

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Email: norm@bamlawca.com September 3, 2024
Website: www.bamlawca.com

Attorneys for Plaintiff

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

SONNY RATTLER, an individual, on
behalf of himself and on behalf of all
persons similarly situated, and on behalf
of the State of California, as private
attorney general,

Plaintiffs,

vs.

PACIFIC COAST CONTAINER, INC., a
California Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **22CV015216**
[Consolidated with Case No. 22CV015223]

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

Hearing Date: October 3, 2024
Hearing Time: 10:00 a.m.
[Hearing scheduled by Order dated May 3, 2024]

Reservation ID: A-15216-003

Judge: Hon. Tara Desautels
Dept.: 23

Action Filed: July 28, 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 First Amended Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct
4 copy of which is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal
5 Decl.”).¹ In accordance with the Preliminary Approval Order dated May 3, 2024 (“Preliminary
6 Approval Order”), the approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiff Sonny Rattler (“Plaintiff”) respectfully moves for final approval,
9 including attorneys’ fees, costs and the service award, and the proposed entry of the Final Approval
10 Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class
11 and avoids the delays, risks, and costs of further litigation. After disseminating the notice to the
12 members of the Class, there were **no objections and only three (3) requests for exclusion**, which
13 means that nearly the entire Class (99.35%) has elected to participate in the Settlement. Blumenthal
14 Decl. ¶4. This is a positive response from the Class evidencing their collective approval of the
15 settlement. As a result, Plaintiff respectfully submit that the class settlement should be finally approved
16 for the same reasons that the Court preliminarily approved the settlement as fair, reasonable, and
17 adequate.

18 **II. THE SETTLEMENT BEFORE THE COURT**

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
20 Pacific Coast Container, Inc. (“Defendant”) is One Million Five Hundred Thousand Dollars
21 (\$1,500,000) (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross Settlement Amount
22 consists of the following elements: (1) payment of the Individual Class Payments to the Participating

24 ¹ Capitalized terms are defined in the Agreement.

25 ² The “Class” is defined as “all individuals who are or previously worked for Defendant in
26 California, including any employees staffed with Defendant by a third party including LiUNA Laborer’s
27 Local Union 67, Empire Workforce Solutions, Simplified Labor Staffing Solutions, Tek Talent, Horizon
28 Personnel Services, CorTech, Chartwell Staffing Solutions, and were classified as non-exempt at any
 time during the Class Period” The “Class Period” is defined as “July 28, 2018, through July 23, 2023.”
 (Preliminary Approval Order at ¶6.)

1 Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
2 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5)
3 the PAGA Penalties. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount
4 does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement
5 Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(b).
6 The following is a table of the key financial terms of the Settlement and the proposed deductions:

7 **\$1,500,000** (Gross Settlement Amount)

- 8 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
9 - \$16,500 (Class Counsel Litigation Expenses Payment - not to exceed amount)
10 - \$500,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
11 - \$30,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
12 - \$10,500 (Administration Expenses Payment)

13 **\$933,000** (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 ¶ 3.) In sum, the Settlement valued
19 at \$1,500,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
20 that liability and class certification in this case were far from certain in light of the defenses asserted
21 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
22 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
23 reasonable and adequate, and should be finally approved. 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).

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

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

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

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

13 Over the course of more than a year of litigation, the Parties engaged in the investigation of the
14 claims, including the production of documents, class data, and other information, allowing for the full
15 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
16 investigation performed was detailed at length in support of the motion for preliminary approval. The
17 Settlement was the product of one arms-length mediation and contentious negotiations, both during and
18 after mediation, presided over by mediator Hon. Carl J. West (Ret.). The details of the litigation are
19 set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

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

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

27 The Parties attended an arms-length mediation session with Hon. Carl J. West (Ret.), a respected
28 jurist and experienced mediator of wage and hour class actions, in order to reach this Settlement. In

1 preparation for the mediation, Defendant provided Plaintiff and Class Counsel with payroll and
2 employment data and other information regarding the Class Members, various internal documents, and
3 other compensation and employment-related materials. Class Counsel analyzed the data with the
4 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
5 mediator. Following the all-day mediation session, the Parties agreed to this Settlement based upon a
6 mediator's proposal. Blumenthal Decl. ¶7(b).

7 The fact that the settlement was negotiated with the assistance of an experienced mediator
8 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
9 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
10 2007) ("The settlement was negotiated and approved by experienced counsel on both sides of the
11 litigation, with the assistance of a well-respected mediator with substantial experience in employment
12 litigation[, and] this factor supports approval of the settlement").

13 From August 2023 to February 2024, the initial settlement agreement and exhibits thereto were
14 finalized and executed. The Parties then revised the initial settlement agreement to address certain
15 issues raised by the Court in its April 2, 2024 tentative ruling, and the Agreement was fully executed
16 on April 24, 2024. On May 3, 2024, the Court issued its Order granting preliminary approval of the
17 settlement as fair, adequate, and reasonable to the Class. Blumenthal Decl. ¶7(c).

18 3. Class Counsel is Experienced in Similar Litigation

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

1 4. There Are No Objections and Only Three (3) Requests for Exclusion

2 The reaction of the Class unequivocally supports approval of the Settlement. On July 1, 2024,
3 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
4 class member with the terms of the Settlement, including notice of the claims at issue and the financial
5 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
6 how individual settlement awards would be calculated, and the specific, estimated payment amount to
7 that individual. See Declaration of Madely Nava ("Nava Decl.") ¶ 7, Exh. A. In disseminating the
8 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
9 Approval Order. Significantly, there have been no objections and only three (3) requests to opt-out.
10 Nava Decl. ¶¶ 11-12. As such, nearly the entire Class (99.35%) will participate in the Settlement and
11 will be sent a settlement check. See Nava Decl. at ¶¶ 13-15; Blumenthal Decl. ¶4.

12 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
13 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F.Supp.2d 164, 175 (S.D.N.Y.
14 2000) ("If only a small number of objections are received, that fact can be viewed as indicative of the
15 adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29
16 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*, 638 F.2d 954
17 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed settlement should
18 be considered when determining fairness of settlement). Here, where there are no objections, the
19 approval of the class is evident.

20 5. The Strength of Plaintiff's Case

21 The Action generally alleges that Plaintiff and other Class Members were not properly paid all
22 overtime wages for hours worked and at the correct rate of pay, were not provided meal and rest periods
23 or paid premiums at the correct rate of pay in lieu thereof, were not timely paid earned wages, were not
24 provided reimbursement for required expenses, were not provided accurate itemized wage statements,
25 were not pay all sick wages and the correct rate of pay, and were not paid all wages at the time of
26 termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other
27 equitable or legal relief allegedly due and owing to Plaintiff and the other Class Members by virtue of
28

1 the foregoing claims. Blumenthal Decl. ¶5.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant
4 present serious threats to the claims of the Plaintiff and the other Class Members. Defendant asserted
5 that Defendant's practices complied with all applicable Labor laws. Defendant argued that Class
6 Members were paid for all time worked and that all work time was properly recorded. Defendant
7 argued there was no miscalculation of the regular rate when paying wages and no underpayment meal
8 premiums and sick pay. Defendant contends that its meal and rest period policies fully complied with
9 California law and Defendant did not fail to provide the opportunity for legally required meal and rest
10 breaks. Defendant could argue that its payment of meal period premiums is evidence of lawful
11 practices. Defendant contends that there was no failure to pay for business expenses and any cell phone
12 usage was merely convenient and voluntary such that reimbursement was not legally required. Finally,
13 Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
14 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest
15 period claims. Defendant also argues that based on its facially lawful practices, Defendant acted in
16 good faith and without willfulness, which if accepted would negate the claims for waiting time penalties
17 and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially
18 reduce any recovery to the Class. While Plaintiff believes that these defenses could be overcome,
19 Defendant maintains these defenses have merit and therefore present a serious risk to recovery by the
20 Class. Blumenthal Decl. ¶8(a).

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

23 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
24 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
25 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.

26 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
27 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
28

1 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
2 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

3 The potential complexity and possible duration of trial also weigh in favor of granting
4 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
5 uncertainty of outcome, and believe defendant would appeal in the event of adverse
6 judgment. A post-judgment appeal would require many years to resolve and delay
7 payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
8 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees,
9 the actual recovery confers substantial benefits on the class that outweigh the potential
10 recovery through full adjudication.

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

13 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
14 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
15 of any employees other than herself. At the time of the mediation, Defendant forcefully opposed the
16 propriety of class certification, arguing that individual issues precluded class certification. Further, as
17 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
18 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class
19 has been certified. While other cases have approved class certification in wage and hour claims, class
20 certification in this action was hotly disputed and the maintenance of a certified class through trial was
21 by no means a foregone conclusion. Blumenthal Decl. ¶8(b).

22 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
23 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
24 substantial defenses both to liability and to class certification. The maximum and average class member
25 allocations (in addition to their Individual PAGA Payment) are \$5,203.27 and \$2,032.68, respectively.
26 *See Nava Decl.* ¶15. Given the complexities of this case, the defenses, along with the uncertainties of
27 proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
28 approved. Blumenthal Decl. at ¶8(e).

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

30 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
31 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event

1 of an adverse judgment. A post-judgment appeal by Defendant would have required many more years
2 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
3 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
4 an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

5 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant
6 through possible appeals which could take at least another two or three years. Class Counsel also have
7 taken into account the uncertain outcome, the risk of litigation, especially in complex actions such as
8 this one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and
9 alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions and appeals would
10 have been inevitable. Costs would have mounted and recovery would have been delayed if not denied,
11 thereby reducing the benefits of an ultimate victory. The Settlement confers substantial benefits upon
12 the Class. Based upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement
13 set forth in the Agreement is in the best interest of the Class. Blumenthal Decl. ¶8(c).

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

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

24 *Id.* at *12.

25 7. The Amount Offered in Settlement

26 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
27 to Plaintiff's claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
28 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
favorably to the value of the claims. Based upon 459 Participating Class Members who collectively
worked an estimated 46,800 workweeks, the Gross Settlement Amount provides an average value of

1 \$3,267 per Class Member and \$32 per workweek and after deductions the Net Settlement Amount
2 provides an average recovery of \$2,032.68 per Class Member and a recovery of \$19.94 per workweek.
3 Blumenthal Decl. at ¶8(d).

4 The calculations to compensate for the amount due for the Class at the time of the mediation
5 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
6 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
7 wages for the employees. The maximum potential damages were calculated to be \$1,411,132 for the
8 alleged unpaid wages due to off-the-clock work at 1 hour per week, \$69,802 for the alleged unpaid
9 wages due to the regular rate miscalculation, \$26,135 for the alleged underpaid meal premiums and sick
10 pay, \$184,263 for alleged meal period damages based upon a 4.7% potential violation rate for shifts
11 worked and after deducting the meal premiums actually paid by Defendant, \$237,234 for alleged rest
12 period damages based upon the same potential 4.7% violation rate observed for meal periods, \$55,655
13 for alleged unreimbursed business expenses for personal cell phone usage at \$5 per month. As a result,
14 the total damage valuation was calculated that Defendant was subject to a maximum damage claim in
15 the amount of \$1,984,221. As to potential penalties, Plaintiff calculated that potential waiting time
16 penalties were a maximum of between \$209,829 and \$1,049,145, depending on the predicate violation
17 giving rise to the penalty, and potential maximum wage statement penalties were \$1,068,000.³
18 Defendant vigorously disputed Plaintiff's calculations and exposure theories. Blumenthal Decl. ¶8(d).

19 Consequently, the Gross Settlement Amount of \$1,500,000 represents more than 75% of the
20 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated,
21 assuming these amounts could be proven at trial.⁴ Importantly, the recent decision that good faith belief
22

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

⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
Plaintiff did not included the PAGA claim in this discussion of the value of the class claims. The

1 of compliance by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024),
2 could completely negate the claims for waiting time and wage statement penalties, even if wages were
3 owed to the Class. The above maximum calculations should then be adjusted in consideration for both
4 the risk of class certification and the risk of establishing class-wide liability on all claims. Given the
5 amount of the settlement as compared to the potential value of claims in this case and the defenses
6 asserted by Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been
7 met. 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 (1977); *Boeing Co. v. Van Gemert*, 444
17 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
18 of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
19 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
20 alone." *Vincent*, 557 F.2d at 769.

21 _____
22 PAGA claim was addressed in the Declaration of Kyle Nordrehaug at ¶33 filed in support of Plaintiff's
23 Motion for Preliminary Approval..

24 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
25 settlement where the settlement amount constituted approximately 25% of the estimated overtime
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 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
2 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
3 fund wage and hour class action settlements should start with the percentage method. See *Laffitte v.*
4 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state
5 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
6 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
7 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
8 created"). Under the percentage of the fund method, a court's objective remains to "mimic the market"
9 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

17 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
18 Here, Plaintiff and his counsel secured a \$1,500,000 settlement for the benefit of the Class, and not one
19 Class Member objected. The Settlement was possible only because Class Counsel was able to convince
20 Defendant that Plaintiff could potentially prevail on the contested issues regarding liability, maintain
21 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
22 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
23 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
24 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
25 F.R.D. 431, 449 (E.D. Cal. 2013) ("**Like this case, where recovery is uncertain, an award of**
26 **one-third of the common fund as attorneys' fees has been found to be appropriate.**")

27 Third, "the response of the class members to attorneys' fee notice, though not decisive, is
28

1 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
2 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
3 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
4 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

5 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
6 reward is the attendant risks inherent in the litigation. Here, it is clear that a settlement fund of
7 \$1,500,000 has been created. For Class Counsel, the fees here were wholly contingent in nature and the
8 case presented far more risk than the usual contingent fee case. Among the risks was the cost inherent
9 in class action litigation, as well as a long battle with a corporate Defendant who had retained a premier
10 and highly experienced defense firm. **Counsel retained on a contingency fee basis, whether in**
11 **private matters or in class action litigation, is entitled to a premium above their hourly rate in**
12 **order to compensate for both the risks and the delay in payment.** *See e.g. Stanger v. China Elec.*
13 *Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v.*
14 *Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply risk multiplier).

15 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
16 the requested attorneys’ fee of one-third equal to \$500,000 is also established by reference to Class
17 Counsel’s lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
18 **that through September 10, 2024, Class Counsel’s total lodestar is \$254,473.75, with significant**
19 **additional fees still to be incurred to complete final approval and the settlement process.**
20 (Blumenthal Decl. at ¶12 and Exhibits #3 and 4.) The requested fee award is therefore currently
21 equivalent to Class Counsel’s total lodestar with a reasonable multiplier of less than 2, and there will
22 be additional lodestar incurred by Class Counsel to complete the settlement process and manage the
23 settlement distribution and reports. (Blumenthal Decl. at ¶12.) Such a multiplier is below the range
24 of multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
25 1051 (9th Cir. 2002).⁶

26
27 ⁶ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
28 *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.

1 For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the
2 common fund is fair and reasonable, and should be approved.

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

4 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
5 Litigation Expenses Payment of not more than \$16,500." Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$13,833.05. Class Counsel have incurred
7 \$13,833.05 based upon counsel's billing records. These litigation expenses include the expenses
8 incurred for filing fees, mediation expenses, expert expenses (Berger Consulting), and attorney service
9 charges (Knox, OneLegal), and research charges (LexisNexis), all of which are costs normally billed
10 to and paid by the client.⁷ The details of the litigation expenses incurred are set forth the Blumenthal
11 Decl. at ¶13 and Exhibits #3 and 4. These costs were reasonably incurred in the prosecution of the
12 Action. (Blumenthal Decl. at ¶13.) Because these costs were necessary to the successful prosecution
13 of these claims, the request should be granted.

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

15 Plaintiff respectfully submit that for his service as the sole class representative, Plaintiff should
16 be awarded the agreed service award of \$10,000, in accordance with the Agreement for his time, risk
17 and effort expended on behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).)
18 Defendant has agreed to this payment and there have been no objections to the requested service award.
19 The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California
20 in similar cases, which further supports the request in this case. The Plaintiff's Declarations is submitted
21

22 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
23 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez*
24 *v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved
25 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 in support of this request and is attached as Exhibit #6 to the Blumenthal Decl.

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

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

21 **VI. CONCLUSION**

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

25 Respectfully submitted,

26 Dated: September 10, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

27 By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Attorneys for Plaintiff