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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

LAPREAL VINCENT, CHARLENE
KEARNEY, individuals, on behalf of
themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

WESTERN BUYERS LLC, a Limited
Liability Company; US LBM
HOLDINGS, LLC, a Limited Liability
Company; ACS-US LBM, LLC, a
Limited Liability Company;
AMERICAN CONSTRUCTION
SOURCE-US LBM, INC., a
Corporation; AMERICAN
CONSTRUCTION SOURCE LLC, a
Limited Liability Company;
CALIFORNIA BUILDING SUPPLY-
US LBM, LLC, a Limited Liability
Company; DESERT LUMBER- US
LBM, LLC, a Limited Liability
Company; PARKER's BUILDING
SUPPLY -US LBM, LLC, a Limited
Liability Company and DOES 1
through 50, inclusive,

Defendants.

Case No. **23CV00757**

**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: September 26, 2024

Hearing Time: 9:30 a.m.

[*Hearing scheduled by Order dated May 16,
2024*]

Judge: Hon. JoAnn Bicego

Courtroom: 2

Action Filed: January 23, 2023

Trial Date: Not set

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1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action and PAGA Settlement Agreement (the “Agreement”), a true and correct copy of which is
4 attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In accordance
5 with the Preliminary Approval Order dated May 16, 20224 (“Preliminary Approval Order”), the
6 approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiffs Lapreal Vincent and Charlene Kearney (“Plaintiffs”) respectfully
9 move for final approval and the proposed entry of the Final Approval Order and Judgment, submitted
10 herewith. The settlement represents an excellent result for the Class and avoids the delays, risks, and
11 costs of further litigation. After disseminating the notice to the 1,023 members of the Class, **there were**
12 **no objections and no requests for exclusion** from the Class, which means that the entire Class (100%)
13 has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a positive response from the
14 Class evidencing their collective approval of the settlement. As a result, Plaintiffs respectfully submit that
15 the settlement should be finally approved for the same reasons that the Court preliminarily approved the
16 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 Defendants
19 Western Buyers, LLC; US LBM Holdings, LLC; ACS - US LBM, LLC; American Construction
20 Source - US LBM, Inc.; American Construction Source, LLC; California Building Supply - US
21 LBM, LLC; Desert Lumber - US LBM, LLC; Parker's Building Supply - US LBM, LLC
22 (“Defendants”) is One Million Nine Hundred Thousand Dollars (\$1,900,000) (Agreement at ¶¶ 1.22
23 and 3.1.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
24 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who were employed by one or more of the Defendants in
27 California and classified as a non-exempt employee at any time during the Class Period.” The “Class
28 Period” is defined as “January 23, 2019 to May 16, 2024.”(Preliminary Approval Order at ¶ 5.)

1 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the
2 Class Representative Service Payments to Plaintiffs; and (5) the PAGA Penalties payment. (Agreement
3 at ¶ 1.22.) Blumenthal Decl. ¶3(a). 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 **\$1,900,000 (Gross Settlement Amount)**

- 8 - \$30,000 (Plaintiffs' proposed service awards not to exceed \$15,000 each)
- 9 - \$40,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$633,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 11 - \$95,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$12,950 (Administration Expenses Payment)

13 **\$1,088,717 (Net Settlement Amount)**

14 The specific details of the Settlement were discussed in the Motion for Preliminary Approval and are set
15 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 \$1,900,000 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 by
21 Defendants. 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 act
11 intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced
12 in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*, 48 Cal. App.
13 4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the proposed
14 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.*
17 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
18 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether
19 the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The
20 well-recognized factors that the trial court should consider in evaluating the reasonableness of a class
21 action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and
22 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
23 offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience
24 and views of counsel, the presence of a governmental participant, and the reaction of the class members
25 to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
26 (internal citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th
27 399, 408 (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 agreement
4 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that
5 the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
6 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
7 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 one year of litigation, the Parties engaged in the investigation of
14 the claims, including the production of documents, class data, and other information, allowing for the
15 full and complete analysis of liabilities and defenses to the claims in this Action. The procedural history
16 and investigation performed was detailed at length in support of the motion for preliminary approval.
17 The Settlement was the product of one full-day arms-length mediation and one additional half-day arms-
18 length mediation, and contentious negotiations throughout, presided over by David A. Rotman, Esq.
19 The details of the litigation are 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. Defendants have expressly denied and continue to deny
23 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs 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 who
26 has previously litigated similar claims against other employers. Blumenthal Decl. ¶7(a).

27 The Parties attended one full-day arms-length mediation session and a second half-day arms-
28 length mediation session with David A. Rotman, Esq., a respected and experienced mediator of wage

1 and hour class actions, in order to reach this Settlement. In preparation for the mediation, Defendants
2 provided to Plaintiffs and Class Counsel payroll and employment data and other information regarding
3 the Class Members, various internal documents, and other compensation and employment-related
4 materials. Class Counsel analyzed the data with the assistance of damages expert Berger Consulting and
5 prepared and submitted a mediation brief to the mediator. Following the second, half-day mediation, the
6 Parties agreed to this Settlement based upon a 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 at *15 (N.D. Cal. 2007) (where settlement was "negotiated
10 and approved by experienced counsel on both sides of the litigation, with the assistance of a
11 well-respected mediator" this factor supports approval of the settlement").

12 From March 2024 to April 2024, the settlement agreement and exhibits thereto were negotiated,
13 finalized and executed. On May 16, 2024, the Court granted the Motion for Preliminary Approval, and
14 entered the Order granting preliminary approved of the settlement as fair and reasonable to the Class.
15 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 motions
21 in state and federal courts throughout California. The experience of counsel and class action cases
22 managed and settled by the Class Counsel in this action is provided to the Court in the Blumenthal Decl.
23 at Exhibit #1. Class Counsel have participated in every aspect of the settlement discussions and have
24 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 No Requests for Exclusion

27 The reaction of the Class unequivocally supports approval of the Settlement. On June 20, 2024,
28

1 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
2 class member with the terms of the Settlement, including notice of the claims at issue and the financial
3 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
4 how individual settlement awards would be calculated, and the specific, estimated payment amount to
5 that individual. See Declaration of Nicole Bench ["Bench Decl."], ¶ 8, Exh. A. In disseminating the
6 notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary
7 Approval Order. Significantly, there have been no objections and no requests to opt-out. Bench Decl.
8 ¶¶ 12-13. As such, the entire Class (100%) will participate in the Settlement and will be sent a
9 settlement check. See Bench Decl. at ¶¶ 16-18; Blumenthal Decl. ¶4.

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

18 5. The Strength of Plaintiffs' Case

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

1 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
2 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
3 argued that Class Members were paid for all time worked and that all work time was properly recorded.
4 Defendants maintained there was no miscalculation of the regular rate when paying wages to the
5 Plaintiffs and the Class. Defendants contend that their meal and rest period policies fully complied with
6 California law and that Defendants did not fail to provide the opportunity for legally required meal and
7 rest breaks. Defendants could argue that its payment of significant meal period premiums is evidence
8 of its lawful practices. Defendants contend that there was no failure to pay for business expenses and
9 any cell phone usage was merely convenient and voluntary such that reimbursement was not legally
10 required. Finally, Defendants could argue that the Supreme Court decision in *Brinker v. Superior Court*,
11 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the
12 meal and rest period claims. Defendants also argue that based on its facially lawful practices, Defendants
13 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
14 penalties and/or inaccurate wage statements. If successful, Defendants' defenses could eliminate or
15 substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be
16 overcome, Defendants maintain these defenses have merit and therefore present a serious risk to
17 recovery by the Class. Blumenthal Decl. ¶8(a).

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

20 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
21 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
22 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.

23 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
24 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's case, legal
25 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
26 approval."). As recognized in a federal decision approving settlement of an overtime wage class action:

27 The potential complexity and possible duration of trial also weigh in favor of granting
28 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the

1 uncertainty of outcome, and believe defendant would appeal in the event of adverse
2 judgment. A post-judgment appeal would require many years to resolve and delay
3 payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
4 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees,
5 the actual recovery confers substantial benefits on the class that outweigh the potential
6 recovery through full adjudication.

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

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

18 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
19 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and
20 substantial defenses both to liability and to class certification. The maximum and average Class Member
21 allocation (in addition to their Individual PAGA Payment) are \$3,016.38 and \$1,064.24, respectively.
22 *See* Bench Decl. ¶15. Given the complexities of this case, the defenses, along with the uncertainties of
23 proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
24 approved. Blumenthal Decl. at ¶8(e).

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

26 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
27 cannot be overstated. There is little doubt that Defendants would post a bond and appeal in the event
28 of an adverse judgment. A post-judgment appeal by Defendants would have required many more years
29 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
30 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh

1 an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

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

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

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

21 *Id.* at *12.

22 7. The Amount Offered in Settlement

23 The Settlement in this case is fair, reasonable and adequate considering Defendants' defenses to
24 Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
25 which discussed the value of the class claims in detail, the Gross Settlement Amount compares favorably
26 to the value of the claims. Based upon 1,023 Participating Class Members who collectively worked
27 100,701 Workweeks, which were the estimated class figures at mediation, the Gross Settlement Amount
28 provides a value of \$1,857 per Class Member and \$18.68 per Workweek, and after deductions, the Net
Settlement Amount provides an average recovery of \$1,064.24 per Class Member and a recovery of
\$10.70 per Workweek. Blumenthal Decl. at ¶8(d).

1 The calculations to compensate for the amount due for the Class at the time of the mediation
2 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
3 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
4 wages for the employees. For the Class, maximum potential damages were calculated to be \$261,906
5 for alleged reporting time wages, \$953,934 for the alleged unpaid wages for off-the-clock work due to
6 at 5 minutes per shift, \$32,439 for the alleged unpaid wages due to miscalculation of the regular rate
7 when paying wages, \$9,267 for the alleged underpayment of meal period premiums and sick pay,
8 \$1,613,224 for alleged meal period damages based upon a 23% potential violation rate for shifts worked
9 and after accounting for the meal premiums actually paid by Defendants, \$1,998,130 for alleged rest
10 period damages based upon the same 23% potential violation rate for shifts worked, \$445,120 for
11 alleged unreimbursed business expenses at \$20 per month. As a result, the total damage valuation was
12 calculated that Defendants were subject to a maximum damage claim in the amount of \$5,314,021. As
13 to potential penalties, Plaintiffs calculated that potential waiting time penalties were a maximum of
14 between \$1,560,242 and \$1,745,194, and potential maximum wage statement penalties were
15 \$2,901,950.³ Defendants disputed these calculations and exposure theories. Blumenthal Decl. at ¶ 8(d).

16 Consequently, the Gross Settlement Amount of \$1,900,000 represents more than 35% of the
17 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
18 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
19 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
20

21
22 ³ 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
Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
(2010) ("There 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.").

26 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
27 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
28 PAGA claim is addressed in the Declaration of Nordrehaug at ¶33 filed in support of preliminary
approval.

1 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
2 calculations should then be adjusted in consideration for both the risk of class certification and the risk
3 of establishing class-wide liability on all claims. Given the amount of the settlement as compared to the
4 potential value of claims in this case and the defenses asserted by Defendants, this settlement is fair and
5 reasonable.⁵ Clearly, the goal of this litigation has been met.

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

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

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

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

23 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
27 approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
28 *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 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
2 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
3 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
4 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
5 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

6 First, the fee award representing one-third of the fund clearly falls within that range and is
7 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
8 fee awards. Attorneys’ fees awards of one-third of the fund are within the expected range in the market
9 in legal services. In *Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016), the California Supreme
10 Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third
11 (1/3) as a reasonable percentage in a contingent common fund class settlement. Such similar awards by
12 other Courts are set forth in the Blumenthal Decl. ¶11.

13 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
14 Here, Plaintiffs and their counsel secured a \$1,900,000 settlement for the benefit of the Class and no
15 Class Members elected to opt out. Similarly, not one Class Member objected. The Settlement was
16 possible only because Class Counsel was able to convince Defendants that Plaintiffs could potentially
17 prevail on the contested issues regarding liability, maintain class certification, overcome difficulties in
18 proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In successfully
19 navigating these hurdles Class Counsel displayed the necessary skills in both wage and hour and class
20 action litigation. Moreover, as discussed above, there were significant risks to the contingent litigation.
21 See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case,**
22 **where recovery is uncertain, an award of one-third of the common fund as attorneys' fees has**
23 **been found to be appropriate.**”)

24 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
25 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
26 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
27 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
28

1 Class Counsel would be seeking a one-third fee award. Again, there were no objections.

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

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

8 495 F.2d 448, 470 (2d Cir. 1974).

9 Here, it is clear that a settlement fund of \$1,900,000 has been created. For Class Counsel, the
10 fees here were wholly contingent in nature and the case presented far more risk than the usual contingent
11 fee case. Among the risks was the cost inherent in class action litigation, as well as a long battle with a
12 corporate Defendants who had retained a premier and highly experienced defense firm. **Counsel**
13 **retained on a contingency fee basis, whether in private matters or in class action litigation, is**
14 **entitled to a premium above their hourly rate in order to compensate for both the risks and the**
15 **delay in payment.** See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016)
16 (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016)
17 (abuse of discretion not to apply risk multiplier).

18 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
19 the requested attorneys' fee of one-third equal to \$633,333 is also established by reference to Class
20 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
21 **that through August 30, 2024, Class Counsel's total lodestar is \$328,136.25**, with significant
22 additional fees still to be incurred to complete final approval and the settlement process. (Blumenthal
23 Decl. at ¶12 and Exhibit #3.) The requested fee award is therefore currently equivalent to Class
24 Counsel's total lodestar with a reasonable multiplier of 1.9, and there will be additional lodestar incurred
25 by Class Counsel to complete the settlement process and manage the settlement distribution and reports.
26 (Blumenthal Decl. at ¶12.) Such a multiplier is below the range of multipliers approved in other cases
27 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶ For such

28 ⁶ 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

1 reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the common fund is
2 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 \$40,000." Class Counsel have incurred \$34,839.38 based
6 upon counsel's billing records which is less than the "not to exceed" amount of \$40,000. Class Counsel
7 therefore requests reimbursement for litigation expenses in the amount of \$34,839.38. These litigation
8 expenses include the expenses incurred for filing fees, mediation expenses, expert expenses (Berger
9 Consulting), and attorney service charges (Knox, OneLegal), and research charges (LexisNexis), all of
10 which are costs normally billed to and paid by the client.⁷ The details of the expenses incurred are set
11 forth the Blumenthal Decl. at ¶13 and Exhibit #3. Because these expenses were reasonably incurred and
12 necessary to the successful prosecution of these claims, the request is reasonable and should be granted.

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

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

21
22 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
23 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
24 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez*
25 *v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53); *Taylor v. Fedex Freight,*
Inc., 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

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

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

20 **VI. CONCLUSION**

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

24 Respectfully submitted,

25 Dated: August 30, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug

Attorneys for Plaintiffs