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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15
16 **IN AND FOR THE COUNTY OF SANTA CLARA**
17

18 TIANA SELL, an individual, on behalf of
19 herself and on behalf of all persons
20 similarly situated,

21 Plaintiff,

22 vs.

23 EBLOCK CORPORATION, a
24 Corporation; and DOES 1 through 50,
25 inclusive,

26 Defendants.

Case No. 23CV409729

[Consolidated with Case No. 23CV410279]

**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: December 4, 2024

Hearing Time: 1:30 p.m.

[Hearing scheduled by Order dated July 24 , 2024 as
adjusted by clerk email of July 24, 2024]

Judge: Hon. Theodore C. Zayner

Dept.: 19

Action Filed: January 10, 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 July 24, 20224 (“Preliminary Approval Order”), the approved
6 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 Tiana Sell (“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 and
11 avoids the delays, risks, and costs of further litigation. After disseminating the Class Notice to the 337
12 members of the Class, **there were no objections and no requests for exclusion** from the Class, which
13 means that the entire Class (100%) has elected to participate in the Settlement. Blumenthal Decl. ¶4.
14 This is a positive response from the Class evidencing their collective approval of the settlement. As a
15 result, Plaintiff respectfully submits that the settlement should be finally approved for the same reasons
16 that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

17 **II. THE SETTLEMENT BEFORE THE COURT**

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
19 EBlock Corporation (“Defendant”) is Five Hundred Thirty-Two Thousand Five Hundred Dollars
20 (\$532,500) (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross Settlement Amount
21 consists of the following elements: (1) payment of the Individual Class Payments to the Participating
22 Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
23 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5) the
24 PAGA Penalties payment. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross Settlement

25 ¹ Capitalized terms are defined in the Agreement.

26 ² The “Class” is defined as “all individuals who were employed by Defendant in California and
27 classified as a non-exempt employee at any time during the Class Period.” The “Class Period” is defined
28 as “November 20, 2022 through January 26, 2024.” (Preliminary Approval Order, p. 2, Section III(A).)

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

4 **\$532,500** (Gross Settlement Amount)

- 5 - \$5,000 (Plaintiff's proposed service award - reduced by Court)
- 6 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 7 - \$177,550 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 8 - \$15,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 9 - \$10,000 (Administration Expenses Payment - not to exceed amount)

7 **\$291,950** (Net Settlement Amount)

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

10 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
11 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
12 is "fair, reasonable, and adequate." (Preliminary Approval Order at pp. 2, 4.) In sum, the Settlement
13 valued at \$532,500 is an excellent result for the Class. This result is particularly favorable in light of the
14 fact that liability and class certification in this case were far from certain in light of the defenses asserted
15 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
16 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
17 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

20 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal.App.4th 259,
21 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
22 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
23 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are the
24 preferred means of dispute resolution. This is especially true in complex class action litigation.")

25 The court must decide whether the proposed settlement falls within the range of reasonable
26 settlements, taking into account that settlements are compromises between the parties reflecting
27 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See*
28 *Wershba v. Apple Computer*, 91 Cal.App.4th 224, 246 (2001) ("The proposed settlement is not to be

1 judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs
2 prevailed at trial.”) In *Wershba*, the Court explained that “the merits of the underlying class claims are
3 not a basis for upsetting the settlement of a class action.” *Id.*; *see also 7-Eleven, supra*, at 1150.

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

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

13 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*
14 *Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service Com'n*, 688
15 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether the settlement
16 is fair. *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117 (2009). “The well-recognized
17 factors that the trial court should consider in evaluating the reasonableness of a class action settlement
18 agreement include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
19 further litigation, the risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, the experience and views
21 of counsel, the presence of a governmental participant, and the reaction of the class members to the
22 proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008) (internal
23 citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th 399, 408
24 (2010).

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

1 the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
2 [trial] court’s determination is nothing more than ‘an amalgam of delicate balancing, gross
3 approximations and rough justice.’ [Citation omitted.]” *Id.*

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

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

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

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

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

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

23 The Parties attended an arms-length mediation session with Michael Dickstein, Esq., a respected
24 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
25 preparation for the mediation, Defendant provided to Plaintiff and Class Counsel payroll and employment
26 data and other information regarding the Class Members, various internal documents, and other
27 compensation and employment-related materials. Class Counsel analyzed the data with the assistance
28 of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator.

1 Following this all-day mediation, the Parties agreed to this Settlement based upon a mediator's proposal.
2 Blumenthal Decl. ¶7(b).

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

8 From November 2023 to January 2024, the settlement agreement and exhibits thereto were
9 finalized and executed. On July 24, 2024, the Court granted the Motion for Preliminary Approval, and
10 entered the Order granting preliminary approval of the settlement as fair and reasonable to the Class.
11 Blumenthal Decl. ¶7(c).

12 3. Class Counsel Is Experienced in Similar Litigation

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

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

23 The reaction of the Class unequivocally supports approval of the Settlement. On September 5,
24 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
25 each class member with the terms of the Settlement, including notice of the claims at issue and the
26 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
27 sought, how individual settlement awards would be calculated, and the specific, estimated payment
28 amount to that individual. See Declaration of Madely Nava. In disseminating the notice, the

1 Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order.
2 Significantly, there have been no objections and no requests to opt-out. As such, the entire Class
3 (100.00%) will participate in the Settlement and will be sent a settlement check. Blumenthal Decl. ¶4.

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

12 5. The Strength of Plaintiff's Case

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

20 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
21 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant
22 present serious threats to the claims of the Plaintiff and the other Class Members. Defendant maintains
23 that its practices complied with all applicable wage and hour laws. Defendant maintains that all Class
24 Members' work time was properly recorded and compensated and that there was no miscalculation of
25 the regular rate. Defendant contends that its meal and rest period policies and practices provide Class
26 Members with meal and rest periods and that the payment of significant meal premiums is evidence of
27 Defendant's legal compliant practices. As to expense reimbursement, Defendant maintains that it did
28 not fail to provide reimbursement for necessary business expenses because, among other things,

1 employees are not required to use their personal cell phones to perform their work. Defendant could
2 argue that the decisions in *Brinker v. Superior Court*, 53 Cal.4th 1004 (2012), *Lockheed Martin Corp.*
3 *v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th
4 85 (2021), weakened Plaintiff's claims in terms of liability and value, and preclude claims from
5 proceeding on a class or representative basis. Defendant also maintains that a good faith dispute and
6 absence of willfulness would negate the claims for waiting time penalties and/or failure to provide
7 accurate itemized wage statements. *See, e.g., Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056,
8 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and
9 accurate wage statement in compliance with the requirements of section 226, then it has not knowingly
10 and intentionally failed to comply with the wage statement law.") If successful, Defendant's defenses
11 could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these
12 defenses could be overcome, Defendant maintains these defenses have merit and therefore present a
13 serious risk to recovery by the Class. Blumenthal Decl. ¶8(a).

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

16 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
17 Defendants strongly deny liability for Plaintiffs' principal claim... [...T]he gross
18 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.

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

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

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

1 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable to
2 obtain class certification and thereby not recover on behalf of any employees other than herself.
3 Defendant argued that the individual experience of each putative class member varied with respect to
4 the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiff's
5 meal and rest period claims would require individualized inquiries into whether each employee took a
6 compliant meal or rest period on a given shift and, if not, why. Plaintiff is aware of other cases where
7 class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal.App.5th 885
8 (2019) (denying certification of rest break claims). Finally, even if class certification was successful, as
9 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Association*,
10 59 Cal.4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where a
11 class has been certified. While other cases have approved class certification of wage and hour claims,
12 class certification in this Action would have been hotly disputed and was by no means a foregone
13 conclusion. Blumenthal Decl. ¶8(b).

14 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
15 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and substantial
16 defenses both to liability and to class certification. The maximum and average Class Member allocation
17 will be set forth in the forthcoming Declaration of Madely Nava (Administrator). Given the complexities
18 of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is
19 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

27 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant through
28 possible appeals which could take at least another two or three years. Class Counsel also have taken into

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

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

12 In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and
13 likely duration of further litigation likewise favors the settlement. Regardless of how this
14 Court might have ruled on the merits of the legal issues, the losing party likely would
15 have appealed, and the parties would have faced the expense and uncertainty of litigating
16 an appeal. "The expense and possible duration of the litigation should be considered in
17 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 Defendant's defenses to
21 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 favorably
23 to the value of the claims. Based upon 337 Participating Class Members who collectively worked 26,569
24 Workweeks, which were the estimated class figures at mediation, the Gross Settlement Amount provides
25 a value of \$1,580 per Class Member and \$20 per Workweek and after deductions, the Net Settlement
26 Amount provides an average recovery of \$890.05 per Class Member and a recovery of \$11.28 per
27 Workweek. 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, Plaintiff's damage expert. As to the Class whose claims are at
issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid

1 wages for the employees. For the Class, the maximum value of the claim for unpaid wages due to the
2 alleged miscalculation of the regular rate applicable to overtime pay, sick pay and meal premiums was
3 \$28,198, the maximum value of the claim for unpaid wages due to alleged off-the-clock work was
4 \$649,680, the maximum potential damages for alleged meal period violations were estimated to be
5 \$114,118 based upon a 7.8% violation rate observed in the time records and after deduction of meal
6 premiums already paid by Defendant, the maximum potential damages for alleged rest period violations
7 were estimated to be \$169,369 based upon the same 7.8% potential violation rate observed for meal
8 periods, and the maximum potential damages for the alleged failure to reimburse business expenses were
9 calculated to be \$32,595 based upon \$5 per month. In total, the damages for the Class were calculated
10 to have a maximum potential total value of \$993,960. In addition, Plaintiff calculated that the maximum
11 value of the potential waiting time penalties were \$824,997, and the maximum value of the potential
12 wage statement penalties were \$77,850.³ Defendant vigorously disputed Plaintiff's calculations and
13 exposure theories. Blumenthal Decl. at ¶ 8(d).

14 Consequently, the Gross Settlement Amount represents more than 53% of Plaintiff's calculation
15 of the potential maximum damages at issue for the Class in this case, assuming these amounts could all
16 be proven in full at trial.⁴ Importantly, the recent decision that good faith belief of compliance by the
17 employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056, 1065 (2024), could completely
18 negate the claims for waiting time and wage statement penalties, even if wages were owed to the class.

19 The maximum calculations should then be realistically risk-rated in consideration for both the risk of
20 class certification and the risk of establishing class-wide liability on all claims. Given the amount of the
21
22

23 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code §§ 203 and 226, these
24 claims were subject to additional, separate defenses asserted by Defendant, including a good faith dispute
25 defense as to whether any premium wages for meal or rest periods or other wages were owed given
26 Defendant's position that 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.").

27 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
28 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
Declaration of Kyle Nordrehaug at ¶ 33 filed in support of the motion for preliminary approval.

1 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
2 reasonable.⁵ Clearly, the goal of this litigation has been met.

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

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

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

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

22 ⁵ 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 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
2 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
3 in fixing a reasonable fee. See *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998).

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

11 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
12 Here, Plaintiff and her counsel secured a \$532,500 settlement for the benefit of the Class and none of
13 the Class Members elected to opt out. Similarly, not one Class Member objected. The Settlement was
14 possible only because Class Counsel was able to convince Defendant that Plaintiff could potentially
15 prevail on the contested issues regarding liability, maintain class certification, overcome difficulties in
16 proof as to monetary relief and take the case to trial if need be. Blumenthal Decl. ¶10(f). In successfully
17 navigating these hurdles Class Counsel displayed the necessary skills in both wage and hour and class
18 action litigation. Moreover, as discussed above, there were significant risks to the contingent litigation.
19 See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case,**
20 **where recovery is uncertain, an award of one-third of the common fund as attorneys' fees has**
21 **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. For Class Counsel, the fees here were wholly

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

9 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
10 the requested attorneys' fee of one-third equal to \$177,550 is also established by reference to Class
11 Counsel's lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
12 **that through November 5, 2024, Class Counsel's total lodestar is \$156,268.81, with significant**
13 **additional fees still to be incurred to complete final approval and the settlement process.**
14 (Blumenthal Decl. at ¶12 and Exhibit #3.) The requested fee award is therefore currently equivalent to
15 Class Counsel's total lodestar with a reasonable multiplier of 1.1, and there will be additional lodestar
16 incurred by Class Counsel to complete the settlement process and manage the settlement distribution and
17 reports. (Blumenthal Decl. at ¶12.) Such lodestar cross-check is below the range of positive multipliers
18 approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir.
19 2002).⁶ For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the
20 common fund is reasonable and should be approved.

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

22 The Agreement provides at paragraph 3.2(b), that Class Counsel may seek a "Class Counsel
23 Litigation Expenses Payment of not more than \$25,000." Class Counsel have incurred \$30,516.81 based

24
25 ⁶ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
26 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
27 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
28 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
Cases, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez*
v. Netflix, Inc., 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53); *Taylor v. Fedex Freight,*
Inc., 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

1 upon counsel's billing records, which is more than the "not to exceed" amount of \$25,000. Class
2 Counsel, therefore, requests reimbursement for litigation expenses in the amount of \$25,000. These
3 litigation expenses include the expenses incurred for filing fees, mediation expenses, expert expenses
4 (Berger Consulting), and attorney service charges (Knox, OneLegal), and research charges (LexisNexis),
5 all of which are costs normally billed to and paid by the client.⁷ The details of the expenses incurred are
6 set forth the Blumenthal Decl. at ¶13 and Exhibit #3. Because these expenses were reasonably incurred
7 and necessary to the successful prosecution of these claims, the request is reasonable and should be
8 granted.

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

10 Plaintiff respectfully submits that for her service as the sole class representative, Plaintiff should
11 be awarded a service award in accordance with the Agreement for her time, risk, and effort expended
12 on behalf of the Class as the only class representative. (Agreement at ¶ 3.2(a).) At the time of
13 preliminary approval, the Court reduced the service award to \$5,000. Defendant has agreed to this
14 payment and there have been no objections to the requested service award. The Blumenthal Decl., at
15 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
16 further supports the request in this case. Plaintiff's Declaration is submitted in support of this request
17 and is attached as Exhibit #4 to the Blumenthal Decl.

18 As the representative of the Class, Plaintiff performed her duties to the Class admirably and
19 without exception. Plaintiff 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.) As set forth in the Agreement, Plaintiff is also
22 providing a comprehensive release as part of the Settlement, far beyond the class release. Plaintiff's
23 Declaration details the involvement, stress, and risks she undertook as a result of this Action. Plaintiff
24 also assumed the serious risk that she might possibly be liable for costs and fees to Defendant, as well

25
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 reputational risk of being “blacklisted” by other future employers for having filed a class action
2 on behalf of employees. (Blumenthal Decl. at ¶15.) Without the Plaintiff’s participation, cooperation
3 and information, no other employees would be receiving any benefit. (Blumenthal Decl. at ¶¶ 15-16).

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

14 **VI. CONCLUSION**

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

18 Respectfully submitted,

19 Dated: November 5, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug
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