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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

CARLOS LUJANO, an individual, on behalf of
himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

GENERAL PRODUCTION SERVICE OF
CALIFORNIA, INC., a California Corporation;
and DOES 1 TO 50,

Defendants.

Case Number: BCV-20-102705

**Plaintiff's Notice of Motion and Motion for
Final Approval of Class Action Settlement**

Date: July 6, 2022

Time: 8:30 a.m.

Dept.: H

Judge: Hon. Bernard C. Barmann, Jr.

Action Filed: November 19, 2020

Trial Date: None Set

Preliminary Approval Granted: March 8, 2022

1 **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **NOTICE IS HEREBY GIVEN** that on July 6, 2022, at 8:30 a.m., or as soon thereafter as the
4 matter may be heard, in Department H of the Kern County Superior Court for the State of California,
5 located at the 1215 Truxtun Avenue, Bakersfield, California 93301, before the Honorable Bernard C.
6 Barmann, Jr., Plaintiff Carlos Lujano (“Plaintiff”), on behalf of himself, the State of California, as a
7 private attorney general, and on behalf of all others similarly situated, will and hereby does move this
8 Court for entry of an order:

9 1. Finally certifying the class, as defined in the *Settlement Agreement and Release of Class*
10 *Action* (the “Settlement Agreement”) between Plaintiff and Defendant General Production Service of
11 California, Inc. (“Defendant”), for the purpose of settlement pursuant to California Code of Civil
12 Procedure section 382 and California Rules of Court, rule 3.769;

13 2. Finally appointing the named Plaintiff, Carlos Lujano, as class representative for
14 purposes of settlement;

15 3. Finally appointing Jonathan Melmed and Kyle D. Smith of Melmed Law Group P.C. as
16 class counsel for purposes of settlement;

17 4. Finding that the notice of the settlement was properly provided to the class members in
18 accordance with the Court’s March 8, 2022, *Order Granting Preliminary Approval of Class Action*
19 *Settlement*;

20 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms
21 set forth in the Settlement Agreement, including the payment by Defendant of the non-reversionary
22 gross settlement amount of \$1,750,000.00 (“Gross Settlement Amount”), plus the employer’s portion
23 of applicable payroll taxes;

24 6. Finally approving the allocation for attorneys’ fees of one-third of the Gross Settlement
25 Amount (i.e., \$583,333.33), plus necessary litigation costs of \$12,052.12;

26 7. Finally approving ILYM Group, Inc. (the “Settlement Administrator”) as the settlement
27 administrator and approving distribution of \$12,500.00 from the Gross Settlement Amount to cover the
28 settlement administrator’s expenses in administering the settlement;

1 8. Finally approving the allocation of \$25,000.00 for penalties pursuant to the California
2 Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$18,750.00) shall be paid to
3 the California Labor and Workforce Development Agency (“LWDA”) from the Gross Settlement
4 Amount, with the remaining 25% (i.e., \$6,250.00) payable to the aggrieved employees;

5 9. Finally approving a class representative incentive payment to the named plaintiff in an
6 amount of \$10,000.00 from the Gross Settlement Amount to compensate him for the burdens,
7 responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

8 10. Binding all participating class members to the terms of the Settlement Agreement,
9 including the release specified therein; and

10 11. Retaining jurisdiction to enforce the Settlement Agreement.

11 This motion is based on this notice and motion; the memorandum of points and authorities in
12 support thereof; the declaration of Plaintiff’s counsel; the declaration of the Settlement Administrator;
13 the Settlement Agreement; the other records, pleadings, and papers filed in this action; and upon such
14 other evidence or argument as may be presented to the court at the hearing of this motion.

15 As this motion is unopposed, and due to the complex nature of this motion, Plaintiff respectfully
16 requests relief from the page limit requirement under California Rules of Court, Rule 3.1113(d).

17 Dated: June 15, 2022

MELMED LAW GROUP P.C.



KYLE D. SMITH

Attorney for Plaintiff, the Putative Class, and the
Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks final approval of a wage-and-hour class action settlement between Plaintiff
4 Carlos Lujano (“Plaintiff”) and Defendant General Production Service of California, Inc.
5 (“Defendant”) (collectively, the “Parties”) of \$1,750,000 (the “Gross Settlement Amount”) to be
6 distributed to 1,206 individuals defined as: *All individuals who are or were employed by Defendant as*
7 *non-exempt field workers in California during the period from April 10, 2018, through March 8, 2022*
8 (the “Class Members” or the “Class”).

9 Plaintiff also represent a group of aggrieved employees on behalf of the State of California as
10 private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”). (Lab. Code, §§ 2698–2699.5.) The “Aggrieved Employees,” for these purposes, are defined
12 as: *All individuals who are or were employed by Defendant as non-exempt field workers in California*
13 *during the period from November 18, 2019, through March 8, 2022.*

14 A true and correct copy of the *Class Action Settlement Agreement and Release of Claims*
15 (“Settlement Agreement”) is attached as **Exhibit A** to the concurrently-filed *Declaration of Jonathan*
16 *Melmed in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement* (“Melmed FAM
17 Decl.”). The Settlement Agreement, in its entirety, is incorporated herein by reference.

18 On March 8, 2022, this Court granted preliminary approval of the Settlement Agreement.
19 Pursuant to that order, on April 5, 2022, ILYM Group, Inc. (the “Settlement Administrator”) mailed
20 the Court-approved *Notice of Proposed Class Action Settlement* (the “Class Notice”) to all 1,159 Class
21 Members contained on the original list of data provided by Defendant. (See *Declaration of Nathalie*
22 *Hernandez of ILYM Group, Inc., in Support of Motion for Final Approval of Class Action Settlement*
23 (“Admin. Decl.”), at ¶ 6.) On May 10, 2022, the Settlement Administrator was advised by Defendant’s
24 counsel that 47 individuals were inadvertently omitted from the class list. (Admin. Decl., ¶ 7.) On May
25 12, 2022, the Settlement Administrator mailed the Class Notice to those additional 47 Class Members.
26 (Admin. Decl., ¶ 11.) A copy of the Class Notice is attached to the Settlement Administrator’s
27 declaration as **Exhibit A**.

If the Court grants final approval, each participating Class Member will receive a share of approximately **\$1,107,114.55** (the “Net Settlement Amount”), which is calculated as described below. Plaintiff also provides the following summary to assist the Court in its review:

Gross Settlement Amount	\$1,750,000.00
Attorneys’ Fees:	(\$583,333.33)
Litigation Costs:	(\$12,052.12)
Settlement Administration Costs:	(\$12,500.00)
Incentive Award to Plaintiff:	(\$10,000.00)
PAGA Payment to LWDA:	(\$18,750.00)
PAGA Payment to Aggrieved Employees:	(\$6,250.00)
Net Settlement Amount	\$1,107,114.55
<i>Employer Portion of Payroll Taxes Paid by Defendant In Addition To The Gross Settlement Amount</i>	

Class Participation	
Eligible Class Members:	1,206
Requests for Exclusion:	0
Objectors:	0
Participating Class Members:	1,206
Total Participation Rate:	100%

<u>Relevant Supplemental Data</u>	
Number of Aggrieved Employees:	965
Workweeks during the Class Period	89,522
Pay Periods during the PAGA Period	25,192
Highest Payment to Class Members	\$2,537.99
Average Payment to Class Members	\$923.19
Class Counsel Fee Request	⅓ of Gross Settlement Amount
Percent of Class Payments Attributable to Unpaid Wages (W-2 Income):	20%
Percent of Class Payments Attributable to Non-Wages (1099 Income):	80%

1 The Settlement Agreement is an excellent result for the Class, which is demonstrated by the
2 extraordinarily high participation rate of **100%**. (Admin. Decl., ¶ 13.) To date, only **not a single**
3 **prospective class member has requested exclusion out of the 1,206 total eligible employees who**
4 **were provided notice.** (Admin. Decl., ¶ 11.) Likewise, no Class Members have submitted objections
5 to the Settlement Agreement. (Admin. Decl., ¶ 12.) These numbers evidence an overwhelmingly
6 positive response from the Class Members regarding the substance of the Settlement Agreement,
7 confirming that the Settlement Agreement is in the best interest of the Class Members. (Melmed FAM
8 Decl., ¶ 33.) Further, they raise a strong presumption that the Settlement Agreement is fair, reasonable,
9 adequate, and in the best interest of the Class Members.

10 Because the Settlement Agreement is fair and reasonable, was negotiated at arm's length
11 between counsel following extensive informal discovery, was reached after attendance at a full-day
12 mediation and significant time in post-mediation negotiations and investigation culminating in the
13 Parties accepting the broad terms of the Settlement Agreement, it should be finally approved. (Melmed
14 FAM Decl., ¶ 28.)

15 As part of Plaintiff's motion for final approval, Plaintiff's counsel is seeking final approval of
16 attorneys' fees in the amount of one-third of the Gross Settlement Amount, which is a reasonable fee
17 for a wage and hour class action as a percentage of the common fund and within the normal range of
18 attorneys' fee awards in similar class actions in California courts, as demonstrated below, and
19 considering the benefit obtained for the class in this case.

20 Based on the foregoing, Plaintiff respectfully requests that the Court issue an order **(1)** finally
21 certifying the Class; **(2)** finally appointing Plaintiff as class representative; **(3)** finally appointing
22 Plaintiff's attorneys as class counsel, **(4)** finding that notice of the settlement was properly provided to
23 the Class Members; **(5)** finally approving the Settlement Agreement as fair, adequate, and reasonable;
24 **(6)** finally approving the allocation for attorneys' fees of one-third of the Gross Settlement Amount,
25 plus necessary incurred litigation costs; **(7)** finally approving ILYM Group, Inc. as the settlement
26 administrator; **(8)** finally approving the allocation of \$25,000.00 from the Gross Settlement Amount
27 for PAGA penalties; **(9)** finally approving a class representative incentive payment to the named
28 plaintiff in an amount of \$10,000.00; **(10)** binding all participating class members to the terms of the

1 Settlement Agreement, including the release specified therein; and **(11)** retaining jurisdiction to enforce
2 the terms of the Settlement Agreement.

3 **II. BACKGROUND**

4 Defendant is engaged in the business of drilling oil and gas, and is headquartered in Taft,
5 California. (Melmed FAM Decl., ¶ 11.) Defendant has operated since 1967 and, in addition to owning
6 and operating more than 70 drilling rigs, it offers services that include well rig maintenance,
7 construction pump rentals, heavy equipment transportation, and other drilling-related services.
8 (Melmed FAM Decl., ¶ 11.)

9 Plaintiff was employed by Defendant as an hourly worker, in the position of a heavy machine
10 operator. (Melmed FAM Decl., ¶ 12.) Plaintiff's hourly rate depended on the category of work he
11 performed, varying from \$13.00 per hour while driving to \$22.00 per hour while operating heavy
12 machinery in fields used to dig and excavate lines in the field for gas, water, and/or oil pipelines.
13 (Melmed FAM Decl., ¶ 12.)

14 Plaintiff alleges that Defendant's hourly, non-exempt field worker employees—including
15 Plaintiff, the Class Members, and the Aggrieved Employees—experienced various violations of
16 California's wage-and-hour laws. (Melmed FAM Decl., ¶ 13.)

17 **A. PROCEDURAL HISTORY**

18 On November 18, 2020, Plaintiff submitted a letter to the California Labor and Workforce
19 Development Agency ("LWDA") to notify the LWDA, pursuant to the Private Attorneys General Act
20 of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"), of his intent to seek civil penalties
21 against Defendant under PAGA for violations of Labor Code sections 201, 202, 203, 204, 210, 226,
22 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, and 2084, as well as
23 Industrial Welfare Commission ("IWC") Wage Order Nos. 9-2001 and/or 16-2001 (the "Applicable
24 Wage Orders"). (Melmed FAM Decl., ¶ 14.)

25 On November 19, 2020, Plaintiff filed a class action complaint in Kern County Superior Court.
26 On February 25, 2021, Plaintiff filed a first amended complaint adding his PAGA claims. Plaintiff
27 alleged claims for: **(1)** failure to pay all minimum wages; **(2)** failure to pay all overtime wages;
28 **(3)** failure to provide rest periods and pay missed rest break premiums; **(4)** failure to provide compliant

1 meal periods and pay missed meal period premiums; **(5)** failure to maintain accurate employment
2 records; **(6)** failure to pay timely wages during employment; **(7)** failure to pay all wages due and owing
3 at separation; **(8)** failure to indemnify necessary business expenditures; **(9)** failure to furnish accurate
4 itemized wage statements; **(10)** violations of California’s Unfair Competition Law (Bus. & Prof. Code,
5 §§ 17200–17210); and **(11)** penalties pursuant to PAGA (Lab. Code, §§ 2698–2699.6) for violations
6 of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185,
7 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and other provisions of the Labor Code.
8 (Melmed FAM Decl., ¶ 15.)

9 On March 23, 2021, Plaintiff filed a second amended complaint (the “Complaint”) to narrow
10 the definition of the “Class Period” to begin on April 10, 2018, due to a previous class action settlement
11 of which Plaintiff was a member. (Melmed FAM Decl., ¶ 16.) On June 2, 2021, Defendant filed its
12 answer to the second amended complaint. (Melmed FAM Decl., ¶ 16.)

13 On or about March 24, 2021, the Parties agreed to attend a private mediation. (Melmed FAM
14 Decl., ¶ 17.) Prior to mediation, Plaintiff’s counsel conducted significant informal discovery.
15 Discovery, investigation, and prosecution has included, among other things, numerous telephonic
16 conferences with Plaintiff; inspection and analysis of thousands of pages of documents and other
17 information produced by Plaintiff and Defendant; analysis of work-related data from a sample of Class
18 Members and Aggrieved Employees; an analysis of the legal positions taken by Defendant;
19 investigation into the viability of class treatment of the claims asserted in the action; analysis of
20 potential class-wide damages, including information sufficient to understand Defendant’s potential
21 defenses to Plaintiff’s claims; research of the applicable law with respect to the claims asserted in the
22 Complaint and the potential defenses thereto; and assembling and analyzing of data for calculating
23 damages. (Melmed FAM Decl., ¶ 17.)

24 On September 10, 2021, the Parties participated in a full-day mediation with Judge Howard R.
25 Broadman (Ret.) who is a full-time mediator with extensive experience in California wage and hour
26 class action lawsuits. (Melmed FAM Decl., ¶ 18.) The settlement negotiations were hard-fought and
27 conducted in good faith and at arm’s length between attorneys with substantial experience litigating
28 class action and wage-and-hour cases. (Melmed FAM Decl., ¶ 18.) The mediation began at 9:00 AM

1 and continued vigorously for more than 10 hours to approximately 7:41 PM, when counsel for the
2 Parties began exchanging an initial draft of a Memorandum of Understanding (“MOU”). (Melmed
3 FAM Decl., ¶ 18.) The MOU negotiated by counsel was executed by the Parties on September 13,
4 2021. (Melmed FAM Decl., ¶ 18.) The Parties continued their post-mediation negotiations and
5 executed the Settlement Agreement on December 10, 2021. (Melmed FAM Decl., ¶ 18.)

6 On March 8, 2022, Plaintiff’s *Motion for Preliminary Approval of Class Action Settlement*
7 (“Preliminary Approval Motion”) was granted. (See *Order Granting Preliminary Approval of Class*
8 *Action Settlement* (“Preliminary Approval Order” or “PAM Order”), ¶ 2.) In granting preliminary
9 approval, this Court determined that the Settlement Agreement appeared to be “fair, adequate, and
10 reasonable to the Settlement Class.” (PAM Order, ¶ 2.) This Court further found that the Settlement
11 Agreement “falls within the range of reasonableness and is presumptively valid” (PAM Order, ¶
12 3.) Likewise, the Class has shown its strong approval of the Settlement Agreement; as of the date of
13 this filing, there have been *no objections or requests for exclusion by the Class Members*. (Admin.
14 Decl., ¶¶ 11–12.)

15 The matter is now before this court for final approval.

16 **B. THE CLAIMS AND DEFENSES**

17 Plaintiff alleges numerous wage and hour violations on behalf of the Class Members and
18 Aggrieved Employees who worked for Defendant during the Class Period¹ and PAGA Period.²
19 (Melmed FAM Decl., ¶ 25.) Defendant contested and denied each of Plaintiff’s material allegations on
20 the merits and as to the propriety of the class and PAGA action. (Melmed FAM Decl., ¶ 25.) The details
21 and settlement value of each of these claims, and their corresponding defenses, were discussed
22 extensively in the Preliminary Approval Motion and its accompanying paperwork, the discussion of
23 which is incorporated by reference herein. (Melmed FAM Decl., ¶ 25.)

27 ¹ The “Class Period,” as used herein, is defined as the period from April 10, 2018, through March 8, 2022.

28 ² The “PAGA Period,” as used herein, is defined as the period from November 18, 2019, through March 8, 2022.

1 **C. SUMMARY OF THE SETTLEMENT AGREEMENT**

2 The Settlement Agreement is a non-reversionary settlement, meaning that Class Members are
3 not required to submit a claim form to receive their settlement share, none of the Gross Settlement
4 Amount will revert to Defendant, and the applicable employer-side payroll taxes are to be paid by
5 Defendant outside the Gross Settlement Amount. (Settlement Agreement, pp. 6, 14.) Under the terms
6 of the Settlement Agreement, Defendant will be released of all claims asserted in the Complaint in
7 exchange for Defendant's agreement to pay a non-reversionary settlement Gross Settlement Amount
8 of \$1,750,000.00. (Settlement Agreement, at pp. 8–10, 29.)

9 The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement
10 Administrator, not to exceed \$12,500.00; **(2)** Class Counsel's attorney fees not to exceed one-third of
11 the Gross Settlement Amount, i.e., \$583,333.33; **(3)** litigation expenses and costs of \$12,052.12; **(4)** an
12 incentive award to the named plaintiff of up to \$10,000.00; **(5)** payment to the LWDA of \$18,750.00
13 for its 75% share of the settlement for civil penalties pursuant to PAGA; and **(6)** payment to the
14 Aggrieved Employees of their proportionate share of \$6,250 in PAGA penalties. (Settlement
15 Agreement, at pp. 3, 4, 7–8, 15–18, 20, 23.) The remaining amount, which consist of \$1,107,114.55,
16 will be distributed to all Class Members who did not request exclusion from the settlement (the "Net
17 Settlement Amount"). Applicable employer-side payroll taxes will be paid by Defendant outside and
18 separate from the Gross Settlement Amount. (Settlement Agreement, at pp. 6, 18–19.)

19 Individual payments to the Class Members will be calculated and apportioned from the Net
20 Settlement Amount based on the number of weeks worked as an eligible Class Member in California
21 by the participating Class Member during the Class Period (the "Individual Settlement Payments").
22 (Settlement Agreement, at p. 24.) Specific calculations of Individual Settlement Payments will be
23 determined by dividing the number of work weeks in which a Settlement Class Member worked for
24 Defendant during the Class Period based on Defendant's available records ("Work Weeks") by all work
25 weeks in which Class Members worked during the Class Period, multiplied by the Net Settlement
26 Amount. (Settlement Agreement, at pp. 15–16, 24.)

27 Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement
28 (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number

1 of pay periods worked during the PAGA Period compared to the total number of pay periods worked
2 by all Aggrieved Employees during the PAGA Period. (Settlement Agreement, at p. 25.)

3 The Settlement Agreement provides that 20% of each individual settlement payment from the
4 class-portion of the Settlement Agreement shall constitute wages (for which each participating Class
5 Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute
6 interest and penalties (for which each participating Class Member will be issued an IRS Form 1099 for
7 the interest and penalty allocation). (Settlement Agreement, at pp. 16–17.)

8 With respect to the individual payments made under the PAGA-portion of the Settlement
9 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which
10 each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation).
11 (Settlement Agreement, at p. 17.)

12 Participating Class Members will have 180 days to cash his/her settlement checks. (Settlement
13 Agreement, at p. 27.) If a Class Member fails to cash his/her check by the deadline, then the Settlement
14 Administrator shall distributed pursuant to Code of Civil Procedure section 384. (Settlement
15 Agreement, at p. 27.) Plaintiff proposes that such funds be submitted to the State of California’s
16 Unclaimed Property Fund in the name of the Class Member 180 days after the checks have been mailed
17 to the Class Members so as to ensure the Class Members have an opportunity to receive their funds.

18 **D. THE NOTICE PROCESS WAS DILIGENTLY CARRIED OUT**

19 Pursuant to this Court’s Preliminary Approval Order, the Settlement Administrator has fully
20 completed distributing the Class Notice. (Admin. Decl., ¶¶ 4–13.) As of the date of this filing, the
21 response deadline has passed for 1,159 of the 1,206 Class Members. (Admin. Decl., ¶ 12.) The response
22 deadline for the remaining Class Members will have passed on June 26, 2022, prior to the date this
23 motion is scheduled to be heard. (Admin. Decl., ¶ 12.)

24 The Settlement Administrator was tasked with, among other things: (1) printing and mailing
25 the Class Members the court-approved Class Notice; (2) processing undeliverable mail and locating
26 updated addresses for Class Members; (3) receiving other communications about the Settlement
27 Agreement; (4) receiving and processing requests for exclusion; (5) resolving disputes over the number
28

1 of workweeks allocated to each Class Member during the Class Period; and (6) calculating estimated
2 individual settlement award amounts. (Admin. Decl., ¶ 3.)

3 On March 17, 2022, the Settlement Administrator received a data file from Defendant’s counsel
4 containing Class Member names, last known addresses, social security numbers, and applicable
5 employment information (“Class Data List”). (Admin. Decl., ¶ 5.) The initial Class Data List contained
6 1,159 putative Class Members. (Admin. Decl., ¶ 6.) On April 5, 2022, Class Notices were mailed to
7 the group in the initial Class Data List. (Admin. Decl., ¶ 6.)

8 On May 10, 2022, the Settlement Administrator received a supplemental batch of class data for
9 an additional 47 Class Members, which had been inadvertently omitted from the original list, bringing
10 the finalized Class Data List to 1,206 putative Class Members. (Admin. Decl., ¶ 7.) On May 12, 2022,
11 Class Notices were mailed to the Class Members in the supplemental batch of the Class Data List.
12 (Admin. Decl., ¶ 7.)

13 For any Class Notices that were returned, the Settlement Administrator conducted a
14 computerized skip trace to update the class list of addresses as accurately as possible, updating the
15 addresses of Class Members as applicable. (Admin. Decl., ¶ 8.) As a result of this skip trace, 39 updated
16 addresses were obtained and the Class Notices were promptly re-mailed to those Class Members.
17 (Admin. Decl., ¶ 8.) To date, only 26 of the 1,206 Class Notices remain undeliverable with no
18 forwarding address, where no new addresses could be found through skip trace or through a forwarding
19 address provided by the United States Postal Service. (Admin. Decl., ¶ 10.)

20 The deadline for the 1,159 Class Members in the initial Class Data List to submit an opt-out
21 request, objection, or dispute of workweeks was May 20, 2022. (Admin. Decl., ¶¶ 11, 12.) The
22 Settlement Administrator has received **zero** objections or requests to opt out from that group. (Admin.
23 Decl., ¶¶ 11, 12.) The deadline for the 47 Class Members in the supplemental batch of the Class Data
24 List to submit an opt-out request, objection, or dispute of workweeks is June 26, 2022. (Admin. Decl.,
25 ¶¶ 11, 12.) As with the group in the initial Class Data List, the Settlement Administrator has received
26 **zero** objections or requests to opt out. (Admin. Decl., ¶¶ 11, 12.)

27 Thus, the Settlement Administrator is reporting a **100% participation rate**—an
28 overwhelmingly favorable response to a Settlement. (Admin. Decl., ¶ 13.)

1 **E. THE CLASS WAS GIVEN THE BEST POSSIBLE NOTICE OF THE**
2 **SETTLEMENT**

3 In approving a class action settlement, due process requires “notice plus an opportunity to be
4 heard and participate in the litigation, whether in person or through counsel. The notice must be the
5 best practicable, ‘reasonably calculated, under all the circumstances, to apprise interested parties of the
6 pendency of the action and afford them an opportunity to present their objections.’” (*Phillips Petroleum*
7 *Co. v. Shutts* (1985) 472 U.S. 797, 812.) Notably, while an absent class member must be provided
8 notice, it is elementary that any failure to *receive* notice, in and of itself, is insufficient to show a due
9 process violation. (*Silber v. Mabon* (9th Cir. 1994) 18 F.3d 1449, 1454; *Juris v. Inamed Corp.* (11th
10 Cir. 2012) 685 F.3d 1294, 1321 [“Courts have consistently recognized that . . . due process does not
11 require that class members actually receive notice.”].)

12 The notice procedure approved by the Court was and is the best notice practicable. As discussed
13 above, the Settlement Administrator duly mailed the Class Notices to all Class Members. (Admin.
14 Decl., ¶¶ 4–13.) When a Class Notice was returned undeliverable, the settlement administrator made
15 reasonable efforts to obtain a valid mailing address by performing a computerized skip trace or by
16 obtaining a forwarding address through the United States Post Service. (Admin. Decl., ¶ 8.)

17 The terms of the Class Notice, which was approved by the Court, fully complied with the
18 requirements of California Rules of Court, rule 3.769, subdivision (f). (PAM Order, ¶ 5.) It provided
19 Class Members with all relevant information needed to make an informed decision as to whether to
20 opt-out, participate in, or object to the settlement. It provided an explanation of the litigation and
21 proposed settlement terms, and procedures on how to opt out, object and/or appear at the final fairness
22 hearing. The Class Notice also provided an explanation of the case, the exclusion date and procedure
23 for exclusion, the proposed attorneys’ fees, litigation costs, administration costs, service award, the
24 LWDA payment to be requested, and the individual members’ estimated recovery. It also stated that
25 those who do not opt out will be bound by the terms of the Settlement Agreement, including the release
26 of claims described therein. (See Admin. Decl., Exh. A.)

27 Moreover, the Court diligently reviewed and approved the Class Notice as to form and content.
28 (PAM Order, ¶ 5.) Therefore, the Court may determine the fairness and adequacy of the settlement and

1 order its approval, secure in the knowledge that all Class Members have been given the opportunity to
2 participate fully in the notice process and have been fully apprised of their rights and options, including
3 their rights to object to the Settlement Agreement. To date, no one has chosen to do so. (Admin. Decl.,
4 ¶ 12.)

5 **F. THE CLASS MEMBERS OVERWHELMINGLY APPROVE OF THE**
6 **SETTLEMENT, WHICH IS FAIR AND REASONABLE**

7 The Class Members have overwhelmingly accepted the Settlement Agreement and 1,206 Class
8 Members stand to benefit from the settlement on entry of final approval. (Admin. Decl., ¶ 13.) “[T]he
9 absence of a large number of objections to a proposed class action settlement raises a strong
10 presumption that the terms of a proposed class settlement action are favorable to the class members.”
11 (*In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043, quoting *National*
12 *Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529;
13 *Moore v. PetSmart, Inc.* (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000, at *7
14 [finding that where “less than one percent either opted out or objected, the reaction of the putative class
15 has been very positive. Therefore, this factor strongly favors settlement.”].)

16 Here, **zero** members of the eligible Class Members have submitted objections to any of the
17 terms of the proposed settlement, including Plaintiff’s requested service award or Plaintiff’s counsel’s
18 proposed attorneys’ fees and costs. (Admin. Decl., ¶ 12.) Moreover, **zero** Class Members have
19 requested exclusion out of 1,206 eligible Class Members—evidencing that all Class Members desire
20 to receive the benefits of this Settlement Agreement. (Admin. Decl., ¶ 11.) This response evidences the
21 Class Members’ clear and overwhelmingly support the Settlement Agreement.

22 **III. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT**

23 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW**
24 **AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT**

25 The law favors settlements. (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1382.) This
26 is particularly true in class actions where substantial resources can be conserved by avoiding the time,
27 cost, and risk of formal litigation. However, a class action may not be dismissed, compromised, or
28 settled without the Court’s approval. (Cal. Rules of Court, rule 3.769(a).) This requirement exists to

1 prevent fraud, collusion, or unfairness to the class and to ensure that their rights are given due regard
2 by the negotiating parties. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103
3 Cal.App.3d 573, 578–579; *Officers for Justice v. Civil Service Com’n of City and County of San*
4 *Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) The California Rules of Court set forth the procedures
5 for court approval of a class action settlement: **(1)** the Court preliminarily approves the settlement;
6 **(2)** class members receive notice as directed by the Court; and **(3)** the Court conducts a final approval
7 hearing to inquire into the fairness of the proposed settlement. (See Cal. Rules of Court, rule 3.769(c),
8 (e)–(g).)

9 The trial court enjoys broad discretion to determine whether a proposed class action settlement
10 is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The decision to approve or reject a
11 proposed settlement lies within the Court’s sound discretion. (*Wershba v. Apple Computer, Inc.* (2001)
12 91 Cal.App.4th 224, 234–235.) In deciding whether to grant final approval, the Court’s ultimate duty
13 is to determine whether the settlement is fair, adequate, and reasonable. (See *Dunk v. Ford Motor Co.*
14 (1996) 48 Cal.App.4th 1794, 1801 [setting forth the “fair, adequate, and reasonable” standard], citing
15 *Officers for Justice v. Civil Service Com’n of City and County of San Francisco, supra*, 688 F.2d 615,
16 625; see also *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742–743 [a trial
17 court must approve a class action settlement agreement, but only after determining that it is “‘fair,
18 adequate and reasonable,’” considering factors such as the “‘risk, expense, [and] complexity’” of
19 continued litigation], citations omitted.) The Court should consider several factors including, but not
20 limited to:

21 “[T]he 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
23 offered in settlement, the extent of discovery completed and the stage of the
24 proceedings, the experience and views of counsel, . . . and the reaction of the class
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1 members to the proposed settlement.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th
2 at p. 1801.)

3
4 The above factors are not exclusive, “the court is free to engage in a balancing and weighing of
5 factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91
6 Cal.App.4th 224, 245.) In doing so, the Court must give due “regard to what is otherwise a private
7 consensual agreement between the parties.” (*Ibid.*; see also *In re Microsoft I-V Cases* (2006) 135
8 Cal.App.4th 706, 723.) The inquiry is limited “to the extent necessary to reach a reasoned judgment
9 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
10 parties” (*Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, *supra*,
11 688 F.2d 615, 625.)

12 As will be explained, applying the above factors, the proposed settlement embodies all key
13 features of a settlement that is fair, reasonable, adequate, and in the best interests of the members of
14 the class, and as such, meets all the criteria necessary for final approval.

15 **B. THE SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS**

16 A presumption of fairness exists where, as here: “(1) the settlement is reached through arm’s-
17 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
18 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
19 small.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th 1794, 1802; *In re Microsoft I-V Cases*, *supra*,
20 135 Cal.App.4th 706, 723 [“The trial court operates under a presumption of fairness when the
21 settlement is the result of arm’s-length negotiation, investigation and discovery that are sufficient to
22 permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the
23 percentage of objectors is small.”].)

24 Here, the Settlement Agreement was negotiated at arm’s length between counsel using a
25 professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 28.) Counsel for all parties
26 were thoroughly familiar with the complex legal and factual questions at issue in this litigation.
27 (Melmed FAM Decl., ¶ 28.) The Settlement Agreement is a product of intensive negotiations,
28 supported by investigation and direct exchanges of information through informal discovery, during

1 settlement negotiations, including a full-day mediation, and significant post-mediation negotiations.
2 (Melmed FAM Decl., ¶ 28.) Though cordial and professional, the settlement negotiations were
3 adversarial and non-collusive in nature. (Melmed FAM Decl., ¶ 28.)

4 The parties thoroughly investigated and evaluated the factual and legal strengths and
5 weaknesses of this case before reaching the settlement. (Melmed FAM Decl., ¶ 29.) As described
6 above, the Settlement Agreement was reached after extensive informal discovery, investigation,
7 research, thorough calculations, risk evaluation, substantial exchanges of documents, and an exchange
8 of other information required to evaluate the claims at issue. (Melmed FAM Decl., ¶ 29.) The settlement
9 came only after the case was thoroughly investigated by Plaintiff's counsel. (Melmed FAM Decl., ¶
10 29.)

11 The settlement reached is the product of substantial effort by the parties and their counsel.
12 (Melmed FAM Decl., ¶ 30.) Plaintiff and his counsel agree with the Court that the Settlement
13 Agreement represents a fair and reasonable resolution of the Class claims. (PAM Order ¶ 2; Melmed
14 FAM Decl., ¶ 30.)

15 Moreover, Plaintiff's Counsel are experienced in similar class actions. (Melmed FAM Decl.,
16 ¶¶ 5–10.) Additionally, the percentage of objectors is not only small, *but zero*. (Admin. Decl., ¶ 12.)
17 The presumption of fairness of this settlement applies with full force.

18 C. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED

19 1. The Settlement Is the Result of Serious, Informed, and Non-Collusive 20 Negotiations

21 As explained above, the Settlement Agreement was negotiated at arm's length between counsel
22 utilizing a professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 28.) Counsel for
23 both parties were thoroughly familiar with the complex legal and factual questions at issue in this
24 litigation. (Melmed FAM Decl., ¶ 28.) The Settlement Agreement is a product of intensive negotiations,
25 supported by investigation and direct exchanges of information through informal discovery, during the
26 course of settlement negotiations, including a full-day mediation. (Melmed FAM Decl., ¶ 28.) Although
27 Plaintiff and his counsel believed the class claims had merit and there was a possibility of certifying
28 the class and claims, they recognized the potential risk, expense, and complexity posed by litigation,

1 such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages
2 awarded, and/or on an appeal that can take several more years to litigate. (Melmed FAM Decl., ¶ 31.)

3 The resulting Settlement Agreement was based on calculations, risk assessment, and non-
4 collusive negotiation. It takes the risks identified above and others into account in arriving at the non-
5 reversionary settlement. (Melmed FAM Decl., ¶ 29.)

6 **2. The Extent of the Discovery and Investigation Was More Than Sufficient**
7 **to Permit Final Approval of the Settlement Agreement**

8 Counsel for the Parties spent months prior to the mediation developing the factual record for
9 this case, engaging in informal discovery and exchanges of documents and information, drafting
10 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and
11 weaknesses of their respective positions at the mediation and during subsequent settlement
12 negotiations. (Melmed FAM Decl., ¶ 26.) The Parties and their counsel attended a full-day mediation
13 session before an experienced and well-respected mediator which resulted in the resolution of the case
14 on a class and representative basis. (Melmed FAM Decl., ¶ 18.) Judge Howard R. Broadman (Ret.) is
15 a nationally recognized mediator of complex class actions and commercial matters.

16 In addition, the parties are represented by skilled and experienced counsel with extensive
17 backgrounds in complex litigation and experience litigating similar wage and hour class actions.
18 (Melmed FAM Decl., ¶¶ 5–10, 27.) The Settlement Agreement was reached after extensive
19 investigation and research, calculations and risk evaluation, substantial exchanges of documents, and
20 Plaintiff's counsel thorough factual investigation, sufficient to evaluate Defendant's defenses.
21 (Melmed FAM Decl., ¶ 27.) The Settlement Agreement came only after the case was thoroughly
22 investigated by Plaintiff's counsel. (Melmed FAM Decl., ¶ 27.) Plaintiff's counsel agree that this
23 settlement is fair, adequate, and reasonable, and in the best interests of Class Members. (Melmed FAM
24 Decl., ¶ 27.)

25 **3. The Settlement Agreement is a Reasonable Compromise of Claims**

26 Although Plaintiff and his counsel believed the class claims had merit and that there was a
27 possibility of certifying the class and claims, they recognized the potential risk, expense, and
28 complexity posed by litigation, such as unfavorable decisions on class certification, summary

1 judgment, adverse outcomes at trial or on the damages awarded, and the potential for appeal that can
2 take several more years to litigate. (Melmed FAM Decl., ¶ 31.) The resulting Settlement Agreement
3 was based on calculations, risk assessment, and non-collusive negotiation. (Melmed FAM Decl., ¶ 31.)
4 It takes the risks identified above and others into account in arriving at the non-reversionary Gross
5 Settlement Amount of \$1,750,000. (Melmed FAM Decl., ¶ 32.)

6 The Settlement Agreement represents a fair compromise given the risks and uncertainties
7 presented by continued litigation. Defendant asserted and would have continued to assert legal and
8 factual grounds to defend against this action, including factual and legal defenses on the merits.
9 Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the
10 Settlement Agreement ensures timely relief and substantial recovery of the Defendant's realistic
11 exposure. (Melmed FAM Decl., ¶ 32.)

12 **4. The Risks Inherent in Continued Litigation are Great**

13 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
14 should consider “[t]he strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of
15 further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.*, *supra*,
16 48 Cal.App.4th 1794, 1801.) As described in the Preliminary Approval Motion and its accompanying
17 papers, Defendant had viable defenses to Plaintiff's claims, which create a real possibility that the
18 claims might not be certified or may fail on the merits. (Melmed FAM Decl., ¶ 31.) Proceeding with
19 litigation would impose significant risk of no recovery as well as ongoing, substantial additional
20 expenditures of time and resources. (Melmed FAM Decl., ¶ 31.) If settlement were not achieved,
21 continued litigation of the claims would take substantial time and possibly confer little to no benefit on
22 Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery for
23 Class Members, and benefits the Parties and the Court. (Melmed FAM Decl., ¶ 31.)

24 **5. Plaintiff's Counsel are Experienced in Similar Wage-and-Hour Litigation**

25 The view of the attorneys actively conducting the litigation is entitled to significant weight in
26 deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87
27 F.R.D. 15, 18; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [court must take
28 into account “the experience and view of counsel”], internal quotation and citation omitted.) Plaintiff's

1 counsel are experienced in wage-and-hour class actions. Numerous state and federal courts have
2 certified them as adequate and competent class counsel in similar wage and hour class actions. (Melmed
3 FAM Decl., ¶¶ 5–10.) Plaintiff’s counsel believe that this settlement is fair, adequate, and reasonable,
4 in the best interests of Class Members, and should be finally approved. (Melmed FAM Decl., ¶ 32.)

5 **IV. THE CLASS REPRESENTATIVE’S SERVICE AWARD IS FAIR, REASONABLE,**
6 **AND APPROPRIATE**

7 The Settlement Agreement provides for a service award payment of \$10,000 to the named
8 plaintiff. (Settlement Agreement, at p. 15.) The proposed service awards are intended to recognize the
9 time, effort, and risk Plaintiff undertook in bringing this case and helping to secure the relief obtained
10 for the members of the Class. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
11 [upholding “service payment” to named plaintiff for his efforts in bringing class case]; *Rodriguez v.*
12 *West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959 [stating that incentive awards are
13 “intended to compensate class representatives for work done on behalf of the class, to make up for
14 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
15 willingness to act as a private attorney general.”].) To determine the propriety of a service award, courts
16 consider the actions protecting class interests, the benefit provided to the class based on those actions,
17 and the amount of time and effort expended by the plaintiff. (*Staton v. Boeing Co.* (9th Cir. 2003) 327
18 F.3d 938, 976–977.) The service award must be supported by evidence of the time and effort expended
19 by the named plaintiff and a reasoned explanation of the financial and other risks taken by the plaintiff
20 in bringing the case. (See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785,
21 806–807.)

22 Plaintiff’s requested service awards serve to recognize their time and efforts on behalf of the
23 Class Members, including time spent in meetings with the attorneys and the acceptance of the financial
24 risk in pursuing this litigation. (Melmed FAM Decl., ¶ 35.) The service award requested by Plaintiff
25 represents only 0.57% of the Gross Settlement Amount in this case ($\$10,000 \div \$1,750,000 \times 100 =$
26 0.57%). Plaintiff provided considerable assistance to counsel in bringing this case, in gathering highly
27 relevant documents, and assisting in the preparing and performance of mediation. (Melmed FAM Decl.,
28 ¶ 35.)

1 The service awards also fall within the range of service awards typically awarded to class
2 representatives in similar class actions. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal., June
3 30, 2011, No. 1:09-CV-1662 OWW MJS) 2011 WL 2648879, at *6 [approving **\$11,250** service award
4 to each of the two class representatives in a trucker meal break class action]; *Ross v. U.S. Bank Nat.*
5 *Ass'n* (N.D. Cal., Sept. 29, 2010, No. C07-02951SI) 2010 WL 3833922, at *2 [approving **\$20,000**
6 enhancement award to class representative in California wage-and-hour class action settlement];
7 *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards
8 in the amount of **\$10,000** each from a \$300,000 settlement fund in a wage/hour class action]; *West v.*
9 *Circle K Stores, Inc.* (E.D. Cal., Oct. 20, 2006, No. CIVS040438WBSGGH) 2006 WL 8458679, at *8
10 [“[T]he court finds plaintiffs’ enhancement payments of **\$15,000** each to be reasonable.”]; *Glass v.*
11 *UBS Financial Services, Inc.* (N.D. Cal., Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862, at
12 *17 [“the Court finds the requested payment of **\$25,000** to each of the named plaintiffs is appropriate.”],
13 emphasis added; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal., Apr. 22, 2010, No. CV 08 1365
14 CW EMC) 2010 WL 1687832, at *17 fn.8 [“Numerous courts in the Ninth Circuit and elsewhere have
15 approved incentive awards of **\$20,000** or more where, as here, the class representative has
16 demonstrated a strong commitment to the class”], emphasis added.) Finally, Plaintiff has agreed to enter
17 into a general release of all claims against Defendant, whereas the Class Members only released the claims
18 alleged. The requested service awards are modest, fair, and reasonable.

19 **V. THE PROPOSED ATTORNEYS’ FEE ALLOCATION IS FAIR, REASONABLE,**
20 **AND APPROPRIATE**

21 Plaintiff’s counsel seek a fee award under the “common fund” doctrine. (See *Laffitte v. Robert*
22 *Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [reaffirming its approval of the use of a percentage of the
23 common fund to compensate counsel].) Plaintiff’s counsel are also entitled to fees under various
24 statutes at issue here, including, among others, Labor Code sections 218.5, 226, subdivision (e)(1),
25 1194.2, and 2699, subdivision (g)(1), all of which provide for reasonable attorneys’ fees to be recovered
26 by the prevailing party.

27 Specifically, Plaintiff’s counsel requests attorneys’ fees of \$583,333.33 (i.e., one-third of the
28 Gross Settlement Amount), as provided in the Settlement Agreement. (Settlement Agreement, at p. 4.)

As will be explained, this request is reasonable and appropriate under the common fund theory and is supported by: (1) case law, (2) the high-quality of work performed by Plaintiff’s counsel, (3) the excellent results achieved for the Class Members, (4) the risks inherent in the contingent nature of Plaintiff’s counsel’s representation in this case, and (5) public policy considerations.

**A. PLAINTIFF’S COUNSEL ARE ENTITLED TO A FEE FROM THE
COMMON FUND CREATED**

As the California Supreme Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to award as attorneys’ fees in a class action where a common fund was generated because of the case. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [“We therefore agree with the Court of Appeal below that ‘the percentage of fund method survives in California class action cases, and the trial court did not abuse its discretion in using it, in part, to approve the fee request [of one-third of the common fund] in this class action’”].) The California Supreme Court further clarified that trial courts “have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.” (*Ibid.*)

It is well-established that, where a lawsuit results in the recovery of a fund or property benefiting others, as well as plaintiff—as in a class action—the court has inherent equitable power to order the plaintiff’s attorney fees to be paid out of the common fund or property. (See *Serrano v. Priest* (1977) 20 Cal.3d 25, 35; *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 25 [“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund”]; *Quinn v. State of California* (1975) 15 Cal.3d 162, 168; *In re Stauffer’s Estate* (1959) 53 Cal.2d 124, 132.) This “fee spreading” is premised on assuring that all those benefitted by the litigation pay their fair share of the costs for obtaining the recovery. (See *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26; *Cziraki v. Thunder Cats, Inc.* (2003) 111 Cal.App.4th 552, 558.)

As mentioned above, Plaintiff’s counsel are seeking a fee award under the “common fund” doctrine. The common fund doctrine provides that “a litigant or a lawyer who recovers a common fund

1 for the benefit of persons other than himself or his client is entitled to reasonable attorneys' fees from
2 the fund as a whole." (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*
3 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; see also *Class Plaintiffs v. Jaffe & Schlesinger, P.A.* (9th
4 Cir. 1994) 19 F.3d 1306, 1308.) The doctrine is founded on the understanding that attorneys should
5 normally be paid by their clients, and that unless attorneys' fees are paid out of the common fund where
6 the attorneys' unnamed class member "clients" have no express retainer agreement, those who
7 benefited from the fund without contributing to those who created it would be unjustly enriched.
8 (*Boeing Co. v. Van Gemert, supra*, 444 U.S. 472, 478.)

9 In *Laffitte v. Robert Half Internat., Inc., supra*, 1 Cal.5th 480, the California Supreme Court
10 unequivocally held "that when class action litigation established a monetary fund for the benefit of the
11 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
12 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
13 fund created" without considering the amount of hours expended on the case. (*Id.* at p. 503.) The court
14 further held that "[t]he recognized advantages of the percentage method—including relative ease of
15 calculation, alignment of incentives between counsel and the class, a better approximation of market
16 conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement
17 and avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a
18 valuable tool that should not be denied our trial courts." (*Ibid.*)

19 Plaintiff's counsel's diligent litigation of this action resulted in the creation of an ascertainable
20 common fund that will substantially benefit the Class. Plaintiff's counsel's request for an award of one-
21 third of the Gross Settlement Amount is well within the range of awarded to counsel under similar
22 circumstances in litigation of this type. These requested amounts are unopposed by Defendant and not
23 objected to by any Class Member. (Admin. Decl., ¶ 12.) As this Settlement Agreement will result in
24 the recovery of a substantial fund benefiting all participating Class Members, this Court has inherent
25 equitable power to order Plaintiff's counsel's fees and costs to be paid out of the Gross Settlement
26 Amount, pursuant to the common fund theory.

**B. COURTS ROUTINELY AWARD ATTORNEYS' FEES AT OR ABOVE
THOSE REQUESTED HERE**

The negotiated and unopposed fee award should also be approved because it is within the approved range of appropriate awards of attorneys' fees in similar wage and hour class action cases in California. (See, e.g., *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–492 [citing to five recent wage and hour class actions where federal district courts approved attorney fee awards ranging from 30 to 33%]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving attorney fee award of 33.33% of the common fund and noting that award was similar to awards in three other wage and hour class action cases where fees ranged from 30.3% to 40%]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [meal break class action where the federal district court approved attorneys' fees of one-third of common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [approving fees at one-third of the common fund in a missed meal break class action and noting that fee awards in class actions average around one-third of the recovery]; *Williams v. TriCap International LLC* (Final Approval Order, March 7, 2019) LASC No. BC644383 [awarding one-third of gross settlement amount]; *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6 [noting that a fee award of one-third of the settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”]; *McCrory v. Elations Company, LLC* (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL 769703, at *10 [noting that most fee awards are 33%]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov. 18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804, at *12 [finally approving a 33.34% fee award on a \$5,800,000 settlement].)

Thus, a fee in the amount of one-third of the common fund is fair and reasonable as it falls squarely within the range of fee awards approved by courts in similar wage-and-hour matters. (See *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6 [approving fee award of one-third of the total maximum settlement amount of \$4.5 million and noting that the fee award of one-third of the total settlement was “well within the range of percentages which

1 courts have upheld as reasonable in other class action lawsuits”]; *Monterrubio v. Best Buy Stores, L.P.*
2 (E.D. Cal., Nov. 20, 2013, No. 2:11-CV-03270-MCE-AC) 2013 WL 12432761, at *12 [finally
3 approving fee award of 30%]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-
4 CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving fee award of 33.33% of the common fund];
5 *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL
6 3492841, at *4 [awarding fees of one-third of common fund in a wage and hour class action, noting:
7 “[f]ee awards in class actions average around one-third of the recovery”]; *Martin v. FedEx Ground*
8 *Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8
9 [approving attorneys’ fees of one-third of common fund].)

10 **C. THE HIGH QUALITY OF WORK AND EXCELLENT RESULT OBTAINED**
11 **SUPPORT THE AWARD**

12 In addition to the fact that a class benefit was created with a significant common fund, the
13 fairness of the requested fee award of one-third of that common fund is supported by the high quality
14 of work performed by Plaintiff’s counsel and the favorable result obtained for the Class Members given
15 the significant challenges faced by Plaintiff in this action.

16 Plaintiff’s counsel diligently, efficiently, and creatively pursued this case and promptly reached
17 a successful settlement for the benefit of the Class Members. Despite the numerous risks and obstacles
18 afflicting Plaintiff’s claims as detailed in the Preliminary Approval Motion and its accompanying
19 papers, Plaintiff’s counsel crafted and negotiated a fair and reasonable Settlement Agreement for the
20 benefit of the Class Members. The fact that the settlement was embraced and supported by the Class
21 Members, as evidenced by the complete lack of any objections or opt-outs, clearly demonstrates that
22 the Class Members support the Settlement Agreement and results achieved by Plaintiff’s counsel
23 through the litigation of this matter. (Admin. Decl., ¶¶ 11, 12.)

24 As a result of this litigation, the Class Members stand to receive a significant Net Settlement
25 Amount of **\$1,107,114.55**.

26 **D. THE CONTINGENT NATURE OF PLAINTIFF’S COUNSEL’S**
27 **REPRESENTATION OF PLAINTIFF AND THE CLASS MEMBERS**
28

1 **FURTHER SUPPORTS THE FEE AWARD AT ONE-THIRD OF THE**
2 **MAXIMUM COMMON FUND**

3 An additional factor militating in favor of the granting of the requested fee award is the fact that
4 this case was both legally and financially risky for Plaintiff’s counsel, who accepted this representation
5 on a contingency basis. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1049
6 [noting that “[r]isk is a relevant circumstance” when considering attorneys’ fees].) Specifically, there
7 was the prospect of enormous cost inherent in class action litigation, and the many additional risks,
8 discussed at length in Plaintiff’s Preliminary Approval Motion and its accompanying papers. Those
9 risks included the risk of the Court not certifying the class because common issues do not predominate;
10 the risk of Defendant prevailing on the merits; the risk that a court may not award the damages or
11 penalties sought; difficulties in establishing bad faith; and the difficulty in proving a sustainable injury.
12 In light of these risks, the chances of recovery were far from certain.

13 This risk further justifies the requested fee award. As explained by the California Supreme
14 Court, “[a] lawyer who both bears the risk of not being paid and provides legal services is not receiving
15 the fair market value of his work if he is paid only for the second of these functions. If he is paid no
16 more, competent counsel will be reluctant to accept fee award cases.” (*Ketchum v. Moses* (2001) 24
17 Cal.4th 1122, 1133, quotation marks omitted; see also *Crommie v. State of Cal., Public Utilities Com’n*
18 (N.D. Cal. 1994) 840 F.Supp. 719, 725 [“The purpose of contingent risk inquiry is to determine a fee
19 that is likely to entice competent counsel to undertake difficult public interest cases.”].)

20 Finally, the absence of any objections to the requested fee award, coupled with the 100% Class
21 participation rate, also supports the appropriateness and reasonableness of the requested attorneys’ fees.
22 (Admin. Decl., ¶ 12; *In re Heritage Bond Litigation* (C.D. Cal., June 10, 2005, No. 02-ML-1475 DT)
23 2005 WL 1594403, at *21 [“The absence of objections or disapproval by class members to Plaintiffs’
24 counsel’s fee further supports finding the fee request reasonable.”].)

1 **E. PUBLIC POLICY CONSIDERATIONS REQUIRE THE AWARD OF**
2 **ADEQUATE FEES SO COMPETENT AND EXPERIENCED COUNSEL WILL**
3 **UNDERTAKE SUCH REPRESENTATIONS**

4 In many complex actions such as this one, able counsel for plaintiffs can be retained only on a
5 contingent basis. A large segment of the public would be denied a remedy and the ability to retain
6 counsel to pursue low value individual claims in actions such as the current case if fees awarded by the
7 courts in successful cases did not fairly and adequately compensate counsel for the services provided,
8 the serious risks undertaken, and the delay before any compensation is received.

9 Fair fee awards in successful cases ensure that competent legal services will be available. The
10 complexity and societal importance of this type of litigation calls for the most able counsel obtainable
11 for plaintiffs. To encourage first-rate attorneys to represent plaintiffs on a contingent basis in this type
12 of important litigation, attorneys' fees awarded should reflect this goal. In its landmark decision,
13 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, a unanimous Supreme Court noted:

14 “Thirty years ago commentators, in urging the utility of the class suit to vindicate the
15 rights of stockholders, made this incisive observation: ‘Modern society seems
16 increasingly to expose men to . . . group injuries for which individually they are in a
17 poor position to seek legal redress, either because they do not know enough or because
18 such redress is disproportionately expensive. If each is left to assert his rights alone if
19 and when he can, there will at best be a random and fragmentary enforcement, if there
20 is any at all. This result is not only unfortunate in the particular case, but it will operate
21 seriously to impair the deterrent effect of the sanctions which underlie much
22 contemporary law. The problem of fashioning an effective and inclusive group remedy
23 is thus a major one.’ [Citation.]” (*Vasquez v. Superior Court, supra*, 4 Cal.3d 800, 807.)
24

25 The same rationale applies to this litigation. The express judicial policy of California is to favor
26 the maintenance of these types of representative actions. (See, e.g., *Sav-On Drug Stores, Inc. v.*
27 *Superior Court* (2004) 34 Cal.4th 319, 340; *Pearce v. Superior Court* (1983) 149 Cal.App.3d 1058,
28

1 1065; *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 126.) As recognized by the
2 California Supreme Court in *Sav-On Drug Stores, Inc.*:

3 “Considerations of sound public policy buttress our conclusion. Labor Code section
4 1194 confirms ‘a clear public policy . . . that is specifically directed at the enforcement
5 of California’s minimum wage and overtime laws for the benefit of workers.’ [Citation.]
6 As defendant’s own authority reminds us, California’s overtime laws are remedial and
7 are to be construed so as to promote employee protection. [Citation.] And, as we have
8 recognized, ‘this state has a public policy which encourages the use of the class action
9 device.’ [Citation.] “‘By establishing a technique whereby the claims of many
10 individuals can be resolved at the same time, the class suit both eliminates the possibility
11 of repetitious litigation and provides small claimants with a method of obtaining redress
12 for claims which would otherwise be too small to warrant individual litigation.’”
13 [Citation.]” (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th 319, 340.)
14

15 One of the purposes for awarding fees in such a situation is:

16 “[E]ncouragement of the attorney for the successful litigant, who will be more willing
17 to undertake and diligently prosecute proper litigation for the protection of recovery of
18 the fund if he is assured that he will be promptly and directly compensated should his
19 efforts be successful.” (*In re Stauffer’s Estate* (1959) 53 Cal.2d 124, 132.)
20

21 Conversely, a reduction in attorneys’ fees due to the size of the settlement in this case would
22 create perverse incentives for class action attorneys—effectively penalizing them for obtaining more
23 favorable results on behalf of the class. Public policy would be best served by encouraging class action
24 attorneys to recover the greatest amount reasonably possible on behalf of the injured class members.
25 The award of attorneys’ fees as requested by Plaintiff’s counsel would properly reward Plaintiff’s
26 counsel’s efforts in advancing a clear public policy and would encourage additional such efforts.

27 These important public policy considerations support the Court’s approval of the fee requested.
28

1 **VI. PLAINTIFF’S COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES**

2 Under the common fund method, the attorneys representing the class members are permitted to
3 recover their litigation costs and expenses from the common fund. (See *Serrano v. Priest* (1977) 20
4 Cal.3d 25, 35 [common fund doctrine permits recovery of fees and costs from the fund]; *Rider v.*
5 *County of San Diego* (1992) 11 Cal.App.4th 1410, 1424, fn. 6 [costs are recoverable from the common
6 fund “[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery
7 of attorneys’ fees by . . . [Plaintiffs’] attorneys”]; *Melendres v. City of Los Angeles* (1975) 45
8 Cal.App.3d 267, 277.) In fact, this is true for whatever method is chosen by the Court to calculate
9 attorneys’ fees: Plaintiff’s counsel is entitled to recover “those out-of-pocket expenses that would
10 normally be charged to a fee-paying client.” (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.)

11 Accordingly, Plaintiff’s counsel further request that, in addition to awarding them reasonable
12 attorneys’ fees, the Court grant their application for reimbursement of the reasonable out-of-pocket
13 expenses advanced, incurred and expected to be incurred by counsel representing Plaintiff in
14 connection with the prosecution of this litigation, collectively in the amount of \$12,052.12, which is
15 significantly less than the \$15,000.00 maximum cost allocation stipulated by the parties in the
16 Settlement Agreement. (Settlement Agreement, at p. 4; Melmed FAM Decl., ¶ 37.) Plaintiff’s counsel
17 has documented and verified these costs and expenses for which counsel seeks reimbursement.
18 (Melmed FAM Decl., ¶ 37.) All these costs were necessarily incurred in the course of this hard-fought
19 litigation and would have been charged to a fee-paying client. No Class member objected to an award
20 of costs to Plaintiff’s counsel of up to \$15,000.00, and Plaintiff’s counsel now seeks a lesser amount,
21 with the remainder to be distributed amongst the Class Members. (Melmed FAM Decl., ¶ 37; Admin.
22 Decl., ¶ 12; see also Admin. Decl., Exh. A.) Accordingly, the requested reimbursement of the
23 reasonable out-of-pocket expenses advanced and/or incurred is appropriate and justified as part of the
24 overall Settlement Agreement and should be awarded by the Court.

25 **VII. SETTLEMENT ADMINISTRATION COSTS**

26 The parties agreed that the Settlement Administrator, ILYM Group, Inc., would be
27 compensated for services performed. The Settlement Administrator’s requested fee is \$12,500.
28 (Admin. Decl., ¶ 15.)

1 **VIII. SUBMISSION TO THE LWDA**

2 The Settlement Agreement and this motion have been concurrently submitted to the LWDA
3 pursuant to Labor Code section 2699, subdivision (1)(2). (Melmed FAM Decl., ¶ 49.)

4 **IX. CONCLUSION**

5 Plaintiff respectfully submits that the Settlement Agreement is fair, adequate, and reasonable,
6 and merits final approval. This motion is unopposed by Defendant.

7 Dated: June 15, 2022

MELMED LAW GROUP P.C.

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10 **KYLE D. SMITH**

11 Attorney for Plaintiff, the Putative Class, and the
12 Aggrieved Employees
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