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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SACRAMENTO**

EDWARD VIRGEN III, HOLLY  
ALSOP, and CHRISTOPHER SHEA  
O'DONNELL, on behalf of the State of  
California, as private attorney generals,  
and as individuals, on behalf of  
themselves and on behalf of all persons  
similarly situated,

Plaintiffs,

vs.

CURALEAF CA, INC., a California  
Corporation; CURA CA LLC, a  
California Limited Liability Company;  
CURA CS INC., a Corporation; and  
DOES 1 through 50, inclusive,

Defendants.

**CASE NO.: 34-2022-00314655-CU-OE-GDS**

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

**Reservation ID: #A-314655-003**

Hearing Date: January 17, 2025

Hearing Time: 9:00 a.m.

*[Hearing scheduled by Order dated June 28, 2024  
and continued on September 18, 2024]*

Judge: Hon. Lauri A. Damrell  
Dept.: 22

Action Filed: January 27, 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.”).<sup>1</sup> In  
5     accordance with the Preliminary Approval Order dated June 28, 2024 (“Preliminary Approval Order”),  
6     the approved Class Notice has been disseminated to the Class.<sup>2</sup>

7             The purpose of this hearing is to determine whether the proposed settlement of the litigation  
8     should be finally approved. Plaintiffs Holly Alsop, Christopher Shea O'Donnell, and Edward Virgen  
9     III (“Plaintiffs”) respectfully move for final approval, including attorneys’ fees, costs and the service  
10    award, and the proposed entry of the Final Approval Order and Judgment, submitted herewith. The  
11    settlement represents an excellent result for the Class and avoids the delays, risks, and costs of further  
12    litigation. After disseminating the notice to the members of the Class, there were **no objections and**  
13    **only two (2) requests for exclusion**, which means that nearly the entire Class (99.26%) has elected to  
14    participate in the Settlement. Blumenthal Decl. ¶4. This is a positive response from the Class evidencing  
15    their collective approval of the settlement. As a result, Plaintiffs respectfully submit that the class  
16    settlement should be finally approved for the same reasons that the Court preliminarily approved the  
17    settlement 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 Defendants  
20    Curaleaf CA, Inc., Cura CA LLC, and Cura CS Inc. ("Defendants") is Five Hundred Fifty-One  
21    Thousand Four Hundred Fifty-Nine Dollars (\$551,459) (the "Gross Settlement Amount") (Agreement  
22    at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross Settlement Amount consists of the following  
23    elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class

---

24  
25            <sup>1</sup> Capitalized terms are defined in the Agreement.

26            <sup>2</sup> The “Class” is defined as “all individuals who are or previously were employed by Defendants  
27    Curaleaf CA, Inc., Cura CA LLC, and Cura CS Inc. in the State of California on a non-exempt basis at  
28    any time during the Class Period.” The “Class Period” is “January 27, 2018 through March 18, 2022.”  
Preliminary Approval Order, 3:13-16, as modified by the Order of August 20, 2024 regarding the Class  
Period cutoff.

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

7 **\$551,459** (Gross Settlement Amount)

- 8 - \$37,500 (Plaintiffs' proposed service award not to exceed \$12,500 each)
- 9 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$183,819 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 11 - \$10,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$8,500 (Administration Expenses Payment)

13 **\$286,640** (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 Blumenthal 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 2:16-19.) In sum, the Settlement  
19 valued at \$551,459 is an excellent result for the Class. This result is particularly favorable in light of  
20 the fact that liability and class certification in this case were far from certain in light of the defenses  
21 asserted by Defendants. Given the complexities of this case, the defenses asserted, the uncertainty of  
22 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is  
23 fair, reasonable and adequate, and should be finally approved. Blumenthal 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); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th 399, 408  
27 (2010).

28 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.

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

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

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

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

12 Over the course of nearly three years of litigation, the Parties engaged in the investigation of the  
13 claims, including the production of documents, class data, and other information, allowing for the full  
14 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and  
15 investigation performed was detailed at length in support of the motion for preliminary approval. The  
16 Parties participated in mediation on August 16, 2023 with Tripper Ortman, which after arms’ length  
17 negotiations both during and after the mediation, resulted in this Settlement. The details of the litigation  
18 are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

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

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

26 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and  
27 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation  
28 for the mediation, Defendants provided Class Counsel with payroll and employment data and other

1 information regarding the Class Members, various internal documents, and other compensation and  
2 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert  
3 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement  
4 terms were negotiated and set forth in the Agreement. Blumenthal Decl. ¶7(b).

5 The fact that the settlement was negotiated with the assistance of an experienced mediator  
6 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*  
7 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at \*15 (N.D. Cal.  
8 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the  
9 litigation, with the assistance of a well-respected mediator with substantial experience in employment  
10 litigation[, and] this factor supports approval of the settlement”). Following mediation, in March 2024  
11 the Agreement was finalized and executed, and on April 4, 2024 for the Motion for Preliminary  
12 Approval was filed. The Parties then provided supplemental briefing to address certain issues raised by  
13 the Court in its April 26, 2024 tentative ruling, and on June 28, 2024 the Court issued its Preliminary  
14 Approval Order granting preliminary approved of the settlement as fair, adequate, and reasonable to the  
15 Class. Blumenthal Decl. ¶7(c).

### 16 3. Class Counsel is Experienced in Similar Litigation

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

### 26 4. There Are No Objections and Only Two (2) Requests for Exclusion

27 The reaction of the Class unequivocally supports approval of the Settlement. On September 20,  
28 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided

1 each class member with the terms of the Settlement, including notice of the claims at issue and the  
2 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being  
3 sought, how individual settlement awards would be calculated, and the specific, estimated payment  
4 amount to that individual. See Declaration of Makenna Snow ("Snow Decl.") ¶ 8, Exh. A. In  
5 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in  
6 its Preliminary Approval Order. Significantly, there have been no objections and only two (2) requests  
7 to opt-out. Snow Decl. ¶¶ 12-13. As such, nearly the entire Class (99.26%) will participate in the  
8 Settlement and will be sent a settlement check. See Snow Decl. at ¶¶ 15-17; Blumenthal Decl. ¶4.

9 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the  
10 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F.Supp.2d 164, 175 (S.D.N.Y.  
11 2000) ("If only a small number of objections are received, that fact can be viewed as indicative of the  
12 adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29  
13 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*, 638 F.2d 954  
14 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed settlement should  
15 be considered when determining fairness of settlement). Here, where there are no objections, the  
16 approval of the class is evident.

#### 17 5. The Strength of Plaintiff's Case

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

26 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*  
27 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by  
28 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.

1 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants  
2 argued that Class Members were paid for all time worked, that all work time was properly recorded, and  
3 that the regular rate was properly calculated. Defendants contend that its meal and rest period policies  
4 fully complied with California law and Defendants did not fail to provide the opportunity for legally  
5 required meal and rest breaks. Defendants could argue that their payment of significant meal period  
6 premiums is evidence of lawful practices. Defendants contend that there was no failure to pay for  
7 business expenses and any cell phone usage was merely convenient and voluntary such that  
8 reimbursement was not legally required. Finally, Defendants could argue that the Supreme Court  
9 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability,  
10 value, and class certifiability as to the meal and rest period claims. Defendants also argue that based  
11 on their facially lawful practices, Defendants acted in good faith and without willfulness, which if  
12 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If  
13 successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class.  
14 While Plaintiffs believe that these defenses could be overcome, Defendants maintain these defenses  
15 have merit and therefore present a serious risk 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 behalf  
6 of any employees other than themselves. At the time of the mediation, Defendants forcefully opposed  
7 the propriety of class certification, arguing that individual issues precluded class certification. Further,  
8 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59  
9 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the  
10 class has been certified. While other cases have approved class certification in wage and hour claims,  
11 class certification in this action was hotly disputed and the maintenance of a certified class through trial  
12 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 Defendants asserted serious and  
15 substantial defenses both to liability and to class certification. Currently, the maximum and average  
16 class member allocation are \$1,069.55 and \$3,235.77, respectively. *See* Snow Decl. ¶ 17. 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 Defendants would post a bond and appeal in the event  
22 of an adverse judgment. A post-judgment appeal by Defendants would have required many more years  
23 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case  
24 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh  
25 an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

26 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying  
27 this Action against Defendants through possible appeals which could take several years. Class Counsel  
28 has also taken into account the uncertain outcome and risk of litigation, especially in complex class

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

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

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

18 *Id.* at \*12.

#### 19 7. The Amount Offered in Settlement

20 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses  
21 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval  
22 which discussed the value of the class claims in detail, the Gross Settlement Amount compares  
23 favorably to the value of the claims. Based upon 268 Participating Class Members who collectively  
24 worked an estimated 18,780 workweeks, the Gross Settlement Amount provides an average value of  
25 \$2,057 per Class Member and \$29 per workweek and after deductions the Net Settlement Amount  
26 provides an average recovery of \$1,069.55 per Class Member and a recovery of \$15.26 per workweek.  
27 Blumenthal Decl. at ¶8(d).

28 The calculations to compensate for the amount due for the Class at the time of the mediation  
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

1 wages for the employees. The maximum potential damages were calculated to be \$151,493 for the  
2 alleged unpaid wages due to off-the-clock work at 5 minutes per shift, \$5,399 for the alleged unpaid  
3 wages due to the regular rate miscalculation applicable to overtime, \$6,598 for the alleged unpaid wages  
4 due to the regular rate miscalculation applicable to meal premiums and sick pay, \$349,514 for alleged  
5 meal period damages based upon a 37.6% potential violation rate for shifts worked observed in the time  
6 records and after deducting the meal premiums (\$93,538) actually paid by Defendants, \$502,500 for  
7 alleged rest period damages based upon the same potential 37.6% violation rate observed for meal  
8 periods, \$21,980 for alleged unreimbursed business expenses for personal cell phone usage at \$5 per  
9 month. As a result, the total damage valuation was calculated that Defendants were subject to a  
10 maximum damage claim in the amount of \$1,037,484. As to potential penalties, Plaintiffs calculated  
11 that potential waiting time penalties were a maximum range of between \$399,812 and \$1,106,849,  
12 depending on the predicate violation, and potential maximum wage statement penalties were \$240,000.<sup>3</sup>  
13 Defendants vigorously disputed Plaintiffs' calculations and exposure theories. Blumenthal Decl. ¶8(d).

14 Consequently, the Gross Settlement Amount of \$551,459 represents more than 53% of the  
15 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated,  
16 assuming those amounts could be proven at trial.<sup>4</sup> Importantly, the recent decision that good faith belief  
17 of compliance by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024),  
18 could completely negate the claims for waiting time and wage statement penalties, even if wages were  
19 owed to the Class. The above maximum calculations should then be adjusted in consideration for both  
20 the risk of class certification and the risk of establishing class-wide liability on all claims. Given the

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21  
22 <sup>3</sup> While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and  
23 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses  
24 asserted by Defendants, including, a good faith dispute defense as to whether any premium wages for  
25 meal or rest periods or other wages were owed given Defendants' position that Plaintiffs and Class  
26 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584  
27 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute  
28 as to whether and when the wages were due.").

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

1 amount of the settlement as compared to the potential value of claims in this case and the defenses  
2 asserted by Defendants, this settlement is fair and reasonable.<sup>5</sup> Clearly, the goal of this litigation has  
3 been met. Blumenthal Decl. ¶8(d).

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

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

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

17 The California Supreme Court has provided guidance regarding the award of attorneys' fees in  
18 wage and hour class action settlements. Under California law, the award of attorneys' fees in common  
19 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*  
20 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state  
21 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class

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22 <sup>5</sup> See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a  
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime  
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at \*12  
25 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents  
26 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*  
27 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of  
28 a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v.*  
*Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action  
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.  
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"  
of maximum valuation).

1 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court  
2 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund  
3 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”  
4 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

5 First, the fee award representing one-third of the fund clearly falls within that range and is  
6 consistent with other rulings of other courts and comprehensive surveys of class action settlements and  
7 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market  
8 in legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*,  
9 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that  
10 “[m]ost fee awards were between 25 percent and 35 percent”). In *Laffitte*, the Court expressly approved  
11 of a one-third fee award. Such similar awards by other Courts are set forth in the Blumenthal Decl. ¶11.

12 Second, the results delivered by Class Counsel also support the requested percentage of the fund.  
13 Here, Plaintiffs and their counsel secured a \$551,459 settlement for the benefit of the Class, and not one  
14 Class Member objected. The Settlement was possible only because Class Counsel was able to convince  
15 Defendants that Plaintiffs could potentially prevail on the contested issues regarding liability, maintain  
16 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need  
17 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the  
18 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there  
19 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297  
20 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**  
21 **one-third of the common fund as attorneys' fees has been found to be appropriate.**”)

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

27 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees  
28 reward is the attendant risks inherent in the litigation. Here, it is clear that a settlement fund of \$551,459

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

Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of the requested attorneys' fee of one-third equal to \$183,819 is also established by reference to Class Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence that through December 18, 2024, Class Counsel's lodestar is \$289,700.44, with significant additional fees still to be incurred to complete final approval and the settlement process.** Blumenthal Decl. at ¶12 and Exhibits #3 and 4. The requested fee award is therefore less than Class Counsel's total lodestar, representing a negative multiplier, and there will be additional lodestar incurred by Class Counsel to complete the settlement process and manage the settlement distribution and reports. Blumenthal Decl. at ¶12. Such cross-check is well below the range of positive multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).<sup>6</sup> For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the common fund is fair and reasonable, and should be approved.

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

The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel

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<sup>6</sup> See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino* *supra*, at 1051 (3.65 multiplier approved); *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 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 as well within the approved range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

1 Litigation Expenses Payment of not more than \$25,000.” Class Counsel requests reimbursement for  
2 incurred litigation expenses and costs in the amount of \$24,169.51. Class Counsel have incurred  
3 \$24,169.51 based upon counsel’s billing records, and these litigation expenses include the expenses  
4 incurred for filing fees, mediation expenses, expert expenses (Berger Consulting), and attorney service  
5 charges (Knox, OneLegal), all of which are costs normally billed to and paid by the client.<sup>7</sup> The details  
6 of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3 and 4.  
7 These costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl. at ¶13.)  
8 Because these costs were necessary to the successful prosecution of these claims, the request should be  
9 granted.

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

11 Plaintiffs respectfully submit that for their service as class representatives, Plaintiffs should be  
12 awarded the agreed service award of \$12,500, each, in accordance with the Agreement for their time,  
13 risk and effort expended on behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).)  
14 Defendants have agreed to this payment and there have been no objections to the requested service  
15 award. The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in  
16 California in similar cases, which further supports the request in this case. The Plaintiffs’ Declarations  
17 is submitted in support of this request and is attached as Exhibit #6 to the Blumenthal Decl.

18 As the representatives of the Class, Plaintiffs performed their duties to the Class admirably and  
19 without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation,  
20 responding to numerous requests, searching for documents, working with counsel, and reviewing the  
21 settlement documentation. (Blumenthal Decl. at ¶ 14.) The Plaintiffs’ Declarations detail the  
22 involvement, stress and risks they undertook as a result of this Action. Plaintiffs also assumed the  
23 serious risk that they might possibly be liable for costs and fees to Defendants, as well as the  
24 reputational risk of being “blacklisted” by other future employers for having filed a class action on

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25  
26 <sup>7</sup> 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 behalf of employees. (Blumenthal Decl. at ¶15.) Without the Plaintiffs' participation, cooperation and  
2 information, no other employees would be receiving any benefit. (Blumenthal Decl. at ¶¶ 15-16).

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

13 **VI. CONCLUSION**

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

17 Respectfully submitted,

18 Dated: December 19, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**  
19 By: /s/ Kyle Nordrehaug  
20 Kyle R. Nordrehaug  
21 Attorneys for Plaintiff  
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