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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

DAIJA WALKER and ADAM JOY,
individually and on behalf of other
individuals similarly situated,

Plaintiff,

vs.

CROSSROADS TRADING CO., INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 23CV416909

**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: January 8, 2025

Hearing Time: 1:30 p.m.

[Hearing scheduled by Order dated August 26, 2024]

Judge: Hon. Theodore C. Zayner

Dept.: 19

Action Filed: June 6, 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 August 26, 2024 (“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 Daija Walker and Adam Joy (“Plaintiffs”) respectfully move for
9 final approval, including attorneys’ fees, costs and the service awards, and the proposed entry of the
10 Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent result
11 for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the Class
12 Notice to the 1,663 members of the Class, **to date there have been no objections and no requests for**
13 **exclusion** from the Class, which means that currently, the entire Class (100%) has elected to participate
14 in the Settlement.³ 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 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 Gross Settlement Amount to be paid by Defendant
20 Crossroads Trading Co., Inc. (“Defendant”) is One Million One Hundred Four Thousand Eight Hundred
21 Six Dollars and Eighty-Five Cents (\$1,104,806.85), which is an increase of \$4,806.85 as a result of the
22

23 ¹ Capitalized terms are defined in the Agreement.

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

27 ³ The Response Deadline for the members of Class is December 16, 2024, which is after the filing
28 of this Motion. In advance of the hearing date and after the Response Deadline, Plaintiffs will file the
 Declaration of Madely Nava, the Administrator, to document the final figures.

1 escalator provision. (Agreement at ¶¶ 1.22 and 3.1.) Under the Settlement, the Gross Settlement
2 Amount consists of the following elements: (i) all Individual Class Payments and Individual PAGA
3 Payments; (ii) the LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel
4 Litigation Expenses Payment; (iv) the Class Representative Service Payments; and (v) the
5 Administration Expenses Payment. (Agreement at ¶ 1.22.) Blumenthal Decl. ¶3(a). The Gross
6 Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The
7 Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.)
8 Blumenthal Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and the
9 proposed deductions:

10 **\$1,104,806.85** (Gross Settlement Amount)

- 11 - \$20,000 (Plaintiffs' proposed service awards not to exceed \$10,000 each)
- 12 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 13 - \$368,268.95 (Class Counsel Fees Payment - one-third of settlement)
- 14 - \$22,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 15 - \$19,000 (Administration Expenses Payment - not to exceed amount)

16 **\$650,537.90** (Net Settlement Amount)

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

19 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
20 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
21 is "fair, adequate and reasonable" (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
22 at \$1,104,806.85 is an excellent result for the Class. This result is particularly favorable in light of the
23 fact that liability and class certification in this case were far from certain in light of the defenses asserted
24 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
25 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
26 reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

27 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL** 28 **OF CLASS ACTION SETTLEMENTS**

Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal.App.4th 259,
265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*

1 v. *Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
2 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

3 The court must decide whether the proposed settlement falls within the range of reasonable
4 settlements, taking into account that settlements are compromises between the parties reflecting
5 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See*
6 *Wershba v. Apple Computer*, 91 Cal.App.4th 224, 246 (2001) ("The proposed settlement is not to be
7 judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs
8 prevailed at trial.") In *Wershba*, the Court explained that "the merits of the underlying class claims are
9 not a basis for upsetting the settlement of a class action." *Id.*; *see also 7-Eleven, supra*, at 1150.

10 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
11 the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute
12 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
13 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
14 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
15 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*,
16 48 Cal.App.4th 1794, 1801 (1996). Here, the facts and circumstances compel the conclusion that the
17 proposed settlement satisfies that standard and the presumption applies.

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

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

1 citations omitted); *see also* *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th 399, 408
2 (2010).

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

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

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

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

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

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

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

1 The Parties attended an arms-length mediation session with Lynn Frank, Esq., a respected and
2 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
3 for the mediation, Defendant provided Class Counsel with necessary information, including the Class
4 payroll and timekeeping data. Plaintiffs analyzed the data with the assistance of a damages expert,
5 Berger Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
6 Following the all-day mediation, the Parties agreed to the Settlement, which was memorialized in the
7 form of a Memorandum of Understanding. Blumenthal Decl. ¶7(b).

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

13 From March 2024 to July 2024, the settlement agreement and exhibits thereto were finalized
14 and executed. The Parties submitted a stipulation to provide for a *cypres* process. On August 26, 2024,
15 the Court granted the Motion for Preliminary Approval, and entered the Order granting preliminary
16 approval of the settlement as fair and reasonable to the Class. Blumenthal Decl. ¶7(c).

17 3. Class Counsel Is Experienced in Similar Litigation

18 Class Counsel in this matter has extensive class action experience and has represented thousands
19 of persons in class actions including employment litigation, wage and hour class actions, and complex
20 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
21 claims similar to this case and have been approved as experienced class counsel during contested
22 motions in state and federal courts throughout California. The experience of counsel and class action
23 cases managed and settled by the Class Counsel in this action is provided to the Court in the Blumenthal
24 Decl. at Exhibit #1 and the Declaration of Marcus Bradley at ¶¶ 9-15. Class Counsel have participated
25 in every aspect of the settlement discussions and have concluded the settlement is fair, adequate, and
26 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

28 The reaction of the Class unequivocally supports approval of the Settlement. On October 15,

2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each class member with the terms of the Settlement, including notice of the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award that were being sought, how individual settlement awards would be calculated, and the specific, estimated payment amount to that individual. See Declaration of Madely Nava, to be filed after the December 16, 2024 Response Deadline. In disseminating the notice, the Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have been no objections and no requests to opt-out. Currently, the entire Class (100.00%) will participate in the Settlement and will be sent a settlement check. Blumenthal Decl. ¶4.

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

5. The Strength of Plaintiffs' Case

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

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

1 that its practices complied with all applicable wage and hour laws. Defendant maintains that all Class
2 Members' work time was properly recorded and compensated and that there was no miscalculation of
3 the regular rate. Defendant contends that its meal and rest period policies and practices provide Class
4 Members with meal and rest periods and that the payment of meal premiums is evidence of Defendant's
5 legal compliant practices. As to expense reimbursement, Defendant maintains that it did not fail to
6 provide reimbursement for necessary business expenses because, among other things, employees are
7 not required to use their personal cell phones to perform their work. Defendant could argue that the
8 decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior*
9 *Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021),
10 weakened Plaintiffs' claims in terms of liability and value, and preclude claims from proceeding on a
11 class or representative basis. Defendant also maintains that a good faith dispute and absence of
12 willfulness would negate the claims for waiting time penalties and/or failure to provide accurate
13 itemized wage statements. *See e.g. Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024)
14 ("if an employer reasonably and in good faith believed it was providing a complete and accurate wage
15 statement in compliance with the requirements of section 226, then it has not knowingly and
16 intentionally failed to comply with the wage statement law.") If successful, Defendant's defenses could
17 eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses
18 could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk
19 to recovery by the Class. Blumenthal Decl. ¶8(a).

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

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

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

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

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

11 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
12 to obtain class certification and thereby not recover on behalf of any employees other than themselves
13 Defendant argued that the individual experience of each putative class member varied with respect to
14 the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiffs'
15 meal and rest period claims would require individualized inquiries into whether each employee took
16 a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are aware of other cases
17 where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App.
18 5th 885 (2019) (denying certification of rest break claims). Defendant also argued that the existence
19 of arbitration agreements would bar and/or limit class certification. Finally, even if class certification
20 was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank*
21 *National Association*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide
22 recovery even where a class has been certified. While other cases have approved class certification of
23 wage and hour claims, class certification in this Action would have been hotly disputed and was by no
24 means a foregone conclusion. Blumenthal Decl. ¶8(b).

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

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

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

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

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

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

26 *Id.* at *12.

27 7. The Amount Offered in Settlement

28 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
which discussed the value of the class claims in detail, the Gross Settlement Amount compares

1 favorably to the value of the claims. Based upon 1,663 Class Members who collectively worked 80,619
2 Workweeks, the Gross Settlement Amount provides a value of \$664 per Class Member and \$13.70 per
3 Workweek and, after deductions, the Net Settlement Amount provides an average recovery of \$391.18
4 per Class Member and \$8.06 per Workweek. Blumenthal Decl. at ¶8(d).

5 The calculations to compensate for the amount due to the Class Members at the time the
6 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
7 mediation. Class Counsel analyzed the data for putative class members and determined the potential
8 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
9 wages due to the alleged miscalculation of the regular rate applicable to overtime pay, sick pay and meal
10 premiums was \$6,814, the maximum value of the claim for unpaid wages due to alleged off-the-clock
11 work was \$1,691,294, the maximum potential damages for alleged meal period violations were
12 estimated to be \$1,001,888 based upon a 19.4% violation rate observed in the time records and after
13 deduction of meal premiums already paid by Defendant, the maximum potential damages for alleged
14 rest period violations were estimated to be \$970,838 based upon the same 19.4% potential violation rate
15 observed for meal periods, and the maximum potential damages for the alleged failure to reimburse
16 business expenses were calculated to be \$97,335 based upon \$5 per month. In total, the damages for
17 the Class were calculated to have a maximum potential total value of \$3,768,169. In addition, Plaintiffs
18 calculated that the maximum value of the potential waiting time penalties were between \$87,058 and
19 \$4,752,570, depending on the predicate violations, and the maximum value of the potential wage
20 statement penalties were \$3,885,300.⁴ Defendant vigorously disputed Plaintiffs' calculations and
21 exposure theories. Blumenthal Decl. at ¶ 8(d).

22 Consequently, the Gross Settlement Amount represents more than 29% of Plaintiffs' calculation
23

24
25 ⁴ 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 but not limited to, a good-faith dispute defense as to whether any
28 premium wages for meal or rest periods or other wages were owed given Defendant's 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.").

1 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
2 all be proven in full at trial.⁵ Importantly, the recent decision that good faith belief of compliance by the
3 employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056, 1065 (2024), could completely
4 negate the claims for waiting time and wage statement penalties, even if wages were owed to the class.
5 The maximum calculations should then be realistically risk-rated in consideration for both the risk of
6 class certification and the risk of establishing class-wide liability on all claims. Given the amount of the
7 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
8 reasonable.⁶ Clearly, the goal of this litigation has been met.

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

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

13 Class Counsel seeks a fee award calculated at one-third (1/3) of the total value of the settlement
14 for the successful prosecution and resolution of this action. California state and federal courts have
15 recognized that an appropriate method for determining award of attorneys' fees is based on a percentage
16 of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91
17 Cal.App.4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444
18 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
19 of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs

20 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not include the
21 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
22 Declaration of Kyle Nordrehaug at ¶ 33 filed in support of the motion for preliminary approval.

23 ⁶ 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."); *Dunleavy v.*
28 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
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 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
2 alone.” *Vincent*, 557 F.2d at 769.

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. In *Laffitte v. Robert Half Int’l*, 1 Cal.5th 480, 503 (2016), the California Supreme
16 Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third
17 (1/3) as a reasonable percentage in a contingent common fund class settlement. Such similar awards by
18 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 \$1,104,806.85 settlement for the benefit of the Class and
21 none of the Class Members elected to opt out. Similarly, not one Class Member objected. The
22 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
23 could potentially prevail on the contested issues regarding liability, maintain class certification,
24 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
25 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
26 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
27 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
28 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**

1 **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. For Class Counsel, the fees here were wholly
9 contingent in nature and the case presented far more risk than the usual contingent fee case. Among the
10 risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendant
11 who had retained a premier and highly experienced defense firm. **Counsel retained on a contingency**
12 **fee basis, whether in private matters or in class action litigation, is entitled to a premium above**
13 **their hourly rate in order to compensate for both the risks and the delay in payment.** *See e.g.*
14 *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts "must" apply a risk
15 enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply
16 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 \$368,268.95 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 December 12, 2024, Class Counsel’s total combined lodestar is \$223,727.50, with**
21 **significant additional fees still to be incurred to complete final approval and the settlement**
22 **process.** (Blumenthal Decl. at ¶12 and Exhibit #3 [lodestar of \$147,747.50]; Declaration of Marcus
23 Bradley at ¶20 [lodestar of \$75,980]) The requested fee award is therefore currently equivalent to Class
24 Counsel’s total lodestar with a reasonable multiplier of less than 1.7, and there will be additional
25 lodestar incurred by Class Counsel to complete the settlement process and manage the settlement
26 distribution and reports. (Blumenthal Decl. at ¶12.) Such lodestar cross-check is below the range of
27 positive multipliers approved in other cases such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d
28

1 1043, 1051 (9th Cir. 2002).⁷ For such reasons, Class Counsel’s request for attorneys’ fees in the amount
2 of one-third of the common fund is 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 \$25,000.” Class Counsel requests reimbursement for
6 incurred litigation expenses and costs in the amount of \$22,034.49. Class Counsel have incurred
7 combined expenses of \$22,034.49 based upon counsel's billing records; therefore, this requested amount
8 is less than the allocation in the Agreement. These litigation expenses include the expenses incurred
9 for filing fees, mediation expenses, expert expenses (Berger Consulting), attorney service charges
10 (OneLegal), and research charges (LexisNexis), all of which are costs normally billed to and paid by
11 the client. The details of the litigation expenses incurred are set forth the Blumenthal Decl. at ¶13 and
12 Exhibit #3 [costs of \$19,861.25]; Declaration of Marcus Bradley at ¶28 and Exhibit #1 [costs of
13 \$2,173.24]. These costs were reasonably incurred in the prosecution of the Action. (Blumenthal Decl.
14 at ¶13.) Because these costs were reasonable and necessary to the successful prosecution of these
15 claims, the request is reasonable and should be granted.

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

17 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
18 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
19 risk and effort expended on behalf of the Class as the class representatives. (Agreement at ¶ 3.2(a).)
20 Defendant has agreed to this payment and there have been no objections to the requested service awards.
21 The Blumenthal Decl., at ¶14, provides a long list of equivalent service awards approved in California
22 in similar cases, which further supports the request in this case. The Plaintiffs’ Declarations in support
23 of these requests are attached as Exhibits #5 and 6 to the Blumenthal Decl. In addition, the updated

24
25 ⁷ 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 Declaration of Plaintiff Joy is filed herewith as requested by the Court at preliminary approval.

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

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

22 **VI. CONCLUSION**

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

26 Respectfully submitted,

27 Dated: December 12, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
28 By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Attorneys for Plaintiffs