

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Victoria B. Rivapalacio (State Bar #275115)
Christine T. LeVu (State Bar #288271)
Adolfo Sanchez Contreras (State Bar #354371)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

THE WAND LAW FIRM, P.C.

Aubry Wand (SBN 281207)
100 Oceangate, Suite 1200
Long Beach, CA 90802
Telephone: (310) 590-4503
Email: awand@wandlawfirm.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

KIRSTEN CORBETT and BRENDA
CARDENAS, individually, and on behalf
of all others similarly situated,

Plaintiffs,

vs.

G-III APPAREL GROUP, LTD., an entity
of unknown form; AM RETAIL GROUP,
INC., a corporation; and DOES 1 through
10, inclusive,,

Defendants.

CASE NO.: CIVSB2305772

**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: April 9, 2025

Hearing Time: 1:30 p.m.

*[Hearing scheduled by Order dated December 2,
2024]*

Judge: Hon. Joseph T. Ortiz

Dept.: S-17

Action Filed: March 3, 2023

Trial Date: Not set

TABLE OF CONTENTS

I.	INTRODUCTION.....	-1-
II.	THE SETTLEMENT BEFORE THE COURT	-1-
III.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS.....	-2-
IV.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.....	-3-
A.	The Settlement Satisfies the California Test for Fairness.....	-4-
1.	The Investigation and Analysis of Documents are Sufficient to Allow Counsel and the Court to Act Intelligently	-4-
2.	The Settlement was Reached Through Arm's Length Bargaining	-4-
3.	Class Counsel is Experienced in Similar Litigation	-5-
4.	There Are No Objections and Only One (1) Request for Exclusion.	-5-
5.	The Strength of Plaintiffs' Case	-6-
6.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	-9-
7.	The Amount Offered in Settlement.	-9-
V.	THE REQUESTED ATTORNEYS' FEES, COSTS AND SERVICE AWARD SHOULD BE APPROVED	-11-
A.	The Attorneys' Fees are Reasonable and Supported by the Percentage of the Fund Method.	-11-
B.	The Reimbursement of Litigation Expenses.	-14-
C.	The Service Award Is Reasonable and Should be Approved	-14-
VI.	CONCLUSION.....	-15-

TABLE OF AUTHORITIES

Cases:	Page:
<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i> , 85 Cal. App. 4 th 1135 (2000)	2, 3
<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652 (E.D. Cal. Jun 24, 2008)	5
<i>Andrews v. Plains All Am. Pipeline L.P.</i> , 2022 U.S. Dist. LEXIS 172183, (C.D. Cal. 2022)	15
<i>Barbosa v. Cargill Meat Solutions Corp.</i> , 297 F.R.D. 431 (E.D. Cal. 2013)	12
<i>Barcia v. Contain-A-Way, Inc.</i> , 2009 U.S. Dist. LEXIS 17118 (S. D. Cal. 2009)	8
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	11
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	7
<i>Browning v. Yahoo!, Inc.</i> , 2007 U.S. Dist. LEXIS 86266 (N.D. Cal. Nov. 16, 2007)	8
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2009)	3
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	14
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	3, 4
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	8, 9
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	12
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330 (N.D. Cal. 2007); <i>aff'd</i> 2009 U.S. App. LEXIS 10328 (9 th Cir. May 14, 2009)	5, 9, 11, 15
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	7
<i>Hopson v. Hanesbrands Inc.</i> , 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009).	7

1	<i>Huens v. Tatum</i> ,	
2	52 Cal. App. 4 th 259 (1997).....	2
3	<i>In re Austrian & German Bank Holocaust Litigation</i> ,	
4	80 F. Supp. 2d 164 (S.D.N.Y. 2000).....	6
5	<i>In re Sutter Health Uninsured Pricing Cases</i> ,	
6	171 Cal.App.4th 495 (2009).....	14
7	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
8	168 Cal. App. 4th 116 (2008).....	3
9	<i>Laffitte v. Robert Half Int'l</i> ,	
10	1 Cal. 5th 480 (2016)	12-14
11	<i>Laskey v. Int'l Union</i> ,	
12	638 F.2d 954 (6th Cir. 1981)	6
13	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
14	2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008)	8, 15
15	<i>Ma v. Covidien Holding, Inc.</i> ,	
16	2014 WL 2472316, (C.D. Cal. 2014)	11
17	<i>Mathein v. Pier 1 Imps.</i> ,	
18	2018 U.S. Dist. LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018).....	15
19	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> ,	
20	186 Cal. App. 4th 399 (2010).	3
21	<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> ,	
22	15 Cal. 5th 1056, 1065 (2024).....	11
23	<i>Nordstrom Commission Cases</i> ,	
24	186 Cal. App. 4th 576 (2010).	10
25	<i>Officers for Justice v. Civil Service Com'n</i> ,	
26	688 F.2d 615 (9th Cir. 1982)	3
27	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
28	182 Cal.App.4th 278 (2010).....	14
	<i>Reynolds v. Direct Flow Med., Inc.</i> ,	
	2019 U.S. Dist. LEXIS 149865, (N.D. Cal. 2019).....	15
	<i>Rutti v. Lojack Corp., Inc.</i> ,	
	2012 WL 3151077 (C.D. Cal. 2012).....	14
	<i>Serrano v. Priest</i> ,	
	20 Cal. 3d 25 (1977)	11
	<i>Stanger v. China Elec. Motor, Inc.</i> ,	
	812 F.3d 734 (9th Cir. 2016)	13

1	<i>Stetson v. Grissom</i> ,	
2	821 F.3d 1157 (9th Cir. 2016)	13, 14
3	<i>Stoetznner v. U.S. Steel Corp.</i> ,	
4	897 F.2d 115 (3d. Cir. 1990).....	6
5	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
6	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015).....	11
7	<i>Swedish Hospital v. Shalala</i> ,	
8	1 F.3d 1261 (D.C. Cir. 1993)	13
9	<i>Taylor v. Fedex Freight, Inc.</i> ,	
10	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016).....	14
11	<i>Viceral v. Mistras Grp., Inc.</i> ,	
12	2016 WL 5907869 (N.D. Cal. 2016)	11
13	<i>Vincent v. Hughes Air West, Inc.</i> ,	
14	557 F.2d 759 (9th Cir. 1997)	11, 12
15	<i>Vizcaino v. Microsoft Corp.</i> ,	
16	290 F.3d 1043 (9th Cir. 2002)	13
17	<i>Wershba v. Apple Computer</i> ,	
18	91 Cal. App. 4 th 224 (2001).....	3, 11, 14
19	Secondary Sources:	
20	Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Award</i> ,	
21	7 J. Empirical Leg. Stud. 811, 833 (2010)	-12-

1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action Settlement Agreement and Release (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 December 2, 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 Kirsten Corbett and Brenda Cardenas (“Plaintiffs”) respectfully
9 moves for final approval, including attorneys’ fees, costs and the service awards, and entry of the Final
10 Approval Order and Judgment. The settlement represents an excellent result for the Class and avoids
11 the delays, risks, and costs of further litigation. After disseminating the notice to the members of the
12 Class, there were **no objections and only one (1) request for exclusion**, which means that nearly the
13 entire Class (99.95%) has elected to participate in the Settlement. Blumenthal Decl. ¶4. This is a
14 positive response from the Class evidencing their collective approval of the settlement. As a result,
15 Plaintiffs respectfully submit that the class 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 AM Retail Group, Inc. ("Defendant") is One Million One Hundred Thousand Dollars (\$1,100,000)
20 (Agreement at ¶ 21.) Under the Settlement, the Gross Settlement Amount consists of the following
21 elements: (1) payment of the Individual Settlement Payments to Settlement Class Member and
22 Individual PAGA Payments to PAGA Members; (2) Class Counsel Award; (3) Settlement
23 Administrator Costs; (4) the Class Representative Service Awards to Plaintiffs; and (5) the Payment
24

25
26 ¹ Capitalized terms are defined in the Agreement.

27 ² The “Class” is defined as “All non-exempt employees who worked for Defendant in California
28 during the Class Period.” The “Class Period” is defined as “March 3, 2019 to August 17, 2024.”
 (Preliminary Approval Order at ¶2.)

1 to LWDA. (Agreement at ¶¶ 21 and 64.) Blumenthal Decl. ¶3(a). The Gross Settlement Amount does
2 not include Employer's Side of Payroll Taxes. (Agreement at ¶¶ 18 and 21.) No portion of the Gross
3 Settlement Amount shall revert to Defendant under any circumstances. (Agreement at ¶ 21.)
4 Blumenthal Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and the
5 proposed deductions:

6 **\$1,100,000** (Gross Settlement Amount)
7 - \$20,000 (proposed Class Representative Service Award not to exceed \$10,000, each)
8 - \$40,000 (Class Counsel Award of expenses and costs - not to exceed amount)
9 - \$366,666.67 (Class Counsel Award of attorney's fees - not to exceed 1/3 of settlement)
10 - \$50,000 (PAGA Payment - 75% to LWDA and 25% to PAGA Members)
11 - \$14,000 (Settlement Administrator Costs)
12 **\$609,333.33** (Net Settlement Amount)

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

15 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
16 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
17 is "fair and adequate, and falls within the range of reasonableness". (Preliminary Approval Order at ¶
18 1.) In sum, the Settlement valued at \$1,100,000 is an excellent result for the Class. This result is
19 particularly favorable in light of the fact that liability and class certification in this case were far from
20 certain. Given the complexities of this case, the defenses asserted, the uncertainty of class certification,
21 along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and
22 adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

23 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
24 **OF CLASS ACTION SETTLEMENTS**

25 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th
26 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is
27 particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for*
28 *Fair Fran. v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and
settlement are the preferred means of dispute resolution. This is especially true in complex class action
litigation.")

 The court must decide whether the proposed settlement falls within the range of reasonable

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

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

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

16 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*
17 *Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service Com'n*, 688
18 F.2d 615, 625 (9th Cir. 1982). The trial court has broad discretion to determine whether the settlement
19 is fair. *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117 (2009). “The well-recognized
20 factors that the trial court should consider in evaluating the reasonableness of a class action settlement
21 agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
22 further litigation, the risk of maintaining class action status through trial, the amount offered in
23 settlement, the extent of discovery completed and the stage of the proceedings, the experience and views
24 of counsel, the presence of a governmental participant, and the reaction of the class members to the
25 proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008) (internal
26 citations omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal.App.4th 399, 408
27 (2010).

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

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

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

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

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

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

21 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
22 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
23 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
24 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
25 Claims of the Class in accordance with this Settlement, based upon the experience of Class Counsel
26 who has previously litigated similar claims against other employers. Blumenthal Decl. ¶7(a) and
27 Declaration of Aubry Wand (“Wand Decl.”) Wand Decl. ¶30.

28 The Parties attended an arms-length mediation session with Todd Smith, Esq, a respected jurist

1 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
2 preparation for the mediation, Defendant provided Plaintiffs and Class Counsel with payroll and
3 employment data and other information regarding the Class Members, various internal documents, and
4 other compensation and employment-related materials. Class Counsel analyzed the data with the
5 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
6 mediator. Following the all-day mediation session, the Parties agreed to this Settlement based upon a
7 mediator's proposal. 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; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
11 2007) ("The settlement was negotiated and approved by experienced counsel on both sides of the
12 litigation, with the assistance of a well-respected mediator with substantial experience in employment
13 litigation[, and] this factor supports approval of the settlement").

14 From May 17, 2024 to October 8, 2024, the initial settlement agreement and exhibits thereto
15 were finalized and executed. On December 2, 2024, the Court issued its Order granting preliminary
16 approved of the settlement as fair, adequate, 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. Class Counsel have participated in every aspect of the settlement discussions and
25 have concluded the settlement is fair, adequate and reasonable and in the best interests of the Class.
26 Blumenthal Decl. ¶ 3(j).

27 4. There Are No Objections and Only One (1) Request for Exclusion

1 The reaction of the Class unequivocally supports approval of the Settlement. On December 30,
2 2024, the Administrator mailed the Court-approved Class Notice to the Class Members, which provided
3 each class member with the terms of the Settlement, including notice of the claims at issue and the
4 financial terms of the settlement, including the attorneys' fees, costs, and service award that were being
5 sought, how individual settlement awards would be calculated, and the specific, estimated payment
6 amount to that individual. See Declaration of Lisa Pavlik ("Pavlik Decl.") ¶¶ 4-8, Exh. A. In
7 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
8 its Preliminary Approval Order. Significantly, there have been no objections and only one (1) request
9 to opt-out. Pavlik Decl. ¶¶ 14-15. As such, nearly the entire Class (99.95%) will participate in the
10 Settlement and will be sent a settlement check. See Pavlik Decl. at ¶¶ 15 and 17; Blumenthal Decl. ¶4.

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

19 5. The Strength of Plaintiffs' Case

20 The Action generally alleges that Plaintiffs and other Class Members were not properly paid all
21 overtime wages for hours worked and at the correct rate of pay, were not provided meal and rest periods
22 or paid premiums at the correct rate of pay in lieu thereof, were not timely paid earned wages, were not
23 provided reimbursement for required expenses, were not provided accurate itemized wage statements,
24 were not pay all sick wages and the correct rate of pay, and were not paid all wages at the time of
25 termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other
26 equitable or legal relief allegedly due and owing to Plaintiffs and the other Class Members by virtue of
27 the foregoing claims. Blumenthal Decl. ¶5.
28

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

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

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

1 settlement amount and the Class Members' expected net recovery, after fees and other
2 costs are deducted, appear to be a reasonable compromise, in light of the risks of
litigation.

3 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
4 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the strength of Plaintiff's case, legal
5 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
6 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

7 The potential complexity and possible duration of trial also weigh in favor of granting
8 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
9 uncertainty of outcome, and believe defendant would appeal in the event of adverse
10 judgment. A post-judgment appeal would require many years to resolve and delay
payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
11 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
12 recovery through full adjudication.

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

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

23 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
24 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
25 substantial defenses both to liability and to class certification. The maximum and average class member
26 allocations (in addition to their Individual PAGA Payment) are \$3,013.97 and \$285.00, respectively.
27 *See Pavlik Decl.* ¶19. Given the complexities of this case, the defenses, along with the uncertainties
28 of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally

1 approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

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

1 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
2 which discussed the value of the class claims in detail, the Gross Settlement Amount compares
3 favorably to the value of the claims. Based upon 2,138 Participating Class Members who collectively
4 worked an estimated 57,253 workweeks, the Gross Settlement Amount provides an average value of
5 \$514.50 per Class Member and \$19.21 per workweek and after deductions the Net Settlement Amount
6 provides an average recovery of \$285.00 per Class Member and a recovery of \$10.64 per workweek.
7 Blumenthal Decl. at ¶8(d).

8 The calculations to compensate for the amount due for the Class at the time of the mediation
9 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
10 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
11 wages for the employees. The maximum potential damages were calculated to be \$7,596 for the alleged
12 underpaid overtime and sick pay, \$937,599.47 for alleged meal period damages for shifts worked and
13 after deducting the meal premiums actually paid by Defendant, \$736,032.25 for alleged rest period
14 damages based upon the same potential 25% violation rate observed for meal periods, and \$525,620
15 for alleged unreimbursed business expenses for personal cell phone usage. As a result, the total damage
16 valuation was calculated that Defendant was subject to a maximum damage claim in the amount of
17 \$2,206,847.72. As to potential penalties, Plaintiffs calculated that potential waiting time penalties were
18 a maximum of \$3,859,557, and potential maximum wage statement penalties were \$1,016,750.³
19 Defendant vigorously disputed Plaintiffs' calculations and exposure theories. Blumenthal Decl. ¶8(d)
20 and Wand Decl. ¶27.

21 Consequently, the Gross Settlement Amount of \$1,100,000 represents more than 50% of the
22 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated,
23

24 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
25 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
26 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
27 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class
28 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
29 (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 assuming these amounts could be proven at trial.⁴ Importantly, the recent decision that good faith belief
2 of compliance by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024),
3 could completely negate the claims for waiting time and wage statement penalties, even if wages were
4 owed to the Class. The above maximum calculations should then be adjusted in consideration for both
5 the risk of class certification and the risk of establishing class-wide liability on all claims. Given the
6 amount of the settlement as compared to the potential value of claims in this case and the defenses
7 asserted by Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been
8 met. Blumenthal Decl. ¶8(d).

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 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden

21 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
22 Plaintiffs did not included the PAGA claim in this discussion of the value of the class claims. The
23 PAGA claim is addressed in the Declaration of Audry Wand at ¶27 filed currently herewith.

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 alone.” *Vincent*, 557 F.2d at 769.

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

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

18 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
19 Here, Plaintiffs and their counsel secured a \$1,100,000 settlement for the benefit of the Class, and not
20 one Class Member objected. The Settlement was possible only because Class Counsel was able to
21 convince Defendant that Plaintiffs could potentially prevail on the contested issues regarding liability,
22 maintain class certification, overcome difficulties in proof as to monetary relief and take the case to trial
23 if need be. Blumenthal Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed
24 the necessary skills in both wage and hour and class action litigation. Moreover, as discussed above,
25 there were significant risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*,
26 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of**
27 **one-third of the common fund as attorneys' fees has been found to be appropriate.**”)
28

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

6 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
7 reward is the attendant risks inherent in the litigation. Here, it is clear that a settlement fund of
8 \$1,100,000 has been created. For Class Counsel, the fees here were wholly contingent in nature and the
9 case presented far more risk than the usual contingent fee case. Among the risks was the cost inherent
10 in class action litigation, as well as a long battle with a corporate Defendant who had retained a premier
11 and highly experienced defense firm. **Counsel retained on a contingency fee basis, whether in
12 private matters or in class action litigation, is entitled to a premium above their hourly rate in
13 order to compensate for both the risks and the delay in payment.** *See e.g. Stanger v. China Elec.*
14 *Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v.*
15 *Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply risk multiplier).

16 Fifth, the requested fee award is supported by the lodestar cross-check. The reasonableness of
17 the requested attorneys’ fee of one-third equal to \$366,666.67 is also established by reference to Class
18 Counsel’s lodestar in this matter. **The contemporaneous billing records for Class Counsel evidence
19 that through March 13, 2025, Class Counsel’s total combined lodestar is \$251,849, with
20 significant additional fees still to be incurred to complete final approval and the settlement
21 process.** (Blumenthal Decl. at ¶12, Exhibits #3 [lodestar of \$149,934.00] and Wand Decl. ¶¶49-62,
22 Exhibit G. [lodestar of \$101,915.00]) The requested fee award is therefore currently equivalent to Class
23 Counsel’s total lodestar with a reasonable multiplier of less than 1.5, and there will be additional
24 lodestar incurred by Class Counsel to complete the settlement process and manage the settlement
25 distribution and reports. (Blumenthal Decl. at ¶12; Wand Decl. ¶64.) Such a multiplier is below the
26 range of multipliers approved in other cases such as *Laffitte* and *Vizcaino v. Microsoft Corp.*, 290 F.3d
27
28

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 fund is fair and reasonable, and should be approved.

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

4 The Agreement provides at paragraph 64(g), that Class Counsel may seek a "Class Counsel for
5 reimbursement of any costs or expenses associated with Class Counsel's prosecution of this matter from
6 the Gross Settlement Amount not to exceed \$40,000." Class Counsel have incurred \$24,192.25 based
7 upon counsel's billing records. These litigation expenses include the expenses incurred for filing fees,
8 mediation expenses, expert expenses (Berger Consulting and DM&A), and attorney service charges
9 (Knox, OneLegal, CourtCall), LWDA Filing Fee, and research charges (LexisNexis), all of which are
10 costs normally billed to and paid by the client.⁷ The details of the litigation expenses incurred are set
11 forth the Blumenthal Decl. at ¶12, Exhibits #3 (expenses of \$14,489.54) and Wand Decl. ¶65 (expenses
12 of \$9,702.71). These costs were reasonably incurred and necessary to the successful prosecution of the
13 Action, so the request should be granted. (Blumenthal Decl. at ¶13.)

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

15 Plaintiffs respectfully submit that for their service as the sole class representatives, Plaintiffs
16 should be awarded the agreed Class Representative Service Award of \$10,000 each, in accordance with
17 the Agreement for their time, risk and effort expended on behalf of the Class as the class representative.
18 (Agreement at ¶ 64(f).) Defendant has agreed to this payment and there have been no objections to the
19

20 ⁶ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
21 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
22 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*, 91 Cal. App.
23 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing*
24 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable"); *Chavez*
25 *v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved
26 range of 2 to 4); *Taylor v. Fedex Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26
27 multiplier).

28 ⁷ Nontaxable costs are properly awarded where authorized by the parties' agreement. *Stetson*, 821
F.3d at 1165. Accordingly, "[e]xpenses such as reimbursement for travel, meals, lodging,
photocopying, long-distance telephone calls, computer legal research, postage, courier service,
mediation, exhibits, documents scanning, and visual equipment are typically recoverable." *Rutti v.*
Lojack Corp., Inc., 2012 WL 3151077, at *12 (C.D. Cal. 2012).

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

4 As the only representatives of the Class, Plaintiffs performed their duties to the Class admirably
5 and without exception. Plaintiffs worked extensively with Class Counsel during the course of the
6 litigation, responding to numerous requests, searching for documents, working with counsel, and
7 reviewing the settlement documentation. (Blumenthal Decl. at ¶ 14; Wand Decl. ¶¶ 66-72.) The
8 Plaintiffs' Declarations detail the involvement, stress and risks they undertook as a result of this Action.
9 Plaintiffs also assumed the serious risk that they might possibly be liable for costs and fees to
10 Defendant, as well as the reputational risk of being "blacklisted" by other future employers for having
11 filed a class action on behalf of employees. (Blumenthal Decl. at ¶15.) Without the Plaintiffs'
12 participation, cooperation and information, no other employees would be receiving any benefit.
13 (Blumenthal Decl. at ¶¶ 15-16).

14 The payment of a service award to a successful class representative is appropriate and the
15 amount of \$10,000 is well within the currently awarded range for similar settlements. *See, e.g., Andrews*
16 *v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (service awards
17 of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865,
18 at *19 (N.D. Cal. 2019) (granting \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018
19 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
20 \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008)
21 (awarding \$25,000 service award to each of six plaintiffs); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
22 *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award). Class Counsel respectfully request
23 approval of the Class Representative Service Award in accordance with the Agreement.

24 **VI. CONCLUSION**

25 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness
26 established in California law and should therefore be finally approved as fair, reasonable and adequate
27 and requests entry of the Final Approval Order and Judgment, submitted herewith.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

Dated: March 13, 2025 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Attorneys for Plaintiffs