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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF GLENN

FABIAN MARTINEZ, PAUL ADAMS,
MICHAEL RUSH, and RICHARD L.
YOUNG, individually on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

JOHNS MANVILLE, a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **23CV03097**

**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: April 16, 2025

Hearing Time: 2:30 p.m.

*[Hearing scheduled by Order dated November 25,
2024]*

Judge: Hon. Alicia Ekland

Dept.: 2

Action Filed: March 15, 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
4 is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal Decl.”).¹ In
5 accordance with the Preliminary Approval Order dated March 15, 2023 (“Preliminary Approval
6 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. Plaintiffs Fabian Martinez, Paul Adams, Michael Rush, and Richard L.
9 Young (“Plaintiffs”) respectfully move for final approval, including attorneys’ fees, costs and the
10 service awards, and the proposed entry of the Final Approval Order and Judgment, submitted herewith.
11 The settlement represents an excellent result for the Class and avoids the delays, risks, and costs of
12 further litigation. After disseminating the notice to the members of the Class, there were **no objections**
13 **and no requests for exclusion**, which means that the entire Class (100%) has elected to participate in
14 the Settlement. Blumenthal Decl. ¶ 4. This is a positive response from the Class evidencing their
15 collective approval of the settlement. As a result, Plaintiffs respectfully submit that the class settlement
16 should be finally approved for the same reasons that the Court preliminarily approved the settlement
17 as fair, reasonable, and adequate.

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

19 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Seven
20 Hundred Fifty Thousand Dollars (\$750,000.00) (the “Gross Settlement Amount”) is to be paid by
21 Defendant Johns Manville (“Defendant”) (Agreement at ¶¶ 1.21 and 3.1.) Under the Settlement, the
22 Gross Settlement Amount will settle all issues pending in the Action between the Parties and will be
23 made in full and final settlement of the Released Class and PAGA Claims in exchange for the payments
24 to Participating Class Members from the Net Settlement Amount, and includes (a) the costs of

25
26 ¹ Capitalized terms are defined in the Agreement.

27 ² “Class” is defined as “all individuals who were employed by Defendant in California and classified
28 as non-exempt employees at any time during the Class Period.” The “Class Period” is defined as “the
 period of time from August 20, 2020, to November 20, 2024.” (Preliminary Approval Order ¶ 6.)

1 administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative Service
2 Payment, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved
3 Employees. (Agreement at ¶ 1.21.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does not
4 include Defendant's share of payroll taxes. (Agreement at ¶ 1.21.) The Gross Settlement Amount shall
5 be all-in with no reversion to Defendant. (Agreement at ¶ 1.21.) Blumenthal Decl. ¶3(b). The
6 following is a table of the key financial terms of the Settlement and the proposed deductions:

7 **\$750,000** (Gross Settlement Amount)

- 8 - \$25,000 (Plaintiffs' proposed service awards - not to exceed amount)
9 - \$40,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
10 - \$250,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
11 - \$20,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
12 - \$11,500 (Administration Expenses Payment)

13 **\$403,500** (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 \$750,000 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); *see also*
26 *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th 399, 408 (2010).

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

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

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

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

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

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

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

19 This settlement is the result of thorough discovery as well as negotiations before an experienced
20 and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing
21 or legal liability arising out of the conduct alleged in the Action. Nonetheless, Defendant has concluded
22 that further conduct of the Actions would be protracted and expensive, and that it is desirable that the
23 Action be fully and finally settled in the manner and upon the terms and conditions set forth in the
24 Agreement. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class
25 to resolve the Released Class Claims of the Class in accordance with this Settlement. The release
26 applicable to the Class is appropriately tethered to factual allegations in the Action. Blumenthal Decl.
27 ¶7(a).

28 The Parties attended an arms-length mediation session with David A. Rotman, a respected and

1 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
2 for the mediation, Defendant provided Class Counsel with payroll, time and employment data for the
3 Class, along with other information regarding the Class Members, various internal documents, and other
4 compensation and employment-related materials. Class Counsel analyzed the data with the assistance
5 of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator. The
6 final settlement terms were negotiated and set forth in the Agreement. 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”). From July 2024 to October 2024, the
13 initial settlement agreement and exhibits thereto were finalized and executed. On November 25, 2024,
14 the Court issued its Order granting preliminary approval of the settlement as fair, adequate, and
15 reasonable to the Class. Blumenthal Decl. ¶7(c).

16 3. Class Counsel is Experienced in Similar Litigation

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

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

26 The reaction of the Class unequivocally supports approval of the Settlement. On December 23,
27 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
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1 each class member with the terms of the Settlement, including notice of the claims at issue and the
2 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
3 sought, how individual settlement awards would be calculated, and the specific, estimated payment
4 amount to that individual. See Declaration of Madely Nava ("Nava Decl.") ¶ 7, Exh. A. In
5 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
6 its Preliminary Approval Order. Significantly, there have been no objections and no requests to opt-out.
7 Nava Decl. ¶¶ 11-12. As such, the entire Class (100%) will participate in the Settlement and will be
8 sent a settlement check. See Nava Decl. at ¶¶ 13-15; Blumenthal Decl. ¶4.

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

17 5. The Strength of Plaintiffs' Case

18 The Action generally alleges that Plaintiffs and other Class Members were not properly paid all
19 wages for hours worked, including overtime, and at the correct rate of pay, were not provided meal and
20 rest periods or paid premiums at the correct rate of pay in lieu thereof, were not timely paid earned
21 wages, were not provided reimbursement for required expenses, were not provided accurate itemized
22 wage statements, were not pay all sick wages and the correct rate of pay, and were not paid all wages
23 at the time of termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and
24 any other equitable or legal relief allegedly due and owing to Plaintiffs and the other Class Members
25 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 Defendant
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1 present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant asserted
2 that Defendant's practices complied with all applicable Labor laws. Defendant argued that Class
3 Members were paid for all time worked and that all work time was properly recorded. Defendant
4 maintained there was no miscalculation of the regular rate when paying wages to the Plaintiffs and the
5 Class. Defendant contends that its meal and rest period policies fully complied with California law and
6 that Defendant did not fail to provide the opportunity for legally required meal and rest breaks.
7 Defendant could argue that its payment of significant meal period premiums is evidence of its lawful
8 practices. Defendant contends that there was no failure to pay for business expenses and any cell phone
9 usage was merely convenient and voluntary such that reimbursement was not legally required. Finally,
10 Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
11 (2012), weakened Plaintiffs' claims on liability, value, and class certifiability as to the meal and rest
12 period claims. Defendant also argues that based on its facially lawful practices, Defendant acted in
13 good faith and without willfulness, which if accepted would negate the claims for waiting time penalties
14 and/or inaccurate wage statements. See e.g., *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056,
15 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and
16 accurate wage statement in compliance with the requirements of section 226, then it has not knowingly
17 and intentionally failed to comply with the wage statement law.") If successful, Defendant's defenses
18 could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these
19 defenses could be overcome, Defendant maintains these defenses have merit and therefore present a
20 serious risk to recovery by the 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
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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.

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

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

19 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
20 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
21 substantial defenses both to liability and to class certification. The maximum and average class member
22 allocations (in addition to their Individual PAGA Payment) are \$1,133.88 and \$610.44, respectively.
23 *See Nava Decl.* ¶ 15. Given the complexities of this case, the defenses, along with the uncertainties of
24 proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
25 approved. Blumenthal Decl. at ¶8(e).

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

27 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
28 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event
of an adverse judgment. A post-judgment appeal by Defendant would have required many more years

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

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

14 Although Plaintiffs and Class Counsel believe that their case has merit, which Defendant
15 continues 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
would have appealed, and the parties would have faced the expense and uncertainty of
litigating an appeal.

21 *Id.* at *12.

22 7. The Amount Offered in Settlement

23 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
24 to 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
26 favorably to the value of the claims. Based upon 661 Participating Class Members who collectively
27 worked an estimated 78,949 workweeks, the Gross Settlement Amount provides an average value of
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1 \$1,134 per Class Member and \$9.49 per workweek, and after deductions, the Net Settlement Amount
2 provides an average recovery of \$610.43 per Class Member and a recovery of \$5.11 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, Plaintiffs' damage expert. As to the Class whose claims are at
6 issue in this Action, Plaintiffs 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 \$2,818,571 for the
8 alleged unpaid wages for off-the-clock work at one hour per week, \$30,234 for the alleged unpaid
9 overtime wages, \$27,228 for the alleged unpaid overtime wages due to the miscalculation of the regular
10 rate, \$22,127 for the alleged unpaid meal premiums and sick pay due to the alleged miscalculation of
11 the result rate, \$1,355,029 for alleged meal period damages based upon a 36.4% potential violation rate
12 for all shifts worked observed in the time records and after deduction for meal premiums paid by
13 Defendant, \$1,757,480 for alleged rest period damages based upon the same 36.4% potential violation
14 rate for shifts worked and after deduction for rest premiums paid by Defendant, and \$77,690 for alleged
15 unreimbursed cell-phone expenses at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total
16 damage valuation was calculated that Defendant was subject to a maximum damage claim in the
17 amount of \$6,088,359. As to potential penalties, Plaintiffs calculated that potential waiting time
18 penalties were a maximum of between \$1,021,849 and \$1,970,709, depending on the predicate violation
19 giving rise to the penalty, and potential maximum wage statement penalties were \$1,816,000.³
20 Defendant vigorously disputed Plaintiffs' calculations and exposure theories and contends it complied
21 with all applicable laws. Blumenthal Decl. ¶8(d).

22 Consequently, the Gross Settlement Amount of \$750,000 represents more than 12% of the
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25 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
26 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
27 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
28 meal or rest periods or other wages were owed given Defendant's position that Plaintiff 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.").

1 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
2 Importantly, the recent decision in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024),
3 that an employer does not incur civil or criminal penalties for the willful nonpayment of wages when
4 the employer reasonably and in good faith disputes that wages are due could completely negate
5 Plaintiffs' claims for waiting time and wage statement penalties, even if wages were owed to the Class.
6 The above maximum calculations should then be realistically risk adjusted in consideration for both the
7 risk of class certification and the risk of establishing class-wide liability on all claims. Given the
8 amount of the settlement as compared to the potential value of claims in this case and the defenses
9 asserted by Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has
10 been met. Blumenthal Decl. ¶8(d).

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

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

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

21 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
22 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
23 PAGA claim was addressed at preliminary approval in the Declaration of Nordrehaug at ¶33.

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 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear
2 the entire burden alone.” *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).

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

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

19 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
20 Here, Plaintiffs and their counsel secured a \$750,000 settlement for the benefit of the Class, and not one
21 Class Member objected. The Settlement was possible only because Class Counsel was able to convince
22 Defendant that Plaintiffs could potentially prevail on the contested issues regarding liability, maintain
23 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
24 be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the
25 necessary skills in both wage and hour and class action litigation. Moreover, as discussed above, there
26 were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297
27 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
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1 **one-third of the common fund as attorneys' fees has been found to be appropriate.”)**

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

7 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
8 reward is the attendant risks inherent in the litigation. Here, it is clear that a settlement fund of \$750,000
9 has been created. For Class Counsel, the fees here were wholly contingent in nature and the case
10 presented far more risk than the usual contingent fee case. Among the risks was the cost and risk
11 inherent in litigation with a corporate Defendant who had retained a premier and highly experienced
12 defense firm. **Counsel retained on a contingency fee basis, whether in private matters or in class**
13 **action litigation, is entitled to a premium above their hourly rate in order to compensate for both**
14 **the risks and the delay in payment.** *See e.g. Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741
15 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
16 Cir. 2016) (abuse of discretion not to apply risk multiplier).

17 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
18 the requested attorneys’ fee of one-third equal to \$250,000 is also established by reference to Class
19 Counsel’s lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence**
20 **that through March 20, 2025, Class Counsel’s total lodestar is \$224,777.50, with significant**
21 **additional fees still to be incurred to complete final approval and the settlement process.**
22 (Blumenthal Decl. at ¶ 12 and Exhibit #3.) The requested fee award is therefore currently equivalent
23 to Class Counsel’s total lodestar with a reasonable multiplier of less than 1.2, and there will be
24 additional lodestar incurred by Class Counsel to complete the settlement process and manage the
25 settlement distribution and reports. (Blumenthal Decl. at ¶12.) Such a multiplier is well below the
26 range of multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d
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1 1043, 1051 (9th Cir. 2002).⁶ For such reasons, Class Counsel's request for attorneys' fees in the amount
2 of one-third of the 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 \$40,000." Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$37,688.85. Class Counsel have incurred
7 \$37,688.85 based upon counsel's billing records. These litigation expenses include the expenses
8 incurred for filing fees, mediation expenses, expert expenses (Berger Consulting and DM&A), attorney
9 service charges (Knox, OneLegal), court appearance expenses, and legal research charges (LexisNexis),
10 all of which are costs normally billed to and paid by the client.⁷ The details of the litigation expenses
11 incurred are set forth the Blumenthal Decl. at ¶13 and Exhibit #3. These costs were reasonably incurred
12 in the prosecution of the Action. Blumenthal Decl. at ¶ 13. Because these costs were necessary to the
13 successful prosecution of these claims, the request should be granted.

14 **C. The Service Awards Are Reasonable and Should be Approved**

15 Plaintiffs respectfully submit that for their service as class representatives, Plaintiffs should be
16 awarded the agreed service awards of \$10,000 to Plaintiff Martinez and \$5,000 each to Plaintiffs
17 Young, Adam, and Rush, in accordance with the Agreement for their time, risk and effort expended on
18 behalf of the Class as the class representative. (Agreement at ¶ 3.2(a).) Defendant has agreed to this
19 payment and there have been no objections to the requested service award. The Blumenthal Decl., at
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21 ⁶ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
22 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
23 (2010) (reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App. 4th at 255
24 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing Cases*, 171
25 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez v. Netflix,*
Inc., 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved range of
2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

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).

¶ 14, provides a long list of equivalent service awards approved in California in similar cases, which further supports the request in this case. The Plaintiffs' Declarations are submitted in support of this request and are attached as Exhibits #5, 6, 7, and 8 to the Blumenthal Decl.

As representatives of the Class, Plaintiffs performed their duties to the Class admirably and without exception. Plaintiffs worked extensively with Class Counsel during the course of the litigation, responding to numerous requests, searching for documents, working with counsel, and reviewing the settlement documentation. Blumenthal Decl. at ¶ 14. Plaintiffs' Declarations detail the involvement, stress and risks they each undertook as a result of this Action. Plaintiffs also assumed the serious risk that they might possibly be liable for costs and fees to Defendant, as well as the reputational risk of being "blacklisted" by other future employers for having filed a class action on behalf of employees. Blumenthal Decl. at ¶15. Without Plaintiffs' participation, cooperation and information, no other employees would be receiving any benefit. Blumenthal Decl. at ¶¶ 15-16.

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

VI. CONCLUSION

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

Respectfully submitted,

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Dated: March 20, 2025 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
By: /s/ Kyle Nordrehaug
 Kyle R. Nordrehaug, Attorneys for Plaintiff