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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JERIMY BRAY, 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.

ULINE, INC., a Delaware Corporation; and
DOES 1 TO 50,

Defendants.

Case Number: CIVSB2112058

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

Date: August 8, 2023

Time: 9:00 a.m.

Dept.: S26

Judge: Hon. David S. Cohn

Complaint Filed: May 12, 2021

FAC Filed: June 30, 2021

Trial Date: None Set

Preliminary Approval Granted:
March 20, 2023

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 August 8, 2023, at 9:00 a.m. in Department S26 of the
4 San Bernardino County Superior Court for the State of California, located at the San Bernardino Civil
5 Division, 247 West Third Street, San Bernardino, California 92415, before the Honorable David S.
6 Cohn, Plaintiff Jerimy Bray (“Plaintiff”), on behalf of himself, the State of California, as a private
7 attorney general, and on behalf of all other similarly situated, will and hereby does move this court for
8 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 Uline, Inc., (“Defendant”), for
11 the purpose of settlement pursuant to California Code of Civil Procedure section 382 and California
12 Rules of Court, rule 3.769;

13 2. Finally appointing the named plaintiff, Jerimy Bray, as class representative for purposes
14 of settlement;

15 3. Finally appointing Jonathan Melmed, Kyle D. Smith, and Joanne Kim of Melmed Law
16 Group P.C. as 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 20, 2023, *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 \$1,500,000.00 (“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., \$500,000.00), plus necessary litigation costs of \$14,201.34;

26 7. Finally approving Phoenix Settlement Administrators (the “Settlement Administrator”)
27 as the settlement administrator and approving distribution not to exceed \$12,750.00 from the Gross
28 Settlement Amount to cover the settlement administrator’s expenses in administering the settlement;

1 8. Finally approving the allocation of \$200,000.00 for penalties pursuant to the California
2 Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$150,000.00) 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., \$50,000.00) payable to the aggrieved employees;

5 9. Finally approving a class representative incentive payment to Plaintiff in an amount of
6 \$10,000.00 from the Gross Settlement Amount to compensate him for the burdens, responsibilities,
7 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;

10 11. Retaining jurisdiction to enforce the Settlement Agreement; and

11 12. Granting Plaintiff leave to file the overlength brief included with this motion due to its
12 complex nature.

13 As will be explained in the memorandum included with this motion, the class notice process
14 has been completed as to the original 1,235 potential members of the class supplied by Defendant to
15 the Settlement Administrator. After the completion of the class notice process, however, Defendant
16 discovered that approximately 26 members of the class were inadvertently omitted from the list
17 supplied by Defendant. Thus, the class notice process has not been completed as to approximately 26
18 members of the class. The parties have agreed to send a new class notice to those members, which is
19 to be sent out on July 25, 2023. Plaintiff therefore requests that the order sought by this motion be
20 issued after the class notice process as to the remaining 26 class members has been completed. Plaintiff
21 will submit to this Court a supplemental declaration from the administrator and a brief supplemental
22 report after the completion of that process and will request that the Court sign the proposed final
23 approval order at that time (and not at the time of the final approval hearing noticed by this motion).

24 This motion is based on this notice and motion; the memorandum of points and authorities in
25 support thereof; the declaration of Plaintiff’s counsel; the declaration of the Settlement Administrator;
26 the Settlement Agreement; the other records, pleadings, and papers filed in this action; and upon such
27 other evidence or argument as may be presented to the court at the hearing of this motion.
28

1 Dated: July 19, 2023

MELMED LAW GROUP P.C.

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4 **JONATHAN MELMED**

5 Attorney for Plaintiff, the Preliminarily-Certified
6 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 Jerimy Bray (“Plaintiff”) and Defendant Uline, Inc., (“Defendant”) (collectively, the “Parties”) for
5 \$1,500,000.00 (the “Gross Settlement Amount”) to be distributed primarily to approximately 1,259
6 individuals defined as:

7 *All current and former non-exempt employees of Defendant who worked in the State of*
8 *California during the period from April 22, 2017, through June 24, 2022 (the “Class*
9 *Period”).*
10

11 These employees are referred to herein individually as the “Class Members” or collectively as
12 the “Class.” Plaintiff also represents the State of California as a private attorney general, on behalf of
13 a group of approximately 998 aggrieved, pursuant to the California Labor Code Private Attorneys
14 General Act of 2004, Labor Code sections 2698 through 2699.6 (“PAGA”). The “Aggrieved
15 Employees,” for PAGA purposes, share an identical definition with the Class Members, except that the
16 applicable release period runs from April 22, 2020, to June 24, 2022 (the “PAGA Period”). (Settlement
17 Agreement, at p. 8.)

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

22 **A. AN INITIAL NOTE CONCERNING CLASS NOTICES**

23 On March 20, 2023, this Court granted preliminary approval of the Settlement Agreement.
24 Pursuant to that order, on April 6, 2023, Defendant’s counsel sent a data file to Phoenix Settlement
25 Administrators (the “Settlement Administrator”) containing the names and information of 1,235 Class
26 Members. (See Declaration of Jarrod Salinas on Behalf of Phoenix Settlement Administrators in
27 Support of Motion for Final Approval of Class Action Settlement (“Admin. Decl.”), ¶ 3.) On April 17,
28 2023, the Settlement Administrator mailed the Court-approved *Notice of Proposed Class Action*

1 *Settlement* (the “Class Notice”) to all 1,235 Class Members contained in the data provided by
2 Defendant. (Admin. Decl., ¶ 5.) A copy of the Class Notice is attached to Admin. Decl. as **Exhibit A**.

3 The deadline for submitting a dispute, request for exclusion, or objection passed for this group
4 of Class Members on June 1, 2023. (Admin. Decl., ¶¶ 8–10.) On June 30, 2023—well after the response
5 deadline had passed—Defendant’s counsel notified Plaintiff’s counsel and the Settlement
6 Administrator that Defendant had inadvertently omitted approximately 28 Class Members from the
7 original data file sent to the Settlement Administrator, and had therefore not been provided notice of
8 the Settlement Agreement. (Melmed FAM Decl., ¶ 22.) On July 1, 2023, after a review of the new
9 spreadsheet provided by Defendant’s counsel, the Settlement Administrator determined that two of the
10 individuals in the new list of Class Members *were* included in the original list of Class Members that
11 received the Class Notice, and the number of unnoticed Class Members was therefore 26. (Melmed
12 FAM Decl., ¶ 22.) Thus, the Class Notice process has been completed as to approximately 1,235 of the
13 1,261 total potential Class Members (or about 96.23% of the Class Members). (Melmed FAM Decl., ¶
14 22.)

15 For the remaining 26 Class Members, the Parties have agreed to send out new Class Notices to
16 them, with an additional 45-day response deadline (equal to the response deadline given to the other
17 Class Members). (Melmed FAM Decl., ¶ 23.) The new Class Notices will be mailed out by the
18 Settlement Administrator on or about **July 25, 2023**. (Admin. Decl., ¶ 16.) Their response deadline
19 would therefore fall on approximately September 8, 2023—about a month after the hearing date for
20 this motion. Plaintiff will submit to this Court a supplemental declaration from the Settlement
21 Administrator after the completion of that process.

22 **B. KEY DATA POINTS**

23 If the Court grants final approval, each participating Class Member and Aggrieved Employee
24 will receive a share of approximately **\$813,048.66** (the “Net Settlement Amount”), which is calculated
25 as described below. Plaintiff also provides the following summary to assist the Court in its review:
26
27
28

Original Gross Settlement Amount	\$1,500,000.00
Attorneys' Fees:	(\$500,000.00)
Litigation Costs:	(\$14,201.34)
Settlement Administration Costs:	(\$12,750.00)
Incentive Award to Plaintiff:	(\$10,000.00)
PAGA Payment to LWDA:	(\$150,000.00)
Net Settlement Amount	\$813,048.66
<i>Employer Portion of Payroll Taxes Paid by Defendant in Addition to the Gross Settlement Amount</i>	

Class Participation to Date	
Eligible Class Members in Initial Group:	1,235
Requests for Exclusion:	2
Objectors:	0
Participating Class Members to Date:	1,233
Remaining Class Members to be Noticed:	26
Total Participation Rate to Date:	99.84%

Relevant Supplemental Data	
Number of Aggrieved Employees:	Approximately 998
Workweeks during the Class Period:	148,616
Workweeks during the PAGA Period:	70,742

Highest Payment to Class Members:	\$1,375.01
Average Payment to Class Members:	\$614.15
Class Counsel Fee Request:	$\frac{1}{3}$ of Gross Settlement Amount
Percent of Class Payments Attributable to Unpaid Wages (W-2 Income):	33.334%
Percent of Class Payments Attributable to Non-Wages (1099 Income):	66.666%
Uncashed Checks Paid to:	Unclaimed Property Fund

C. FINAL APPROVAL IS WARRANTED

The Settlement Agreement is an excellent result for the Class, which is demonstrated by the extraordinarily high current participation rate of **99.84%**. (Admin. Decl., ¶ 11.) To date, only two Class Members have requested exclusion out of the 1,235 total eligible employees in the original class list. (Admin. Decl., ¶ 8.) Likewise, *zero* Class Members have submitted objections to the Settlement Agreement. (Admin. Decl., ¶ 9.) These numbers evidence an overwhelmingly positive response from the Class Members regarding the substance of the Settlement Agreement, confirming that the Settlement Agreement is in the best interest of the Class Members. (Melmed FAM Decl., ¶ 29.) Further, they raise a strong presumption that the Settlement Agreement is fair, reasonable, adequate, and in the best interest of the Class Members. Because the Settlement Agreement is fair and reasonable, was negotiated at arm's length between counsel following extensive informal discovery, was reached after attendance at a full-day mediation, it should be finally approved. (Melmed FAM Decl., ¶ 5.)

As part of Plaintiff's motion for final approval, Plaintiff's counsel is seeking final approval of attorneys' fees in an amount equal to one-third of the Gross Settlement Amount. As will be explained below, the amount requested by Plaintiff's counsel is a reasonable fee for a wage and hour class action as a percentage of the common fund and within the normal range of attorneys' fee awards in similar class actions in California courts, as demonstrated below, and considering the benefit obtained for the class in this case.

1 Based on the foregoing, Plaintiff respectfully requests that the Court issue an order **(1)** finally
2 certifying the Class; **(2)** finally appointing Plaintiff as class representative; **(3)** finally appointing
3 Plaintiff's attorneys as class counsel, **(4)** finding that notice of the settlement was properly provided to
4 the Class Members; **(5)** finally approving the Settlement Agreement as fair, adequate, and reasonable;
5 **(6)** finally approving the allocation for attorneys' fees of \$500,000 (approximately one-third) of the
6 Gross Settlement Amount, plus necessary incurred litigation costs in the amount of \$14,201.34;
7 **(7)** finally approving Phoenix Settlement Administrators as the settlement administrator and approving
8 distribution of \$12,750.00 from the Gross Settlement Amount to cover the settlement administrator's
9 expenses in administering the settlement; **(8)** finally approving the allocation of \$200,000.00 from the
10 Gross Settlement Amount for PAGA penalties; **(9)** finally approving a class representative incentive
11 payment to Plaintiff in the amount of \$10,000.00; **(10)** binding all participating class members to the
12 terms of the Settlement Agreement, including the release specified therein; and **(11)** retaining
13 jurisdiction to enforce the terms of the Settlement Agreement.

14 However, because the Class Notice process has not been completed as to 26 potential Class
15 Members, Plaintiff requests that the order sought by this motion be issued after the class notice process
16 as to as to that group has been completed. Plaintiff will submit to this Court a supplemental declaration
17 from the administrator and a brief supplemental report after the completion of that process and will
18 request that the Court sign the proposed final approval order at that time (and not at the time of the
19 final approval hearing noticed by this motion).

20 **II. BACKGROUND**

21 **A. THE PARTIES**

22 Defendant is one of the largest packing, shipping, and industrial supply companies in the United
23 States, with distribution centers throughout the United States, Canada, and Mexico. Defendant is
24 headquartered in Pleasant Prairie, Wisconsin. Defendant offers a large catalog of boxing, packaging,
25 shipping, retail, janitorial, and warehouse equipment. (Melmed FAM Decl., ¶ 12.)

26 Plaintiff was employed during the Class Period and PAGA Period by Defendant as an hourly
27 worker, in the position of a freight picker and his duties including lifting boxes, placing them on pallets,
28 and preparing boxes to be shipped out. (Melmed FAM Decl., ¶ 13; *Declaration of Jeremy Bray in*

1 *Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement* [hereafter "Bray
2 Decl."], at ¶ 2.) Plaintiff alleges that Defendant's hourly, non-exempt employees—including Plaintiff,
3 the Class Members, and the Aggrieved Employees (collectively, the "Employees")—experienced
4 various violations of California's wage-and-hour laws. (Melmed FAM Decl., ¶ 13.)

5 **B. PROCEDURAL SUMMARY**

6 On April 22, 2021, Plaintiff submitted a letter to the California Labor and Workforce
7 Development Agency ("LWDA") to notify the LWDA, pursuant to the Private Attorneys General Act
8 of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"), of his intent to seek civil penalties
9 against Defendant under PAGA for violations of Labor Code sections 201, 202, 203, 204, 210, 226,
10 226.3, 226.7, 226.8, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 1199, as
11 well as Industrial Welfare Commission ("IWC") Wage Order No. 9-2001 (the "Applicable Wage
12 Order"). (Melmed FAM Decl., ¶ 14.)

13 On April 22, 2021, Plaintiff filed his class and representative action complaint in Los Angeles
14 Superior Court. Plaintiff alleged claims for: **(1)** failure to pay all wages due, including minimum wages,
15 **(2)** failure to pay split shift premiums, **(3)** failure to pay all overtime wages; **(4)** failure to provide rest
16 periods and pay missed rest period premiums; **(5)** failure to provide compliant meal periods and pay
17 missed meal period premiums; **(6)** failure to maintain accurate employment records; **(7)** failure to pay
18 wages timely during employment; **(8)** failure to pay all wages earned and unpaid at separation; **(9)**
19 failure to furnish accurate itemized wage statements, and **(10)** violation of California's Unfair
20 Competition Law. (Melmed FAM Decl., ¶ 15.)

21 On June 30, 2021, Plaintiff filed a first amended complaint adding one additional cause of
22 action for PAGA penalties based on the allegations set forth in the original complaint. (Melmed FAM
23 Decl., ¶ 16.)

24 On or about October 4, 2021, the Parties agreed to attend a private mediation. (Melmed FAM
25 Decl., ¶ 17.) Prior to mediation, Plaintiff's counsel conducted significant informal discovery.
26 Discovery, investigation, and prosecution has included, among other things, numerous telephonic
27 conferences with Plaintiff; inspection and analysis of hundreds of pages of documents and other
28 information produced by Plaintiff and Defendant; analysis of work-related data from a sample of nearly

1 100% of Class Members and Aggrieved Employees; an analysis of the legal positions taken by
2 Defendant; investigation into the viability of class treatment of the claims asserted in the action;
3 analysis of potential class-wide damages, including information sufficient to understand Defendant's
4 potential defenses to Plaintiff's claims; research of the applicable law with respect to the claims asserted
5 in the Complaint and the potential defenses thereto; and assembling and analyzing of data for
6 calculating damages. (Melmed FAM Decl., ¶ 17.)

7 On February 24, 2022, the Parties participated in a full-day mediation with Louis Marlin who
8 is a full-time mediator with extensive experience in California wage and hour class action lawsuits. The
9 mediation negotiations were contentious, but the Parties were nevertheless able to reach a settlement. The
10 parties executed the longform Settlement Agreement on July 6, 2022. (Melmed FAM Decl., ¶ 18.)

11 On April 25, 2022, the Parties filed a joint stipulation to remand the action to state court because
12 amount in controversy requirement under CAFA was no longer satisfied. On April 29, 2022, the United
13 States District Court Central District of California granted the joint stipulation and remanded the action
14 to San Bernardino Superior Court. On February 22, 2023, Plaintiff filed his *Motion for Preliminary*
15 *Approval of Class Action Settlement* ("Motion for Preliminary Approval"). (Melmed FAM Decl., ¶ 19.)

16 On March 20, 2023, this Court issued its *Order Granting Preliminary Approval of Class Action*
17 *Settlement* ("Preliminary Approval Order" or "PAM Order"). In granting preliminary approval, this
18 Court determined that the Settlement Agreement appeared to be "fair, adequate, and reasonable to the
19 Settlement Class." (PAM Order, ¶ 2.) This Court further found that the Settlement Agreement "falls
20 within the range of reasonableness and is presumptively valid, subject only to any objections that may
21 be raised at the final fairness hearing and final approval by this Court." (PAM Order, ¶ 3.)

22 Pursuant to that order, on April 6, 2023, Defendant's counsel sent a data file to Phoenix
23 Settlement Administrators (the "Settlement Administrator") containing the names and information of
24 1,235 Class Members. (Admin. Decl., ¶ 3.) On April 17, 2023, the Settlement Administrator mailed
25 the Court-approved Class Notice to all 1,235 Class Members contained in the data provided by
26 Defendant. (Admin. Decl., ¶ 5.) The deadline for submitting a dispute, request for exclusion, or
27 objection passed for this group of Class Members on June 1, 2023. (Admin. Decl., ¶¶ 8–10.) This group
28

1 of Class Members has shown its strong approval of the Settlement Agreement, as there have been no
2 objections and only two requests for exclusion by the Class Members. (Admin. Decl., ¶¶ 8–9.)

3 On June 30, 2023—well after the response deadline had passed—Defendant’s counsel notified
4 Plaintiff’s counsel and the Settlement Administrator that Defendant had inadvertently omitted
5 approximately 28 Class Members from the original data file sent to the Settlement Administrator, and
6 had therefore not been provided notice of the Settlement Agreement. (Melmed FAM Decl., ¶ 22.) On
7 July 1, 2023, after a review of the new spreadsheet provided by Defendant’s counsel, the Settlement
8 Administrator determined that two of the individuals in the new list of Class Members *were* included
9 in the original list of Class Members that received the Class Notice, and the number of unnoticed Class
10 Members was therefore 26. (Melmed FAM Decl., ¶ 22; Admin. Decl., ¶ 16.) Thus, the Class Notice
11 process has been completed as to approximately 1,235 of the 1,261 total potential Class Members (or
12 about 96.23% of the Class Members). (Melmed FAM Decl., ¶ 22.)

13 For the remaining 26 Class Members, the Parties have agreed to send out new Class Notices to
14 them, with an additional 45-day response deadline (equal to the response deadline given to the other
15 Class Members). (Melmed FAM Decl., ¶ 23.) The new Class Notices are scheduled to be mailed out
16 by the Settlement Administrator on or about **July 25, 2023**. (Admin. Decl., ¶ 16.) Their response
17 deadline would therefore fall on approximately September 8, 2023—about a month after the hearing
18 date for this motion. (Melmed FAM Decl., ¶ 23.) Plaintiff will submit to this Court a supplemental
19 declaration from the Settlement Administrator after the completion of that process.

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

21 **C. THE CLAIMS AND DEFENSES**

22 Plaintiff’s claims stem from several categories of illegal employment practices. Specifically,
23 Plaintiff Alleged Defendant applied the incorrect regular rate and had unlawful rest and meal period
24 practices. Plaintiff further alleged derivative claims for waiting time penalties, inaccurate itemized
25 wage statements, unfair competition, and PAGA penalties based on the foregoing. (Melmed FAM
26 Decl., ¶ 30.)

27 The details and settlement value of each of these claims, and their corresponding defenses, were
28 discussed extensively in the Plaintiff’s Motion for Preliminary Approval and its accompanying papers,

1 the discussion of which is incorporated by reference herein, and which, for the sake of brevity, Plaintiff
2 will avoid belaboring in this motion. (Melmed FAM Decl., ¶ 31; see also Declaration of Jonathan
3 Melmed in Support of Plaintiff’s Motion for *Preliminary* Approval of Class Action Settlement, ¶¶ 24–
4 46.)

5 Defendant has persistently denied all liability of any kind associated with the claims and
6 allegations, and further denies that Plaintiff, the Class Members, or the Aggrieved Employees are
7 entitled to any relief. Defendant also denies that these allegations are appropriate for class or
8 representative treatment for any purpose other than the settlement. Defendant maintains, among other
9 things, that they have complied with California laws in all respects. (Melmed FAM Decl., ¶ 32.)

10 **D. SUMMARY OF THE SETTLEMENT AGREEMENT**

11 Under the terms of the Settlement Agreement, Defendant will be released of all claims asserted
12 in the Complaint in exchange for Defendant’s agreement to pay a non-reversionary settlement Gross
13 Settlement Amount of \$1,500,000.00. (See generally, Settlement Agreement.)

14 The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement
15 Administrator not to exceed \$12,750.00; **(2)** Plaintiff’s counsel’s attorney fees not to exceed one-third
16 of the Gross Settlement Amount, i.e., \$500,000.00; **(3)** litigation expenses and costs not to exceed
17 \$20,000.00; **(4)** an incentive award to the named Plaintiff of up to \$10,000.00; **(5)** payment to the
18 LWDA of \$150,000.00 for its 75% share of the settlement for civil penalties pursuant to PAGA; and
19 **(6)** payment to the Aggrieved Employees of \$50,000.00 for their 25% share of the settlement for civil
20 penalties pursuant to PAGA. (Settlement Agreement, at pp. 4, 7–8, 15, 17–18.)

21 The remaining Net Settlement Amount, which consists of approximately **\$813,048.66**, will be
22 distributed to all Class Members who have not requested exclusion from the Settlement Agreement.
23 (Settlement Agreement, at p. 15.) Applicable employer-side payroll taxes will be paid by Defendant
24 outside and separate from the Gross Settlement Amount. (Settlement Agreement, at p. 6, 16.)

25 Individual payments to the Class Members from the class-portion of the settlement will be
26 calculated and apportioned based on the number of weeks worked as an eligible Class Member in
27 California by the participating Class Member during the Class Period (the “Individual Settlement
28 Payments”). (Settlement Agreement, at p. 15.) Specific calculations of Individual Settlement Payments

1 will be determined by dividing the number of shifts in which a participating Class Member worked for
2 Defendant during the Class Period based on Defendant's available records by all weeks in which Class
3 Members worked during the Class Period, multiplied by the Net Settlement Amount. (Settlement
4 Agreement, at pp. 15, 23–24.) For the two Class Members who requested exclusion, their individual
5 payment from the class-portion of the settlement will be returned to the Net Settlement Amount and
6 the Settlement Administrator will proportionately increase the Individual Settlement Payments for each
7 participating Class Member so that the amount actually distributed to participating Class Members
8 equals 100% of the Net Settlement Amount. (*Ibid.*)

9 Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement
10 (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number
11 of pay periods worked during the PAGA Period compared to the total number of pay periods worked
12 by all Aggrieved Employees during the PAGA Period. (Settlement Agreement, at p. 24–25.)

13 For tax purposes, the Settlement Agreement provides that 33.334% of each Individual
14 Settlement Payment from the class-portion of the Settlement Agreement shall constitute wages (for
15 which each participating Class Member will be issued an IRS Form W-2 for such payment), and the
16 remaining 66.666% shall constitute interest and penalties (for which each participating Class Member
17 will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at pp.
18 16–17.)

19 With respect to the individual payments made under the PAGA-portion of the Settlement
20 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which
21 each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation).
22 (Settlement Agreement, at pp. 16–17.)

23 Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at
24 p. 26.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator
25 shall distribute such funds to the California State Controller's Office in the name of the Class Member.
26 (Settlement Agreement, at p. 26.)
27
28

1 **III. NOTICE TO THE CLASS MEMBERS**

2 **A. THE NOTICE PROCESS HAS BEEN DILIGENTLY CARRIED OUT SO FAR**

3 Pursuant to this Court’s Preliminary Approval Order, the Settlement Administrator has fully
4 completed distributing the Class Notice as to the initial group of 1,235 Class Members in Defendant’s
5 initial class data list, as their deadline to respond passed on June 1, 2023. (Admin. Decl., ¶¶ 8–9.) Due
6 to an inadvertent error on Defendant’s part, however, the class list omitted 26 potential Class Members.
7 New Class Notices will be mailed out by the Settlement Administrator on or about **July 25, 2023**.
8 (Admin. Decl., ¶ 16.) The response deadline for this remaining group of Class Members would
9 therefore fall on approximately September 8, 2023—about a month after the hearing date for this
10 motion.

11 The Settlement Administrator was tasked with, among other things: **(1)** printing and mailing
12 the Class Members the court-approved Class Notice; **(2)** receiving and processing requests for
13 exclusion; **(3)** resolving Settlement Class Members’ disputes over the number of workweeks Defendant
14 have record of them working during the Class Period, which was pre-printed on their individualized
15 Class Notice; **(4)** calculating and distributing individual settlement award amounts; **(5)** handling tax
16 withholdings as required by the Settlement and the law; **(6)** preparing, issuing and filing tax returns
17 and other applicable tax forms; and **(7)** handling the distribution of any unclaimed funds pursuant to
18 the terms of the Settlement (Admin. Decl., ¶ 2.)

19 On April 6, 2023, the Settlement Administrator received a data file from Defendant’s counsel
20 containing Class Member names, last known addresses, social security numbers, and applicable
21 employment information (“Class Data List”). (Admin. Decl., ¶ 3.) The initial Class Data List contained
22 1,235 putative Class Members. (Admin. Decl., ¶ 3.) On April 6, 2023, the Settlement Administrator
23 conducted a National Change of Address (“NCOA”) search in an attempt to update the class list of
24 addresses as accurately as possible. (Admin. Decl., ¶ 4.) On April 17, 2023, Class Notices were mailed
25 to the group in the initial Class Data List. (Admin. Decl., ¶ 5.)

26 For any Class Notices that were returned, the Settlement Administrator conducted a
27 computerized skip trace to update the class list of addresses as accurately as possible, updating the
28 addresses of Class Members as applicable. (Admin. Decl., ¶ 6.) As a result of this skip trace, seven

1 updated addresses were obtained and the Class Notices were promptly re-mailed to those Class
2 Members. (Admin. Decl., ¶ 6.) To date, *zero* of the Class Notices in the initial group of Class Members
3 remain undeliverable with no forwarding address, where no new addresses could be found through skip
4 trace or through a forwarding address provided by the United States Postal Service. (Admin. Decl., ¶
5 7.)

6 The deadline for the initial group of 1,235 Class Members in the initial Class Data List to submit
7 an opt-out request, objection, or dispute of workweeks was June 1, 2023. (Admin. Decl., ¶¶ 8–10.) The
8 Settlement Administrator has received *zero* objections and only two requests for exclusion from the
9 Class Members. (Admin. Decl., ¶¶ 8–9.) Thus, the Settlement Administrator is reporting a **99.84%**
10 **participation rate**—an overwhelmingly favorable response to a Settlement. (Admin. Decl., ¶ 11.)
11 Given that the Class Notice process remains pending as to only 3.77% of the potential Class Members
12 (i.e., 26 out of 1,261 total possible Class Members), Plaintiff’s counsel expects to see similarly
13 favorable results from those additional Class Members.

14 **B. THE CLASS IS BEING GIVEN THE BEST POSSIBLE NOTICE OF THE**
15 **SETTLEMENT**

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

25 The notice procedure approved by the Court was and is the best notice practicable. As discussed
26 above, the Settlement Administrator duly mailed the Class Notices to all Class Members contained in
27 the initial group of Class Members in the Class Data List. (Admin. Decl., ¶ 5.) When a Class Notice
28 was returned undeliverable, the settlement administrator made reasonable efforts to obtain a valid

1 mailing address by performing advanced skip traces to locate new addresses for mail that was returned.
2 (Admin. Decl., ¶ 6.)

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

13 Moreover, the Court diligently reviewed and approved the Class Notice as to form and content.
14 In the Court's Preliminary Approval Order of March 20, 2023, the Court found that the notice and
15 implementation schedule met "the requirements of due process and constitute the best notice
16 practicable under the circumstances and due and sufficient notice to all persons entitled thereto." (PAM
17 Order, ¶ 6.) Therefore, the Court may determine the fairness and adequacy of the settlement and order
18 its approval, secure in the knowledge that all Class Members in the initial Class Data List have been
19 given the opportunity to participate fully in the notice process and have been fully apprised of their
20 rights and options, including their rights to object to the Settlement Agreement. To date, no one has
21 chosen to do so. (Admin. Decl., ¶ 9.)

22 **C. THE CLASS MEMBERS OVERWHELMINGLY APPROVE OF THE**
23 **SETTLEMENT, WHICH IS FAIR AND REASONABLE**

24 The Class Members have overwhelmingly accepted the Settlement Agreement and up to 1,259
25 Class Members stand to benefit from the settlement on entry of final approval. (Admin. Decl., ¶¶ 11,
26 16.) "[T]he absence of a large number of objections to a proposed class action settlement raises a
27 strong presumption that the terms of a proposed class settlement action are favorable to the class
28 members." (*In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043, quoting

1 *National Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523,
2 529; *Moore v. PetSmart, Inc.* (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000,
3 at *7 [finding that where “less than one percent either opted out or objected, the reaction of the putative
4 class has been very positive. Therefore, this factor strongly favors settlement.”].)

5 Here, **zero** members of the eligible Class Members have submitted objections to any of the
6 terms of the proposed settlement, including Plaintiff’s requested service award or Plaintiff’s counsel’s
7 proposed attorneys’ fees and costs. (Admin. Decl., ¶¶ 8–9.) Moreover, only two Class Members have
8 requested exclusion out of 1,235 eligible Class Members who have received the Class Notice. (Admin.
9 Decl., ¶ 8.) This response evidences the Class Members’ clear and overwhelmingly support the
10 Settlement Agreement.

11 **IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT**
12 **AFTER COMPLETION OF THE CLASS NOTICE PROCESS**

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

15 The law favors settlements. (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1382.) This
16 is particularly true in class actions where substantial resources can be conserved by avoiding the time,
17 cost, and risk of formal litigation. A class action, however, may not be dismissed, compromised, or
18 settled without the Court’s approval. (Cal. Rules of Court, rule 3.769(a).) This requirement exists to
19 prevent fraud, collusion, or unfairness to the class and to ensure that their rights are given due regard
20 by the negotiating parties. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103
21 Cal.App.3d 573, 578–579; *Officers for Justice v. Civil Service Com’n of City and County of San*
22 *Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) The California Rules of Court set forth the procedures
23 for court approval of a class action settlement: **(1)** the Court preliminarily approves the settlement;
24 **(2)** class members receive notice as directed by the Court; and **(3)** the Court conducts a final approval
25 hearing to inquire into the fairness of the proposed settlement. (See Cal. Rules of Court, rule 3.769(c),
26 (e)–(g).)

27 The trial court enjoys broad discretion to determine whether a proposed class action settlement
28 is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The decision to approve or reject a

1 proposed settlement lies within the Court’s sound discretion. (*Wershba v. Apple Computer, Inc.* (2001)
2 91 Cal.App.4th 224, 234–235.) In deciding whether to grant final approval, the Court’s ultimate duty
3 is to determine whether the settlement is fair, adequate, and reasonable. (See *Dunk v. Ford Motor Co.*
4 (1996) 48 Cal.App.4th 1794, 1801 [setting forth the “fair, adequate, and reasonable” standard], citing
5 *Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, *supra*, 688 F.2d 615,
6 625; see also *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742–743 [a trial
7 court must approve a class action settlement agreement, but only after determining that it is ““fair,
8 adequate and reasonable,”” considering factors such as the ““risk, expense, [and] complexity”” of
9 continued litigation], citations omitted.) The Court should consider several factors including, but not
10 limited to:

11 “[T]he strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of
12 further litigation, the risk of maintaining class action status through trial, the amount
13 offered in settlement, the extent of discovery completed and the stage of the
14 proceedings, the experience and views of counsel, . . . and the reaction of the class
15 members to the proposed settlement.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th
16 at p. 1801.)
17

18 The above factors are not exclusive, “the court is free to engage in a balancing and weighing of
19 factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91
20 Cal.App.4th 224, 245.) In doing so, the Court must give due “regard to what is otherwise a private
21 consensual agreement between the parties.” (*Ibid.*; see also *In re Microsoft I-V Cases* (2006) 135
22 Cal.App.4th 706, 723.) The inquiry is limited “to the extent necessary to reach a reasoned judgment
23 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
24 parties” (*Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, *supra*,
25 688 F.2d 615, 625.)

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

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

2 A presumption of fairness exists where, as here: “(1) the settlement is reached through arm’s-
3 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
4 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
5 small.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th 1794, 1802; *In re Microsoft I-V Cases*, *supra*,
6 135 Cal.App.4th 706, 723 [“The trial court operates under a presumption of fairness when the
7 settlement is the result of arm’s-length negotiation, investigation and discovery that are sufficient to
8 permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the
9 percentage of objectors is small.”].)

10 Here, the Settlement Agreement was negotiated at arm’s length between counsel using a
11 professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 35.) Counsel for all parties
12 were thoroughly familiar with the complex legal and factual questions at issue in this litigation.
13 (Melmed FAM Decl., ¶ 35.) The Settlement Agreement is a product of intensive negotiations,
14 supported by investigation and direct exchanges of information through informal discovery, during
15 settlement negotiations, including a full-day mediation, and significant post-mediation negotiations.
16 (Melmed FAM Decl., ¶ 35.) Though cordial and professional, the settlement negotiations were
17 adversarial and non-collusive in nature. (Melmed FAM Decl., ¶ 35.)

18 The Parties thoroughly investigated and evaluated the factual and legal strengths and
19 weaknesses of this case before reaching the settlement. (Melmed FAM Decl., ¶ 35.) As described above
20 and in the Motion for Preliminary Approval, the Settlement Agreement was reached after extensive
21 informal discovery, investigation, research, thorough calculations, risk evaluation, substantial
22 exchanges of documents, and an exchange of other information required to evaluate the claims at issue.
23 (Melmed FAM Decl., ¶ 36.) The settlement came only after the case was thoroughly investigated by
24 Plaintiff’s counsel. (Melmed FAM Decl., ¶ 36.)

25 The settlement reached is the product of substantial effort by the parties and their counsel.
26 (Melmed FAM Decl., ¶ 37.) Plaintiff and Plaintiff’s counsel agree with the Court’s Preliminary
27 Approval Order that the Settlement Agreement represents a fair and reasonable resolution of the class
28 claims. (PAM Order, ¶ 2; Melmed FAM Decl., ¶ 37.)

Moreover, Plaintiff’s Counsel are experienced in similar class actions. (Melmed FAM Decl., ¶¶ 6–11.) Additionally, the percentage of objectors is not only small, *but zero*. (Admin. Decl., ¶ 9.) The presumption of fairness of this settlement applies with full force.

C. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED

This Court has already performed a *Dunk/Kullar* analysis, as evidenced by this Court’s tentative ruling on Plaintiff’s Motion for Preliminary Approval, issued on or about March 20, 2023, which it subsequently adopted. There, this Court found, among other things, that:

“The amount of the settlement is appropriate given the strength of plaintiffs’ case and the risks of litigation. Adequate discovery and investigation has occurred. There is no evidence of fraud or collusion. Class counsel are well-qualified to represent the class. The representative is also qualified to represent the class. The settlement was reached through arms-length negotiations with the assistance of a well-regarded and experienced mediator.” (Tentative Ruling (Mar. 20, 2023), at p. 4.)

The relevant analysis remains unchanged with one exception: the Court now has adequate information to know “the reaction of the class members to the proposed settlement.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) Because the reaction has been overwhelmingly positive, with *zero* objections to the Settlement Agreement, the justifications for approving the Settlement Agreement have only been bolstered since the time of this Court’s original *Dunk/Kullar* analysis. (Admin. Decl., ¶ 9.) This Court can thus proceed secure in the knowledge that the *Dunk/Kullar* factors weigh heavily in favor of granting final approval.

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

As explained above and in Plaintiff’s Motion for Preliminary Approval, the Settlement Agreement was negotiated at arm’s length between counsel utilizing a professional and well-respected third-party neutral. Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of information through informal

1 discovery, during the course of settlement negotiations, including a full-day mediation, and significant
2 continued negotiations. Although Plaintiff and Plaintiff's counsel believed the class claims had merit
3 and there was a possibility of certifying the class and claims, they recognized the potential risk,
4 expense, and complexity posed by litigation, such as unfavorable decisions on class certification,
5 summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several
6 more years to litigate. (Melmed FAM Decl., ¶ 38.)

7 The resulting Settlement Agreement was based on calculations, risk assessment, and non-
8 collusive negotiation. It takes the risks identified above and others into account in arriving at the non-
9 reversionary settlement. (Melmed FAM Decl., ¶ 36.)

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

12 Counsel for the Parties spent months prior to the mediation developing the factual record for
13 this case, engaging in informal discovery and exchanges of documents and information, drafting
14 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and
15 weaknesses of their respective positions at the mediation and during subsequent settlement
16 negotiations. The Parties and their counsel attended a full-day mediation session before an experienced
17 and well-respected mediator which resulted in the resolution of the case on a class and representative
18 basis. (Melmed FAM Decl., ¶ 33.) Louis Marlin is a nationally recognized mediator of California wage
19 and hour class action lawsuits.

20 In addition, the Parties are represented by skilled and experienced counsel with extensive
21 backgrounds in complex litigation and experience litigating similar wage and hour class actions.
22 (Melmed FAM Decl., ¶¶ 6–11.) The Settlement Agreement was reached after extensive investigation
23 and research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiff's
24 counsel thorough factual investigation, sufficient to evaluate Defendant's defenses. (Melmed FAM
25 Decl., ¶ 34.) The Settlement Agreement came only after the case was thoroughly investigated by
26 Plaintiff's counsel. (Melmed FAM Decl., ¶ 34.) Plaintiff's counsel agree that this settlement is fair,
27 adequate, and reasonable, and in the best interests of Class Members. (Melmed FAM Decl., ¶ 34.)
28

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

2 Although Plaintiff and Plaintiff’s counsel believed the class claims had merit and that there was
3 a possibility of certifying the class and claims, they recognized the potential risk, expense, and
4 complexity posed by litigation, such as unfavorable decisions on class certification, summary
5 judgment, adverse outcomes at trial or on the damages awarded, and the potential for appeal that can
6 take several more years to litigate. Proceeding with litigation will impose significant risk of no recovery
7 as well as ongoing, substantial additional expenditures of time and resources. The resulting Settlement
8 Agreement was based on calculations, risk assessment, and non-collusive negotiation. It takes the risks
9 identified above and others into account in arriving at the non-reversionary Gross Settlement Amount.
10 (Melmed FAM Decl., ¶ 36.)

11 The Settlement Agreement represents a fair compromise given the risks and uncertainties
12 presented by continued litigation. Defendant asserted and would have continued to assert legal and
13 factual grounds to defend against this action, including factual and legal defenses on the merits.
14 Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the
15 Settlement Agreement ensures timely relief and substantial recovery of the Defendant’s realistic
16 exposure. (Melmed FAM Decl., ¶ 39.)

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

18 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
19 should consider “[t]he strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of
20 further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.*, *supra*,
21 48 Cal.App.4th 1794, 1801.) As described, both in this motion and more extensively in the Motion for
22 Preliminary Approval and its accompanying papers, Defendant had viable defenses to Plaintiff’s
23 claims, which create a real possibility that the claims might not be certified or may fail on the merits.
24 (Melmed FAM Decl., ¶ 38.) Proceeding with litigation would impose significant risk of no recovery as
25 well as ongoing, substantial additional expenditures of time and resources. (Melmed FAM Decl., ¶ 38.)
26 If settlement were not achieved, continued litigation of the claims would take substantial time and
27 possibly confer little to no benefit on Class Members. By contrast, the settlement will yield a prompt,
28

1 certain, and substantial recovery for Class Members, and benefits the Parties and the Court. (Melmed
2 FAM Decl., ¶ 38.)

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

4 The view of the attorneys actively conducting the litigation is entitled to significant weight in
5 deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87
6 F.R.D. 15, 18; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [court must take
7 into account “the experience and view of counsel”], internal quotation and citation omitted.) Plaintiff's
8 counsel are experienced in wage-and-hour class actions. Numerous state and federal courts have
9 certified them as adequate and competent class counsel in similar wage and hour class actions. (Melmed
10 FAM Decl., ¶¶ 6–11.) Plaintiff's counsel believe that this settlement is fair, adequate, and reasonable,
11 in the best interests of Class Members, and should be finally approved. (Melmed FAM Decl., ¶ 5.)

12 **V. THE CLASS REPRESENTATIVE'S SERVICE AWARD IS FAIR, REASONABLE,**
13 **AND APPROPRIATE**

14 The Settlement Agreement provides for a service award payment in the amount of \$10,000.00
15 to Plaintiff from the Gross Settlement Amount. (Settlement Agreement, at p. 15.) The proposed service
16 award is intended to recognize the time, effort, and risk Plaintiff undertook in bringing this case and
17 helping to secure the relief obtained for the members of the Class. (See *Bell v. Farmers Ins. Exchange*
18 (2004) 115 Cal.App.4th 715, 726 [upholding “service payment” to named plaintiff for his efforts in
19 bringing class case]; *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959
20 [stating that service awards are “intended to compensate class representatives for work done on behalf
21 of the class, to make up for financial or reputational risk undertaken in bringing the action, and,
22 sometimes, to recognize their willingness to act as a private attorney general.”].) To determine the
23 propriety of a service award, courts consider the actions protecting class interests, the benefit provided
24 to the class based on those actions, and the amount of time and effort expended by the plaintiff. (*Staton*
25 *v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 976–977.)

26 Plaintiff's requested service award serves to recognize his time and efforts on behalf of the
27 Class Members, including time spent in meetings with his attorneys and his acceptance of the financial
28 risk in pursuing this litigation. (Melmed FAM Decl., ¶ 42.) The service award requested by the Plaintiff

1 represents only 0.667% of the Gross Settlement Amount in this case ($\$10,000 \div \$1,500,000 \times 100 =$
2 0.667%). Plaintiff provided considerable assistance to counsel in bringing this case, including
3 providing factual background for mediation and the operative complaint, reviewing the relevant
4 documents, participating in phone calls with Plaintiff's counsel, gathering highly relevant documents,
5 and reviewing the settlement documents. (Melmed FAM Decl., ¶ 42.) Plaintiff agreed to participate in
6 this case with no guarantee of personal benefit. (*Ibid.*) Further, Plaintiff agreed to undertake the
7 financial risk of serving as class representatives and exposed himself to the risk of negative publicity
8 by anyone who opposed this case. (*Ibid.*; see also Bray Decl., ¶¶ 4–9.)

9 The service award also falls well-within the range of service awards typically awarded to class
10 representatives in similar class actions. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal., June
11 30, 2011, No. 1:09-CV-1662 OWW MJS) 2011 WL 2648879, at *6 [approving **\$11,250** service award
12 to each of the two class representatives in a trucker meal break class action]; *Ross v. U.S. Bank Nat.*
13 *Ass'n* (N.D. Cal., Sept. 29, 2010, No. C07-02951SI) 2010 WL 3833922, at *2 [approving **\$20,000**
14 enhancement award to class representative in California wage-and-hour class action settlement];
15 *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards
16 in the amount of **\$10,000** each from a \$300,000 settlement fund in a wage/hour class action]; *West v.*
17 *Circle K Stores, Inc.* (E.D. Cal., Oct. 20, 2006, No. CIVS040438WBSGGH) 2006 WL 8458679, at *8
18 [“[T]he court finds plaintiffs’ enhancement payments of **\$15,000** each to be reasonable.”]; *Glass v.*
19 *UBS Financial Services, Inc.* (N.D. Cal., Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862, at
20 *17 [“the Court finds the requested payment of **\$25,000** to each of the named plaintiffs is appropriate.”],
21 emphasis added; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal., Apr. 22, 2010, No. CV 08 1365
22 CW EMC) 2010 WL 1687832, at *17 fn.8 [“Numerous courts in the Ninth Circuit and elsewhere have
23 approved incentive awards of **\$20,000** or more where, as here, the class representative has
24 demonstrated a strong commitment to the class”], emphasis added.) Finally, Plaintiff has agreed to enter
25 into a general release of all claims against Defendant, whereas the Class Members only released the claims
26 alleged. (Bray Decl., ¶ 9; Settlement Agreement, at pp. 30–32.) The requested service award is modest,
27 fair, and reasonable.
28

1 **VI. THE PROPOSED ATTORNEYS' FEE ALLOCATION IS FAIR, REASONABLE,**
2 **AND APPROPRIATE**

3 Plaintiff's counsel seeks a fee award under the "common fund" doctrine. (See *Laffitte v. Robert*
4 *Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [reaffirming its approval of the use of a percentage of the
5 common fund to compensate counsel].) Plaintiff's counsel are also entitled to fees under various
6 statutes at issue here, including, among others, Labor Code sections 218.5, 226, subdivision (e)(1),
7 1194.2, and 2699, subdivision (g)(1), all of which provide for reasonable attorneys' fees to be recovered
8 by the prevailing party.

9 Specifically, Plaintiff's counsel requests attorneys' fees of one-third of the Gross Settlement
10 Amount (i.e., \$500,000.00), as provided in the Settlement Agreement. (Settlement Agreement, at pp.
11 4, 17.) As will be explained, this request is reasonable and appropriate under the common fund theory
12 and is supported by: **(1)** case law, **(2)** the high-quality of work performed by Plaintiff's counsel, **(3)** the
13 excellent results achieved for the Class Members, **(4)** the risks inherent in the contingent nature of
14 Plaintiff's counsel's representation in this case, and **(5)** public policy considerations.

15 **A. PLAINTIFF'S COUNSEL ARE ENTITLED TO A FEE FROM THE**
16 **COMMON FUND CREATED**

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

26 It is well-established that, where a lawsuit results in the recovery of a fund or property benefiting
27 others, as well as plaintiff—as in a class action—the court has inherent equitable power to order the
28 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 for the benefit of persons other than himself or his client is entitled to reasonable attorneys’ fees from the fund as a whole.” (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; see also *Class Plaintiffs v. Jaffe & Schlesinger, P.A.* (9th Cir. 1994) 19 F.3d 1306, 1308.) The doctrine is founded on the understanding that attorneys should normally be paid by their clients, and that unless attorneys’ fees are paid out of the common fund where the attorneys’ unnamed class member “clients” have no express retainer agreement, those who benefited from the fund without contributing to those who created it would be unjustly enriched. (*Boeing Co. v. Van Gemert, supra*, 444 U.S. 472, 478.)

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

1 Plaintiff's counsel's diligent litigation of this action resulted in the creation of an ascertainable
2 common fund that will substantially benefit the Class. Plaintiff's counsel's request for an award of one-
3 third of the Gross Settlement Amount is well within the range of awarded to counsel under similar
4 circumstances in litigation of this type. These requested amounts are unopposed by Defendant and not
5 objected to by any Class Member. (Admin. Decl., ¶ 9.) As this Settlement Agreement will result in the
6 recovery of a substantial fund benefiting all participating Class Members, this Court has inherent
7 equitable power to order Plaintiff's counsel's fees and costs to be paid out of the Gross Settlement
8 Amount, pursuant to the common fund theory.

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

11 The negotiated and unopposed fee award should also be approved because it is within the
12 approved range of appropriate awards of attorneys' fees in similar wage and hour class action cases in
13 California. (See, e.g., *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–492
14 [citing to five wage and hour class actions where federal district courts approved attorney fee awards
15 ranging from 30 to 33%]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-
16 821-IEG (BLM)) 2010 WL 2196104, at *8 [approving attorney fee award of 33.33% of the common
17 fund and noting that award was similar to awards in three other wage and hour class action cases where
18 fees ranged from 30.3% to 40%]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31,
19 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [meal break class action where the federal district
20 court approved attorneys' fees of one-third of common fund]; *Romero v. Producers Dairy Foods, Inc.*
21 (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [approving fees at one-
22 third of the common fund in a missed meal break class action and noting that fee awards in class actions
23 average around one-third of the recovery]; *Williams v. TriCap International LLC* (Final Approval
24 Order, March 7, 2019) LASC No. BC644383 [awarding one-third of gross settlement amount]; *Stuart*
25 *v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6 [noting
26 that a fee award of one-third of the settlement was “well within the range of percentages which courts
27 have upheld as reasonable in other class action lawsuits”]; *McCrary v. Elations Company, LLC* (C.D.
28 Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL 769703, at *10 [noting that most fee awards

1 are 33%]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov. 18, 2014, No. SACV 13-0561-DOC) 2014
2 WL 6473804, at *12 [finally approving a 33.34% fee award on a \$5,800,000 settlement].)

3 Thus, a fee in the amount of one-third of the common fund is fair and reasonable as it falls
4 squarely within the range of fee awards approved by courts in similar wage-and-hour matters. (See
5 *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6
6 [approving fee award of one-third of the total maximum settlement amount of \$4.5 million and noting
7 that the fee award of one-third of the total settlement was “well within the range of percentages which
8 courts have upheld as reasonable in other class action lawsuits”]; *Monterrubio v. Best Buy Stores, L.P.*
9 (E.D. Cal., Nov. 20, 2013, No. 2:11-CV-03270-MCE-AC) 2013 WL 12432761, at *12 [finally
10 approving fee award of 30%]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-
11 CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving fee award of 33.33% of the common fund];
12 *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL
13 3492841, at *4 [awarding fees of one-third of common fund in a wage and hour class action, noting:
14 “[f]ee awards in class actions average around one-third of the recovery”]; *Martin v. FedEx Ground*
15 *Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8
16 [approving attorneys’ fees of one-third of common fund].)

17 **C. THE HIGH QUALITY OF WORK AND EXCELLENT RESULT OBTAINED**
18 **SUPPORT THE AWARD**

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

23 Plaintiff’s counsel diligently, efficiently, and creatively pursued this case and promptly reached
24 a successful settlement for the benefit of the Class Members. Despite the numerous risks and obstacles
25 afflicting Plaintiff’s claims as detailed in the Motion for Preliminary Approval and its accompanying
26 papers, Plaintiff’s counsel crafted and negotiated a fair and reasonable Settlement Agreement for the
27 benefit of the Class Members. The fact that the settlement was embraced and supported by the Class
28 Members, as evidenced by the complete lack of any objections and only two opt-outs, clearly

1 demonstrates that the Class Members support the Settlement Agreement and results achieved by
2 Plaintiff's counsel through the litigation of this matter. (Admin. Decl., ¶¶ 8–9.)

3 As a result of this litigation, the Class Members stand to receive a significant Net Settlement
4 Amount of **\$813,048.66**.

5 **D. THE CONTINGENT NATURE OF PLAINTIFF'S COUNSEL'S**
6 **REPRESENTATION OF PLAINTIFF AND THE CLASS FURTHER**
7 **SUPPORTS THE FEE AWARD AT ONE-THIRD OF THE MAXIMUM**
8 **COMMON FUND**

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

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

26 Finally, the absence of any objections to the requested fee award, coupled with the 99.84%
27 Class Member participation rate, also supports the appropriateness and reasonableness of the requested
28 attorneys’ fees. (Admin. Decl., ¶ 11; *In re Heritage Bond Litigation* (C.D. Cal., June 10, 2005, No. 02-

1 ML-1475 DT) 2005 WL 1594403, at *21 [“The absence of objections or disapproval by class members
2 to Plaintiff’s counsel’s fee further supports finding the fee request reasonable.”].)

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

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

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

16 “Thirty years ago commentators, in urging the utility of the class suit to vindicate the
17 rights of stockholders, made this incisive observation: ‘Modern society seems
18 increasingly to expose men to . . . group injuries for which individually they are in a
19 poor position to seek legal redress, either because they do not know enough or because
20 such redress is disproportionately expensive. If each is left to assert his rights alone if
21 and when he can, there will at best be a random and fragmentary enforcement, if there
22 is any at all. This result is not only unfortunate in the particular case, but it will operate
23 seriously to impair the deterrent effect of the sanctions which underlie much
24 contemporary law. The problem of fashioning an effective and inclusive group remedy
25 is thus a major one.’ [Citation.]” (*Vasquez v. Superior Court, supra*, 4 Cal.3d 800, 807.)
26

27 The same rationale applies to this litigation. The express judicial policy of California is to favor
28 the maintenance of these types of representative actions. (See, e.g., *Sav-On Drug Stores, Inc. v.*

1 *Superior Court* (2004) 34 Cal.4th 319, 340; *Pearce v. Superior Court* (1983) 149 Cal.App.3d 1058,
2 1065; *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 126.) As recognized by the
3 California Supreme Court in *Sav-On Drug Stores, Inc.*:

4 “Considerations of sound public policy buttress our conclusion. Labor Code section
5 1194 confirms ‘a clear public policy . . . that is specifically directed at the enforcement
6 of California’s minimum wage and overtime laws for the benefit of workers.’ [Citation.]
7 As defendant’s own authority reminds us, California’s overtime laws are remedial and
8 are to be construed so as to promote employee protection. [Citation.] And, as we have
9 recognized, ‘this state has a public policy which encourages the use of the class action
10 device.’ [Citation.] “‘By establishing a technique whereby the claims of many
11 individuals can be resolved at the same time, the class suit both eliminates the possibility
12 of repetitious litigation and provides small claimants with a method of obtaining redress
13 for claims which would otherwise be too small to warrant individual litigation.’”
14 [Citation.]” (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th 319, 340.)
15

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

17 “[E]ncouragement of the attorney for the successful litigant, who will be more willing
18 to undertake and diligently prosecute proper litigation for the protection of recovery of
19 the fund if he is assured that he will be promptly and directly compensated should his
20 efforts be successful.” (*In re Stauffer’s Estate* (1959) 53 Cal.2d 124, 132.)
21

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

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

1 **VII. 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 the law firm representing Plaintiff in
14 connection with the prosecution of this litigation, in the amount of \$14,201.34, which is less than the
15 \$20,000.00 maximum cost allocation stipulated by the parties in the Settlement Agreement. (Settlement
16 Agreement, at pp. 4, 17, 23; Melmed FAM Decl., ¶ 44, Exh. B.) Plaintiff’s counsel has documented
17 and verified these costs and expenses for which counsel seeks reimbursement. (Melmed FAM Decl., ¶
18 44.)

19 All costs were necessarily incurred in the course of this hard-fought litigation and would have
20 been charged to a fee-paying client. No Class Member objected to an award of costs to Plaintiff’s
21 counsel of up to \$20,000.00, and Plaintiff’s counsel now seeks a lesser amount, with the remainder to
22 be distributed amongst the Class Members. (Melmed FAM Decl., ¶¶ 44–45; Admin. Decl., ¶ 9, see also
23 Admin. Decl., Exh. A.) Accordingly, the requested reimbursement of the reasonable out-of-pocket
24 expenses advanced and/or incurred is appropriate and justified as part of the overall Settlement
25 Agreement and should be awarded by the Court.

26 **VIII. SETTLEMENT ADMINISTRATION COSTS**

27 The parties agreed that the Settlement Administrator, Phoenix Settlement Administrators
28 would be compensated for services performed. The Administrator’s requested fee is \$12,750.

1 (Admin. Decl., ¶ 17.) The fee of \$12,750 was previously provided in the Settlement Agreement,
2 preliminarily approved by the Court, and noticed to the Class Members.

3 **IX. SUBMISSION TO THE LWDA**

4 The Settlement Agreement has been submitted to the LWDA pursuant to Labor Code section
5 2699, subdivision (1)(2). (Melmed FAM Decl., ¶ 67, Exh. C.)

6 **X. CONCLUSION**

7 Plaintiff respectfully submits that the Settlement Agreement is fair, adequate, and reasonable,
8 and merits final approval.

9 Dated: July 19, 2023

MELMED LAW GROUP P.C.

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11 

JONATHAN MELMED

12 Attorney for Plaintiff, the Preliminarily-Approved
13 Class, and the Aggrieved Employees
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