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

DOUGLAS PATTON, on behalf of the
State of California, as a private attorney
general, and as an individual, on behalf of
himself and on behalf of all persons
similarly situated, and SALVADOR
REYNOSA, JR., an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

HOME DEPOT U.S.A., INC., a
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

CASE NO.: **21CV387956**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT AND AWARD OF
ATTORNEYS' FEES, COSTS AND SERVICE
AWARDS**

Hearing Date: September 26, 2024
Hearing Time: 1:30 p.m.
[Hearing scheduled by Order dated April 5, 2024]

Judge: Hon. Charles F. Adams
Dept.: 7

Action Filed: October 13, 2021
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 Joint Stipulation of Class Action and PAGA Settlement and Release (“Agreement”), a true and correct
4 copy of which is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal
5 Decl.”).¹ In accordance with the Preliminary Approval Order dated April 5, 2024 (“Preliminary
6 Approval 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 Salvador Reynosa, Jr. and Douglas Patton (“Plaintiffs”)
9 respectfully submit this memorandum in support of the unopposed motion for final approval and the
10 proposed entry of the Final Approval Order and Judgment, submitted herewith. The settlement
11 represents an excellent result for the Class and avoids the delays, risks, and costs of further litigation.
12 After disseminating the notice to the members of the Class, there were **no objections and no requests**
13 **for exclusion**, which means that the entire Class has elected to participate in the Settlement.
14 Blumenthal Decl. ¶4. This is a positive response from the Class evidencing their collective approval
15 of the settlement. As a result, Plaintiffs respectfully submit that the class settlement should be finally
16 approved for the same reasons that the Court preliminarily approved the settlement as fair, reasonable,
17 and adequate.

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

19 Plaintiffs and Defendant Home Depot U.S.A., Inc. (“Defendant”) reached a full and final
20 settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with
21 the Court. As consideration for this Settlement, the Maximum Settlement Payment is One Million One
22 Hundred Twelve Thousand and Five Hundred U.S. Dollars (\$1,112,500). (Agreement at ¶ 37.) Under
23 the Settlement, the Maximum Settlement Payment consists of the following elements: (1) payment of

24 ¹ Capitalized terms are defined in the Agreement.

25
26 ² The “Class” is defined as “any non-exempt, hourly associate employed by Defendant Home Depot
27 (and its past and present Affiliates) in the State of California at a California supply chain facility at any
28 point during the Class Period, excluding the associates who worked at the Tracy RDC prior to June 17,
2021.” The “Class Period” is defined as January 26, 2023 through April 16, 2023. Preliminary Approval
Order, 6:17-21.

1 the Settlement Payments to the Settlement Class Members; (2) Court-approved attorneys' fees and
2 litigation costs; (3) Settlement Administration Expenses; (4) the Service Enhancements to Plaintiffs;
3 and (5) the PAGA Penalty Allocation payment. (Agreement at ¶ 37.) The Maximum Settlement
4 Payment does not include Defendant's share of payroll taxes. (Agreement at ¶ 37.) The Maximum
5 Settlement Payment shall be all-in with no reversion to Defendant. (Agreement at ¶ 79.) Blumenthal
6 Decl. ¶3(b). The following is a table of the key financial terms of the Settlement and the proposed
7 deductions:

8 **\$1,112,500** (Maximum Settlement Payment)

- 9 - \$20,000 (Plaintiffs' proposed service awards not to exceed \$10,000 each)
10 - \$50,500 (Class Counsel litigation costs - not to exceed amount)
11 - \$370,333 (Class Counsel attorneys' fees - not to exceed one-third of settlement)
12 - \$20,000 (PAGA Penalty Allocation - 75% to LWDA / 25% to PAGA Group Members)
13 - \$60,000 (Settlement Administration Expenses)
14 - \$10,000 (Reserve Fund)

15 **\$581,167** (Net Settlement Amount)

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

18 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
19 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
20 is fair, adequate, and reasonable. (Preliminary Approval Order at 9:22-24.) In sum, the Settlement
21 valued at \$1,112,500 is an excellent result for the Class. This result is particularly favorable in light
22 of the fact that liability and class certification in this case were far from certain in light of the defenses
23 asserted by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of
24 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
25 fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

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

28 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.*
v. Southland Corp., 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are

1 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

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

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

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

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

1 399, 408 (2010).

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

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

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

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

14 Over the course of over three years of litigation, the Parties engaged in the investigation of the
15 claims, including the production of documents, class data, and other information, allowing for the full
16 and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
17 investigation performed was detailed at length in support of the motion for preliminary approval. The
18 Settlement was the product of arms-length and contentious negotiations through an all-day mediation
19 presided over by Jeff Ross, Esq., a respected and experience mediator of wage and hour class actions.
20 The details of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(h).

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

22 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
23 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
24 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
25 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
26 Claims of the Class in accordance with this Settlement. Class Counsel are experienced and qualified
27 to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and
28 Class Counsel are particularly experienced in wage and hour employment class actions, as Class

1 Counsel has previously litigated and certified similar claims against other employers. Blumenthal Decl.
2 ¶7(a).

3 The Parties attended an arms-length mediation session with Jeff Ross, a respected and
4 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
5 for the mediation, Defendant provided Class Counsel with necessary information for the members of
6 the Class, including payroll data and information concerning the composition of the Class. Plaintiffs
7 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
8 a mediation brief and damage valuation to the Mediator. After months of negotiations involving Mr.
9 Ross, the Parties reached a global settlement and fully executed a memorandum of understanding
10 regarding material settlement terms on April 14, 2023. The final settlement terms were negotiated and
11 set forth in the Agreement now presented for this Court’s approval. Blumenthal Decl. ¶7(b).

12 The fact that the settlement was negotiated with the assistance of an experienced mediator
13 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
14 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
15 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
16 litigation, with the assistance of a well-respected mediator with substantial experience in employment
17 litigation[, and] this factor supports approval of the settlement”).

18 From April 2023 to November 2023, the settlement agreement and exhibits thereto were
19 finalized and executed, and then presented by motion to this Court for preliminary approval. On April
20 5, 2024, the Court issued its Order granting preliminary approved of the settlement as fair and
21 reasonable to the Class. Blumenthal Decl. ¶7(c).

22 3. Class Counsel is Experienced in Similar Litigation

23 Class Counsel in this matter has extensive class action experience and has represented thousands
24 of persons in class actions including employment litigation, wage and hour class actions, and complex
25 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
26 claims similar to this case and have been approved as experienced class counsel during contested
27 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
28 knowledgeable in this area of law. See Blumenthal Decl. at ¶ 2. Class Counsel have participated in

1 every aspect of the settlement discussions and have concluded the settlement is fair, adequate and
2 reasonable and in the best interests of the Class. Blumenthal Decl. ¶ 3(j).

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

4 The reaction of the Class unequivocally supports approval of the Settlement. On June 5, 2024,
5 the Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
6 class member with the terms of the Settlement, including notice of the claims at issue and the financial
7 terms of the settlement, including the attorneys' fees, costs, and service awards that were being sought,
8 how individual settlement awards would be calculated, and the specific, estimated payment amount to
9 that individual. See Declaration of Nathalie Hernandez ("Hernandez Decl.") at ¶ 7, Exh. A. In
10 disseminating the notice, the Administrator followed the notice procedures authorized by the Court in
11 its Preliminary Approval Order. Significantly, there have been no objections and no requests for
12 exclusion. Hernandez Decl. at ¶¶ 11-12. As such, the entire Class will participate in the Settlement and
13 will be sent a settlement check. See Hernandez Decl. at ¶¶ 13-14; Blumenthal Decl. ¶4.

14 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
15 Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
16 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
17 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d.
18 Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*,
19 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
20 settlement should be considered when determining fairness of settlement). Here, where there are no
21 objections, the approval of the class is evident.

22 5. The Strength of Plaintiffs' Case

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

1 Blumenthal Decl. ¶5.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
4 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
5 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
6 argued that all work time was properly recorded and paid for and that there was no miscalculation of
7 the regular rate. Defendant contends that its meal and rest period policies fully complied with
8 California law, and Defendant did not fail to provide the opportunity for legally required rest breaks.
9 As to meal periods, Defendant established that it paid meal period premiums for more missed meal
10 periods than violations. Further, as to meal and rest periods, the Defendant could argue that the
11 *Barragan* settlement, which received final approval in December 2023, released all such claims. As
12 to expense reimbursement, Defendant contended that it did not fail to provide reimbursement for
13 necessary business expenses and that claimed expenses were incurred voluntarily and/or for the
14 convenience of employees and is therefore not required reimbursement. Defendant argued that the
15 decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior*
16 *Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021),
17 weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period
18 claims. Defendant also argues that based on its facially lawful practices, it acted in good faith and
19 without willfulness, which if accepted would negate the claims for waiting time penalties and/or
20 inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce
21 any recovery to the Class. While Plaintiffs believes that these defenses could be overcome, Defendant
22 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.
23 Blumenthal Decl. ¶8(a).

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

26 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
27 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
28 Associates were misclassified as exempt. In addition to the uncertainties raised by
Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
Defendants notes that the question of an employer's duty to provide rest and meal

1 periods is an open one, signaling even less certainty for Plaintiffs. [...T]he gross
2 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.

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
uncertainty of outcome, and believe defendant would appeal in the event of adverse
9 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
10 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
11 recovery through full adjudication.

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

14 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
15 to obtain class certification and thereby not recover on behalf of any employees other than himself.
16 Defendant argued that the individual experience of each putative class member varied with respect to
17 the claims. Defendant could also contest class certification by arguing injury and good faith were case-
18 by-case determinations that precluded class certification. Plaintiffs are aware of other cases where class
19 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019)
20 (denying certification of rest break claims). Finally, even if class certification was successful, as
21 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
22 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the class
23 has been certified. While other cases have approved class certification in wage and hour claims, class
24 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
25 Blumenthal Decl. ¶8(b).

26 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
27 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
28 substantial defenses both to liability and to class certification. Currently, the maximum and average

1 class member allocation are \$230.57 and \$48.70, respectively. *See* Hernandez Decl. ¶ 14. Given the
2 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
3 Settlement is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. at ¶8(e).

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

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

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

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

25 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
26 and likely duration of further litigation likewise favors the settlement. Regardless of how
27 this Court might have ruled on the merits of the legal issues, the losing party likely
28 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." *See In re Mego Financial
Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further

1 litigation is substantial.

2 *Id.* at *12.

3 7. The Amount Offered in Settlement

4 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
5 to Plaintiffs' claims. The Declaration of Nordrehaug submitted in support of preliminary approval
6 discussed the value of the class claims in detail.

7 The calculations to compensate for the amount due to the Class Members at the time this
8 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
9 mediation. Class Counsel analyzed the data for putative class members and determined the potential
10 maximum damages for the class claims. For the Class, the value of the regular rate claim was
11 calculated to be \$0 because it was released by the *Barragan* settlement, the maximum value of the claim
12 for unpaid wages due to the alleged rounding practices rate was \$700,134, the maximum potential
13 damages for underpaid meal period premiums were estimated to be \$0 because Defendant paid more
14 meal period premiums than potential violations in the records, the maximum potential rest period
15 damages were estimated to be \$3,378,955 based upon one missed rest period per month, and the
16 maximum potential damages for failure to provide expense reimbursement were calculated to be
17 \$834,310. In total, the damages for the Class were calculated to have a maximum potential total value
18 of \$4,913,399. In addition, Plaintiff calculated that the maximum value of the potential waiting time
19 penalties could have been \$1,368,000 for the period prior to March 31, 2021¹⁸ not covered by *Barragan*,
20 however by the time of this hearing, waiting time penalties will be valued at \$0 because this claim is
21 being released by the *Utne* Settlement, which is a \$72 million settlement for which final approval is
22 being heard in February 2024. The maximum value of the potential wage statement penalties were \$0
23 because this claim was released by the *Barragan* settlement.³ Defendant vigorously disputed Plaintiffs'

24
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 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 calculations and exposure theories. Blumenthal Decl. ¶8(d).

2 Consequently, the Maximum Settlement Payment represents more than 22% of the potential
3 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
4 full at trial.⁴ Importantly, the recent decision that good faith belief of compliance by the employer in
5 *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the
6 claims for waiting time and wage statement penalties, even if wages were owed to the Class. The above
7 maximum calculations should then be adjusted in consideration for both the risk of class certification
8 and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as
9 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁵
10 Clearly, the goal of this litigation has 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 (Cal. 1977); *Boeing Co. v. Van*
20 *Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread

21
22 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

24 ⁵ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 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 verdict 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 full verdict value).

1 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear
2 the entire burden 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
6 *v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and
7 state courts in holding that when class action litigation establishes a monetary fund for the benefit of
8 the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
9 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
10 fund created”). Under the percentage of the fund method, a court’s objective remains to “mimic the
11 market” 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 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 \$1,112,500 settlement for the benefit of the Class. The
21 Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs
22 could potentially prevail on the contested issues regarding liability, maintain class certification,
23 overcome difficulties in proof as to monetary relief and take the case to trial if need be. Blumenthal
24 Decl. ¶10(f). In successfully navigating these hurdles Class Counsel displayed the necessary skills in
25 both wage and hour and class action litigation. Moreover, as discussed above, there were significant
26 risks to the contingent litigation. See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
27 (E.D. Cal. 2013) (“**Like this case, where recovery is uncertain, an award of one-third of the**
28 **common fund as attorneys' fees has been found to be appropriate.**”)

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. For Class Counsel, the fees here were wholly
8 contingent in nature and the case presented far more risk than the usual contingent fee case. Among the
9 risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendant
10 who had retained a premier and highly experienced defense firm. **Counsel retained on a contingency
11 fee basis, whether in private matters or in class action litigation, is entitled to a premium above
12 their hourly rate in order to compensate for both the risks and the delay in payment.** *See e.g.*
13 *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (courts “must” apply a risk
14 enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply
15 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 \$370,833 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 September 4, 2024, Class Counsel’s total lodestar is \$544,312.50**, with significant
20 additional fees still to be incurred to complete final approval and the settlement process. Blumenthal
21 Decl. at ¶12 and Exhibits #3, 4, 5 and 6 The requested fee award is therefore significantly less than
22 Class Counsel’s total lodestar, representing a “negative multiplier” of less than 0.7, and there will be
23 additional lodestar incurred by Class Counsel to complete the settlement process. Blumenthal Decl. at
24 ¶12. Such fee award cross-check is far below the range of positive multipliers approved in other cases
25 such as *Laffitte and Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).⁶

26
27 ⁶ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
28 *supra*, at 1051(3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278
(2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba v. Apple*

1 For such reasons, Class Counsel's request for attorneys' fees in the amount of one-third of the
2 common fund is fair and reasonable and should be approved.

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

4 The Agreement provides at paragraph 72(a), that Class Counsel may seek a "a Class Counsel
5 Litigation Expense of no more than \$50,500". Class Counsel requests reimbursement for incurred
6 litigation expenses and costs in the amount of \$50,486.03 based upon counsel's billing records which
7 evidence total expenses of \$50,486.03. These litigation expenses include the expenses incurred for filing
8 fees, mediation expenses, expert fees (Berger Consulting Group), attorney service charges (Knox, One
9 Legal), court reporting charges (Aptus Court Reporting), Lexis charges, appearance fees, and delivery
10 expenses, all of which are costs normally billed to and paid by the client.⁷ The details of the litigation
11 expenses incurred are set forth the Blumenthal Decl. at ¶13 and Exhibits #3, 4, 5 and 6. Because these
12 costs were reasonable and necessary to the successful prosecution of these claims, the request is
13 reasonable and should be granted.

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

15 Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs should
16 be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their time,
17 risk and effort expended on behalf of the Class. (Agreement at ¶ 79(c).) Defendant has agreed to this
18 payment and there have been no objections to the requested service award. The Blumenthal Decl., at
19 ¶14, provides a long list of equivalent service awards approved in California in similar cases, which
20 further supports the request in this case. The Declarations of the Plaintiffs are submitted in support of
21

22 *Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In*
23 *re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of
24 2.52 as "fair and reasonable"); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming
25 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).

1 this request and are attached as Exhibits #8 and 9 to the Blumenthal Declaration.

2 As the representatives of the Class, Plaintiffs performed their duty 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, the Plaintiffs are
6 also providing a comprehensive release as part of the Settlement, far beyond the class release. The
7 Declarations of the Plaintiffs detail the involvement, stress and risks they undertook as a result of this
8 Action. Plaintiffs also assumed the serious risk that they might possibly be liable for costs and fees to
9 Defendant, as well as the reputational risk of being “blacklisted” by other future employers for having
10 filed a class action on behalf of fellow former employees. Blumenthal Decl. at ¶15. Without the
11 Plaintiffs’ participation, cooperation and information, no other employees would be receiving any
12 benefit. Blumenthal Decl. at ¶¶ 14-15.

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

23 **VI. CONCLUSION**

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

27 Dated: September 4, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
28 By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Esq., Attorneys for Plaintiffs