaintiff”) respectfully submits this
9 memorandum in support of the unopposed motion for final approval 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 requests for exclusion**, which means that
13 the entire Class has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a positive
14 response from the Class evidencing their collective approval of the settlement. As a result, Plaintiff
15 respectfully submits that the class settlement should be finally approved for the same reasons that the
16 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 Defendant
19 Boeing Aerospace Operations, Inc. (“Defendant”) is Five Hundred Thousand Dollars (\$500,000).
20 (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following
21 elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class
22 Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses
23 Payment; (4) the Class Representative Service Payment to the Plaintiff; and (5) the PAGA Penalties

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 Defendant
27 Boeing Aerospace Operations, Inc. in California and classified as a non-exempt employee at any time
28 during the Class Period.” The “Class Period” is defined as “February 4, 2018 through March 30, 2023.”
(Preliminary Approval Order at 3:8-14.)

1 payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share
2 of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
3 to Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b).

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

6 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
7 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
8 is "fair, adequate, and reasonable". (Preliminary Approval Order at 2:17-20.) In sum, the Settlement
9 valued at \$500,000 is an excellent result for the Class. This result is particularly favorable in light of
10 the fact that liability and class certification in this case were far from certain in light of the defenses
11 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
12 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
13 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

14 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL** 15 **OF CLASS ACTION SETTLEMENTS**

16 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
17 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
18 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
19 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
20 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

21 The court must decide whether the proposed settlement falls within the range of reasonable
22 settlements, taking into account that settlements are compromises between the parties reflecting
23 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See*
24 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be
25 judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs
26 prevailed at trial.") In *Wershba*, the Court explained that "the merits of the underlying class claims are
27 not a basis for upsetting the settlement of a class action." *Id.*; *see also 7-Eleven, supra*, at 1150.

28 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that

1 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
2 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
3 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
4 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
5 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th
6 at 1801. Here, the facts and circumstances compel the conclusion that the proposed settlement satisfies
7 that standard and the presumption applies.

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

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

21 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
22 Due regard should be given to what is otherwise a private consensual agreement between the parties.
23 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
24 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
25 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*
26 “Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing,
27 gross approximations and rough justice.' [Citation omitted.]” *Id.*

28 These factors are analyzed seriatim below, and all support final approval of the class action

1 settlement before this Court, consistent with this Court's Preliminary Approval Order.

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

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

5 Over the course of more than a year of litigation, the Parties engaged in the investigation of the
6 claims, including the production of documents, class data, and other information, allowing for the full
7 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
8 investigation performed was detailed at length in the motion for preliminary approval. The Settlement
9 was the product of arms-length and contentious negotiations through an all-day mediation presided over
10 by Tripper Ortman, Esq., a respected and experience mediator of wage and hour class actions. The
11 details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(h).

12 2. The Settlement was Reached Through Arm's Length Bargaining

13 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
14 before an experienced and well-respected mediator. Defendant has expressly denied and continue to
15 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
16 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
17 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to
18 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
19 settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has
20 previously litigated and certified similar claims against other employers. Blumenthal Decl. ¶7(a).

21 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
22 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
23 for the mediation, Defendant provided Class Counsel with payroll, time and employment data, along
24 with and other information regarding the Class Members, various internal documents, and other
25 compensation and employment-related materials. Class Counsel analyzed the data with the assistance
26 of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator. The
27 final settlement terms were negotiated and set forth in the Agreement now presented for this Court's
28 approval. Blumenthal Decl. ¶7(b).

1 The fact that the settlement was negotiated with the assistance of an experienced mediator
2 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
3 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
4 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
5 litigation, with the assistance of a well-respected mediator with substantial experience in employment
6 litigation[, and] this factor supports approval of the settlement”).

7 From July 2023 to February 2024, the settlement agreement and exhibits thereto were finalized
8 and executed, and then presented by motion to this Court for preliminary approval. On March 4, 2024,
9 the Court issued its Order granting preliminary approved of the settlement as fair and reasonable to the
10 Class. Blumenthal Decl. ¶7(c).

11 3. Class Counsel is Experienced in Similar Litigation

12 Class Counsel in this matter has extensive class action experience and has represented thousands
13 of persons in class actions including employment litigation, wage and hour class actions, and complex
14 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
15 claims similar to this case and have been approved as experienced class counsel during contested
16 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
17 knowledgeable in this area of law. *See* Blumenthal Decl. at ¶ 2; Declaration of Jean-Claude Lapuyade
18 at ¶¶ 13-18; Declaration of Shani O. Zakay at ¶¶ 3-4. Class Counsel have participated in every aspect
19 of the settlement discussions and have concluded the settlement is fair, adequate and reasonable and in
20 the best interests of the Class. Blumenthal Decl. ¶ 3(j).

21 4. There Are No Objections and No Requests for Exclusion

22 The reaction of the Class unequivocally supports approval of the Settlement. On April 2, 2024,
23 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
24 class member with the terms of the Settlement, including notice of the claims at issue and the financial
25 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
26 how individual settlement awards would be calculated, and the specific, estimated payment amount to
27 that individual. *See* Declaration of Lisa Pavlik (“Pavlik Decl.”) at ¶ 8, Exh. A. In disseminating the
28 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary

1 Approval Order. Significantly, there have been no objections and no requests for exclusion. Pavlik
2 Decl. at ¶¶ 11-12. As such, the entire Class will participate in the Settlement and will be sent a
3 settlement check. See Pavlik Decl. at ¶¶ 13-14; Blumenthal Decl. ¶4.

4 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
5 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
6 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
7 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d.
8 Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*,
9 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
10 settlement should be considered when determining fairness of settlement). Here, where there are no
11 objections, the approval of the class is evident.

12 5. The Strength of Plaintiff's Case

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

20 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
21 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
22 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
23 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that
24 Class Members were paid for all time worked and that all work time was properly recorded. Defendant
25 contends that its meal and rest period policies fully complied with California law and Defendant did not
26 fail to provide the opportunity for legally required meal and rest breaks. Defendant could argue that its
27 payment of meal and rest period premiums is evidence of lawful practices. Defendant contend that
28 there was no failure to pay for business expenses and any cell phone usage was merely convenient and

1 voluntary such that reimbursement was not legally required. Finally, Defendant could argue that the
2 Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's
3 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also
4 argues that based on its facially lawful practices, Defendant acted in good faith and without willfulness,
5 which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements.
6 If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
7 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
8 have merit and therefore present a serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

11 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
12 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
13 Associates were misclassified as exempt. In addition to the uncertainties raised by
14 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
15 Defendants notes that the question of an employer's duty to provide rest and meal
periods is an open one, signaling even less certainty for Plaintiffs. [...]he gross
settlement amount and the Class Members' expected net recovery, after fees and other
costs are deducted, appear to be a reasonable compromise, in light of the risks of
litigation.

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

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

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

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

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

8 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
9 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
10 substantial defenses both to liability and to class certification. Currently, the maximum and average
11 class member allocation are \$1,668.89 and \$959.77, respectively. *See* Pavlik Decl. ¶ 16. Given the
12 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
13 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

21 Plaintiff and Class Counsel recognize the risks, expense and length of continuing to litigate and
22 trying this Action against Defendant and then litigating possible appeals which could take several years.
23 Class Counsel also have taken into account the uncertain outcome, the risk of litigation, especially in
24 complex actions such as this one. Class Counsel are also mindful of and recognize the inherent
25 problems of proof under, and alleged defenses to, the claims asserted in the Action. Moreover, post-
26 trial motions and appeals would have been inevitable. Costs would have mounted and recovery would
27 have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class
28 Counsel believe that the Settlement confers substantial benefits upon the Class. Based upon their

1 evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement
2 is in the best interest of the Class. Blumenthal Decl. ¶8(c).

3 Although Plaintiff and Class Counsel believe that their case has merit, which Defendant
4 continue to vigorously deny, they recognized the potential risks both sides would face if litigation of
5 these Actions continued. As the court explained in *Glass*:

6 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
7 and likely duration of further litigation likewise favors the settlement. Regardless of how
8 this Court might have ruled on the merits of the legal issues, the losing party likely
would have appealed, and the parties would have faced the expense and uncertainty of
litigating an appeal.

9 *Id.* at *12.

10 7. The Amount Offered in Settlement

11 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
12 to Plaintiff's claims. The Declaration of Nordrehaug and Supplemental Declaration of Nordrehaug
13 submitted in support of preliminary approval discussed the value of the class claims in detail.

14 The calculations to compensate for the amount due for the Class at the time of the mediation
15 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
16 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
17 wages for the employees. The maximum potential damages were calculated to be \$194,211 for the
18 alleged unpaid wages due to off-the-clock work at 5 min per day, \$1,418,171 for alleged meal and rest
19 period damages based upon a 10% potential violation rate for shifts worked and after deducting the
20 meal and rest premiums actually paid by Defendant, \$51,570 for alleged unreimbursed business
21 expenses for personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total
22 damage valuation was calculated that Defendant was subject to a maximum damage claim in the
23 amount of \$1,663,952. As to potential penalties, Plaintiff calculated that potential waiting time
24 penalties were a maximum of \$1,710,438, and potential maximum wage statement penalties were
25 \$887,172.³ Defendant disputed Plaintiff's calculations and exposure theories. Blumenthal Decl. ¶8(d).

26
27 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
28 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
by Defendant. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no

1 Consequently, the Gross Settlement Amount of \$500,000 represents more than 30% of the
2 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
3 The above maximum calculations should then be adjusted in consideration for both the risk of class
4 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
5 settlement as compared to the potential value of claims in this case and the defenses asserted by
6 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
7 Blumenthal Decl. ¶8(d).

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

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

12 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
13 for the successful prosecution and resolution of this action. California state and federal courts have
14 recognized that an appropriate method for determining award of attorneys' fees is based on a percentage
15 of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91
16 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (Cal. 1977); *Boeing Co. v. Van*
17 *Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
18 The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread

19 willful failure to pay wages if the employer and employee have a good faith dispute as to whether and
20 when the wages were due.").

21 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
22 Plaintiff did not included the PAGA claim in this discussion of the value of the class claims. The
23 PAGA claim was addressed in the Declaration of Nordrehaug at ¶33 [ROA #50] submitted in support
24 of the Motion for Preliminary Approval.

25 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
26 settlement where the settlement amount constituted approximately 25% of the estimated overtime
27 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
28 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
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 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear
2 the entire burden alone.” *Vincent*, 557 F.2d at 769.

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

12 First, the fee award representing one-third of the fund clearly falls within that range and is
13 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
14 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
15 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,
16 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
17 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved
18 a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

19 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
20 Here, Plaintiff and their counsel secured a \$500,000 settlement for the benefit of the Class. The
21 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiff could
22 potentially prevail on the contested issues regarding liability, maintain class certification, overcome
23 difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f).
24 In successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage and
25 hour and class action litigation. Moreover, as discussed above, there were significant risks to the
26 contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.
27 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the common fund**
28 **as attorneys' fees has been found to be appropriate.**”)

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

6 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
7 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

8 No one expects a lawyer whose compensation is contingent upon his success to charge, when
9 successful, as little as he would charge a client who had agreed to pay for his services, regardless
of success. Nor, particularly in complicated cases producing large recoveries, is it just to make
a fee depend solely on the reasonable amount of time expended.

10 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$500,000 has been created.
11 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
12 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
13 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
14 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class
15 action litigation, is entitled to a premium above their hourly rate in order to compensate for both
16 the risks and the delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
17 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
18 Cir. 2016) (abuse of discretion not to apply risk multiplier).

19 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
20 the requested attorneys’ fee of one-third equal to \$166,666 is also established by reference to Class
21 Counsel’s lodestar in this matter. The contemporaneous billing records for Class Counsel evidence that
22 through July 1, 2024, Class Counsel’s total lodestar is \$228,649.25, with significant additional fees still
23 to be incurred to complete final approval and the settlement process. (Blumenthal Decl. at ¶12 and
24 Exhibit #3 [lodestar of \$202,506.25]; Declaration of Jean-Claude Lapuyade at ¶4 [lodestar of \$16,210];
25 Declaration of Shani O. Zakay at ¶5 [lodestar of \$9,930].) The requested fee award is therefore less
26 than Class Counsel’s total lodestar, representing a “negative multiplier” of 0.7, and there will be
27 additional lodestar incurred by Class Counsel to complete the settlement process and manage the
28

1 settlement distribution and reports. (Blumenthal Decl. at ¶12.) Such a negative multiplier is below the
2 range of positive multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*,
3 290 F.3d 1043, 1051 (9th Cir. 2002).⁶ For such reasons, Class Counsel's request for attorneys' fees in
4 the amount of one-third of the common fund is fair and reasonable and should be approved.

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

6 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "a Class Counsel
7 Litigation Expense of not more than \$26,000". Class Counsel requests reimbursement for incurred
8 litigation expenses and costs in the amount of \$26,000 based upon counsel's billing records which
9 evidence total expenses of \$27,199.98. Because of the cap, the requested expense award is less than
10 actual expenses incurred. The details of the litigation expenses incurred are set forth the Blumenthal
11 Decl. at ¶13 and Exhibit #3 (expenses of \$21,038.83); Declaration of Jean-Claude Lapuyade at ¶10
12 (expenses of \$2,022.12); Declaration of Shani O. Zakay at ¶9 (expenses of \$4,139.03).⁷ These costs
13 were reasonably incurred in the prosecution of the Action. Because these costs were reasonable and
14 necessary to the successful prosecution of these claims, the request is reasonable and should be granted.

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

16 Plaintiff respectfully submits that for his service as the class representative, Plaintiff should be
17 awarded the agreed service award of \$10,000, in accordance with the Agreement for his time, risk and
18 effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendant has agreed to this payment
19 and there have been no objections to the requested service award. The Blumenthal Decl., at ¶14,

20 ⁶ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
21 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
22 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*
23 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
24 *re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of
25 2.52 as "fair and reasonable"); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming
multiplier of 2.53 as well within the approved range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S.
Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

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

1 provides a long list of equivalent service awards approved in California in similar cases, which further
2 supports the request in this case. The Declaration of the Plaintiff is submitted in support of this request
3 and is attached as Exhibits #5 to the Blumenthal Decl and details the involvement, stress and risks he
4 undertook as a result of this Action.

5 As the representative of the Class, Plaintiff performed his duty to the Class admirably and
6 without exception. Plaintiff worked extensively with Class Counsel during the course of the litigation,
7 responding to numerous requests, searching for documents, working with counsel, and reviewing the
8 settlement documentation. (Blumenthal Decl. at ¶ 14.) Plaintiff also assumed the serious risk that he
9 might possibly be liable for costs and fees to Defendant, as well as the reputational risk of being
10 “blacklisted” by other future employers. (Blumenthal Decl. at ¶15.) Without the Plaintiff’s
11 participation, , no other employees would be receiving any benefit. .

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

22 **VI. CONCLUSION**

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

26 Dated: July 1, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

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