

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Kyle D. Smith (SBN 280489)

ks@melmedlaw.com

Joanne H. Kim (SBN 340608)

jhk@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

Attorneys for Plaintiffs, the Preliminarily-Approved Class, and the Aggrieved Employees

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

MARTIN JAVIER HERNANDEZ and
VICENTE SERRANO, individuals on behalf of
themselves, the State of California, as a private
attorneys general, and on behalf of all others
similarly situated,

Plaintiffs,

v.

ODYSSEY LANDSCAPING COMPANY,
INC., a California Corporation; ODYSSEY
LANDSCAPE COMPANY INC., an Unknown
Entity; and DOES 1 TO 50,

Defendants.

Case Number: STK-CV-UOE-2021-11109

**Plaintiffs' Notice of Motion and Motion for
Final Approval of Class and PAGA Action
Settlement**

Complaint Filed: December 7, 2021

FAC Filed: March 4, 2022

Trial Date: None Set

Preliminary Approval Granted:
June 9, 2023

Hearing Date: October 31, 2023

Hearing Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara A. Kronlund

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

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

3 **PLEASE TAKE NOTICE** that that on October 31, 2023, at 9:00 a.m., or as soon thereafter as
4 the matter may be heard, in Department 10D of the San Joaquin County Superior Court for the State
5 of California, located at the Stockton Courthouse, 180 East Weber Avenue, Second Floor, Stockton,
6 California 95202, before the Honorable Barbara A. Kronlund, Plaintiffs Martin Javier Hernandez and
7 Vicente Serrano (collectively, “Plaintiffs”), on behalf of themselves, the State of California, as a private
8 attorneys general, and on behalf of all others similarly situated, will and hereby do move this court for
9 entry of an order:

10 1. Finally certifying the settlement class, as defined in the *Class Action and PAGA*
11 *Settlement Agreement and Release* (the “Settlement Agreement”) between Plaintiffs and Defendant
12 Odyssey Landscaping Company, Inc. (“Defendant”) (collectively, the “Parties”), for the purpose of
13 settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court,
14 rule 3.769;

15 2. Finally appointing the named plaintiffs, Martin Javier Hernandez and Vicente Serrano,
16 as class representatives for purposes of settlement;

17 3. Finally appointing Jonathan Melmed, Kyle D. Smith, and Joanne H. Kim of Melmed
18 Law Group P.C. as class counsel for purposes of settlement;

19 4. Finding that the notice of the settlement was properly provided to the class members in
20 accordance with the Court’s order granting preliminary approval of the Settlement Agreement on June
21 9, 2023;

22 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms
23 set forth in the Settlement Agreement, including the payment by Defendant of the non-reversionary
24 gross settlement amount of \$400,000.00 (“Gross Settlement Amount”), plus the employer’s portion of
25 applicable payroll taxes;

26 6. Finally approving the allocation for attorneys’ fees of one-third of the Gross Settlement
27 Amount (i.e., \$133,333.33), plus necessary litigation costs of \$12,452.96;

1 7. Finally approving Phoenix Settlement Administrators (the “Settlement Administrator”)
2 as the settlement administrator and approving distribution of \$8,250.00 from the Gross Settlement
3 Amount to cover the settlement administrator’s expenses in administering the settlement;

4 8. Finally approving class representative service payments in an amount of \$7,500.00 to
5 each named Plaintiff (for a total of \$15,000.00) from the Gross Settlement Amount to compensate her
6 for the burdens, responsibilities, time, effort, and risks involved in coming forward on behalf of the
7 proposed class;

8 9. Finally approving the allocation of \$110,000.00 for penalties pursuant to the California
9 Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$82,500.00) shall be paid to
10 the California Labor and Workforce Development Agency (“LWDA”) from the Gross Settlement
11 Amount, with the remaining 25% (i.e., \$27,500.00) payable to the aggrieved employees;

12 10. Binding all participating class members to the terms of the Settlement Agreement,
13 including the release specified therein;

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

15 12. Granting Plaintiffs leave to file the overlength brief included with this motion due to the
16 complex nature of this motion.

17 This motion is based on this notice and motion; the memorandum of points and authorities in
18 support thereof; the declaration of Plaintiffs’ counsel; the declaration of the Settlement Administrator;
19 the Settlement Agreement; the other records, pleadings, and papers filed in this action; and upon such
20 other evidence or argument as may be presented to the court at the hearing of this motion. A draft of
21 this motion has been provided to Defendant’s counsel and is unopposed by Defendant.

22 Dated: October 9, 2023

MELMED LAW GROUP P.C.



KYLE D. SMITH

Attorney for Plaintiffs, the Preliminarily-Approved
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 Plaintiffs
4 Martin Javier Hernandez and Vicente Serrano (collectively, “Plaintiffs”) and Defendant Odyssey
5 Landscaping Company, Inc. (“Defendant”) (collectively, the “Parties”) for \$400,000.00 (the “Gross
6 Settlement Amount”) to be distributed to 548 individuals defined as:

7 *All current or former hourly-paid or non-exempt employees employed by Defendant in*
8 *the State of California during the Class Period.*
9

10 These employees are referred to herein individually as the “Class Members” or collectively as
11 the “Class.” The “Class Period” for these purposes is defined as the period from December 7, 2017,
12 through April 18, 2023. A true and correct copy of the *Class Action and PAGA Settlement Agreement*
13 *and Release* (the “Settlement Agreement”), is attached as **Exhibit A** to the concurrently filed
14 *Declaration of Jonathan Melmed in Support of Plaintiffs’ Motion for Final Approval of Class and*
15 *PAGA Action Settlement* (“Melmed FAM Decl.”). The Settlement Agreement, in its entirety, is
16 incorporated herein by reference.

17 Plaintiffs also represent a group of approximately 318 aggrieved employees on behalf of the
18 State of California as a private attorney general pursuant to the California Labor Code Private Attorneys
19 General Act of 2004, Labor Code sections 2698 through 2699.6 (“PAGA”). The “PAGA Period” for
20 these purposes is defined as the period from December 3, 2020, through April 18, 2023. The
21 “Aggrieved Employees,” for these purposes, are defined as:

22 *All individuals who are or were employed by Defendant as non-exempt employees in*
23 *California during the PAGA Period.*
24

25 The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross
26 Settlement Amount will revert to Defendant. (Settlement Agreement, at p. 7.) Class Members are not
27 required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 5.) The
28

applicable employer-side payroll taxes are to be paid by Defendant outside the Gross Settlement Amount. (Settlement Agreement, at p. 7.)

On June 9, 2023, this Court granted preliminary approval of the Settlement Agreement. Pursuant to that order, on July 7, 2023, Phoenix Settlement Administrators (the “Settlement Administrator”) mailed the Court-approved *Notice of Proposed Class Action and PAGA Settlement* (the “Class Notice”) to all 548 Class Members contained in the data provided by Defendant. (See Declaration of Yami Burns with Respect to Notice and Settlement Administration (“Admin. Decl.”), ¶ 5.) A copy of the Class Notice is attached to Admin. Decl. as Exhibit A.

If the Court grants final approval, each participating Class Member and Aggrieved Employee will receive a share of approximately **\$120,963.71** (the “Net Settlement Amount”), which is calculated as described below. Plaintiffs also provides the following summary to assist the Court in its review:

Gross Settlement Amount	\$400,000.00
Attorneys’ Fees:	(\$133,333.33)
Litigation Costs:	(\$12,452.96)
Settlement Administration Costs:	(\$8,250.00)
Service Awards to Plaintiffs:	(\$15,000.00)
PAGA Penalties:	(\$110,000.00)
Net Settlement Amount	\$120,963.71
<i>Employer Portion of Payroll Taxes Paid by Defendant in Addition to the Gross Settlement Amount</i>	

Class Participation	
Eligible Class Members:	548
Requests for Exclusion:	0
Objectors:	0
Participating Class Members:	548
Total Participation Rate:	100%

Relevant Supplemental Data	
Number of Aggrieved Employees:	318
Workweeks during the Class Period	27,426
Pay Periods during the PAGA Period	7,335
Highest Payment to Class Members	\$1,208.95
Average Payment to Class Members	\$216.09
Highest Payment to Aggrieved Employees	\$232.45
Average Payment to Aggrieved Employees	\$86.48
Class Counsel Fee Request	1/3 of the Gross Settlement Amount
Percent of Class Payments Attributable to Unpaid Wages (W-2 Income):	30%
Percent of Class Payments Attributable to Non-Wages (1099 Income):	70%
Uncashed Checks Paid to:	Unclaimed Property Fund

The Settlement Agreement is an excellent result for the Class, which is demonstrated by the extraordinarily high participation rate of **100%**. (Admin. Decl., ¶ 11.) To date, **zero** Class Members have requested exclusion or submitted objections to the Settlement Agreement. (Admin. Decl., ¶¶ 8, 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 Class's best interest. (Melmed FAM Decl., ¶ 38.) Further, these numbers raise a strong presumption that the Settlement Agreement is fair, reasonable, and adequate.

Because the Settlement Agreement is fair and reasonable; was negotiated at arm's length between counsel following extensive investigation and discovery; and was reached after participation in a full-day mediation, it should be finally approved. (Melmed FAM Decl., ¶ 5.) Based on the foregoing, Plaintiffs respectfully requests that the Court issue an order: **(1)** finally certifying the Class;

(2) finally appointing Plaintiffs as class representatives for purposes of settlement; (3) finally appointing Plaintiffs' counsel as class counsel for the purposes of settlement; (4) finding that the notice of settlement was properly provided to the Class Members; (5) finally approving the settlement as fair, adequate, and reasonable; (6) finally approving the allocation for attorneys' fees of one-third of the Gross Settlement Amount (i.e., \$133,333.33), plus necessarily-incurred litigation costs in the amount of \$12,452.96; (7) finally approving Phoenix Settlement Administrators as the settlement administrator and approving distribution of \$8,250.00 from the Gross Settlement Amount to cover the Settlement Administrator's expenses in administering the settlement; (8) finally approving the allocation of \$110,000.00 from the Gross Settlement Amount for PAGA penalties; (9) finally approving class representative service awards to named Plaintiffs in the amount of \$7,500.00 each (for a total of \$15,000.00); (10) binding all participating Class Members to the terms of the Settlement Agreement, including the release specified therein; and (11) retaining jurisdiction to enforce the terms of the Settlement Agreement.

II. BACKGROUND

A. THE PARTIES

Defendant is a full-service design and build landscaping company based in Lodi, California. Defendant's comprehensive package of services include landscape and irrigation construction, erosion control, concrete, landscape maintenance, and landscape design. (Melmed FAM Decl., ¶ 12.)

Plaintiffs are citizens of California and at the relevant times worked for Defendant in California as landscaping maintenance workers from around June 2021 to August 2021. As landscaping maintenance workers, Plaintiffs' duties included installing sprinklers, digging, planting vegetation, maintaining grass, and other landscaping-related projects. Plaintiffs earned approximately \$20.00 per hour while working for Defendant. (Melmed FAM Decl., ¶ 13.)

Plaintiffs alleged that Defendant's employees—including Plaintiffs, the Class Members, and the Aggrieved Employees (collectively, the "Employees")—experienced various violations of California's wage-and-hour laws. (Melmed FAM Decl., ¶ 14.)

1 **B. PROCEDURAL SUMMARY**

2 On December 3, 2021, Plaintiffs submitted a letter to the California Labor and Workforce
3 Development Agency (“LWDA”) to notify the LWDA, pursuant to PAGA, of Plaintiffs’ intent to seek
4 civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226,
5 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804,
6 and others that may be applicable; and California Industrial Welfare Commission (“IWC”) Wage
7 Orders 5-2001 and/or 16-2001 (the “Applicable Wage Orders”). (Cal. Code of Regs., tit. 8, §§ 11050,
8 11160.) The letter attached Plaintiffs’ original complaint, and incorporated the original complaint by
9 reference, and thus sought penalties for claims identical to those alleged in the case. (Melmed FAM
10 Decl., ¶ 15.)

11 On December 7, 2021, Plaintiffs commenced this action by filing a class action complaint
12 alleging causes of action against Defendant for **(1)** failure to pay minimum wage for all hours worked
13 in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Orders; **(2)** failure to
14 pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable
15 Wage Orders; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in
16 violation of Labor Code section 226.7 and the Applicable Wage Orders; **(4)** failure to provide
17 compliant meal periods and pay missed meal period premiums in violation of Labor Code sections
18 226.7 and 512, and the Applicable Wage Orders; **(5)** failure to maintain accurate employment records
19 in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in
20 violation of Labor Code sections 204 and 210; **(7)** failure to pay all wages due and owing at separation
21 in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in
22 violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage
23 statements in violation of Labor Code sections 226 and 226.3; and **(10)** deceptive, fraudulent, or
24 otherwise unlawful business practices based on the foregoing in violation of California’s Unfair
25 Competition Law (Bus. & Prof. Code, §§ 17200–17210). (Melmed FAM Decl., ¶ 16.)

26 On March 4, 2022, Plaintiffs filed a first amended complaint alleging causes of action against
27 Defendant for those described in the original Complaint and adding one cause of action for penalties
28

1 based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The first amended complaint
2 is the operative complaint in the action (the “Operative Complaint”). (Melmed FAM Decl., ¶ 17.)

3 Thereafter, the Parties agreed to attend a private mediation with Hon. Howard R. Broadman
4 (Ret.). (Melmed FAM Decl., ¶ 18.) Prior to the mediation, Plaintiffs’ counsel conducted significant
5 informal discovery. (Melmed FAM Decl., ¶ 18.) Discovery, investigation, and prosecution has
6 included, among other things, numerous telephonic conferences with Plaintiffs; inspection and analysis
7 of thousands of pages of documents, including Defendant’s relevant policies and employee handbook,
8 and other information produced by Plaintiffs and Defendant; analysis of work-related data from a
9 sample of Class Members and Aggrieved Employees; an analysis of the legal positions taken by
10 Defendant; investigation into the viability of class treatment of the claims asserted in the action;
11 analysis of potential class-wide damages, including information sufficient to understand Defendant’s
12 potential defenses to Plaintiffs’ claims; research of the applicable law with respect to the claims asserted
13 in the Operative Complaint and the potential defenses thereto; and assembling and analyzing of data
14 for calculating damages. (Melmed FAM Decl., ¶ 18.)

15 Among other key pieces of information, Plaintiffs’ counsel requested in its informal discovery
16 letter the wage statements and time records for a statistically significant sample size of Class Members
17 during the Class Period. (Melmed FAM Decl., ¶ 19.) The Parties agreed on, and Defendant produced,
18 a 10% sampling of randomly-selected employees, which Plaintiffs’ counsel determined would provide
19 a statistically significant sample size with a high-degree of confidence for Plaintiffs’ expert’s statistical
20 analysis. (Melmed FAM Decl., ¶ 19.) This sampling included payroll records and timesheets for the
21 Class Members’ shifts during the Class Period. (Melmed FAM Decl., ¶ 19.) From these records,
22 Plaintiffs’ expert was able to carefully craft a damages model for each of the categories of alleged
23 claims for which the data would reflect violations. (Melmed FAM Decl., ¶ 19.)

24 On January 18, 2023, the Parties participated in a full-day mediation with Hon. 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., ¶ 20.) The mediation negotiations were contentious, but
27 the Parties were eventually able to reach the broad terms of an agreement. After further negotiation,
28

1 the Parties executed the longform Settlement Agreement now before the Court for approval. (Melmed
2 FAM Decl., ¶ 20.)

3 On June 9, 2023, Plaintiffs’ *Motion for Preliminary Approval of Class and PAGA Action*
4 *Settlement* (“Motion for Preliminary Approval”) was granted. (See Order Granting Preliminary
5 Approval of Class and PAGA Action Settlement (June 9, 2023) (“Preliminary Approval Order” or
6 “PAM Order”).) Since that time, the Class has shown its strong approval of the Settlement Agreement;
7 as of the date of this filing, there have been no objections and no requests for exclusion by the Class
8 Members. (Admin. Decl., ¶¶ 8, 9.)

9 Plaintiffs now seek final approval of the Settlement Agreement.

10 **C. THE CLAIMS AND DEFENSES**

11 Plaintiffs alleged several categories of wage and hour violations on behalf of the Employees.
12 Plaintiffs’ primary claims stem from Defendant’s time-tracking practices. Plaintiffs alleged that the
13 time records kept by Defendant, and used as a basis for paying the Employees, were inaccurate and did
14 not contain all data required by applicable record-keeping laws. Plaintiffs alleged that these inaccurate
15 time records resulted in underpayments to the Employees, creating overtime violations, minimum wage
16 violations, and rest period violations. Plaintiffs further alleged that the Employees used their cell
17 phones to communicate during their shifts and received no corresponding reimbursement in violation
18 of Labor Code section 2802. Plaintiffs argued that these alleged errors would also trigger derivative
19 claims for wage statement penalties, waiting time penalties, and PAGA penalties. (Melmed FAM Decl.,
20 ¶ 25.)

21 The details and settlement value of each of these claims, and their corresponding defenses, were
22 discussed extensively in the Plaintiffs’ Motion for Preliminary Approval and its accompanying papers,
23 the discussion of which is incorporated by reference herein, and which, for the sake of brevity, Plaintiffs
24 will avoid belaboring in this motion. (See Motion for Preliminary Approval, ¶¶ 5–18.)

25 Defendant has persistently denied all liability of any kind associated with the claims and
26 allegations, and further denies that Plaintiffs, the Class Members, or the Aggrieved Employees are
27 entitled to any relief. Defendant also denies that these allegations are appropriate for class or
28

1 representative treatment for any purpose other than the settlement. Defendant maintains, among other
2 things, that it has complied with California laws in all respects. (Melmed FAM Decl., ¶ 27.)

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

4 Under the terms of the Settlement Agreement, Defendant will be released of all claims asserted
5 in the Complaint in exchange for Defendant's agreement to pay a non-reversionary settlement Gross
6 Settlement Amount of \$400,000.00. (See generally, Settlement Agreement.) The Gross Settlement
7 Amount includes: (1) the fees and expenses of the Settlement Administrator, currently estimated to not
8 exceed \$8,250.00 (Settlement Agreement, at pp. 3, 19; Admin. Decl., ¶ 16); (2) Plaintiffs' counsel's
9 attorney fees not to exceed one-third of the Gross Settlement Amount, i.e., \$133,333.33 (Settlement
10 Agreement, at pp. 4, 18); (3) litigation expenses and costs not to exceed \$15,000.00 (Settlement
11 Agreement, at p. 4, 18, 23); (4) a service award to the named Plaintiffs in a combined amount of up to
12 \$15,000.00 (Settlement Agreement, at pp. 7, 15); and (5) PAGA penalties in the amount of
13 \$110,000.00, of which 75% (i.e., \$82,500.00) shall be paid to the LWDA, with the remaining 25% (i.e.,
14 \$27,500.00) payable to the Aggrieved Employees (Settlement Agreement, at pp. 8, 16, 24). The
15 remaining Net Settlement Amount, which consists of approximately \$120,963.71, will be distributed
16 to all Class Members who have not requested exclusion from the Settlement Agreement and the
17 Aggrieved Employees. (Admin. Decl., ¶ 12; Settlement Agreement, at p. 24.) Applicable employer-
18 side payroll taxes will be paid by Defendant outside and separate from the Gross Settlement Amount.
19 (Settlement Agreement, at p. 7.)

20 Individual payments to the Class Members from the class-portion of the settlement will be
21 calculated and apportioned based on the number of weeks worked as an eligible Class Member in
22 California by the participating Class Member during the Class Period (the "Individual Settlement
23 Payments"). (Settlement Agreement, at p. 24.) Individual payments to the Aggrieved Employees from
24 the PAGA-portion of the settlement (i.e., the portion not being sent to the LWDA), will be calculated
25 and apportioned based on the number of pay periods worked by each Aggrieved Employee during the
26 PAGA Period compared to the total number of pay periods worked by all Aggrieved Employees during
27 the PAGA Period. (Settlement Agreement, at p. 25.)
28

1 For tax purposes, the Settlement Agreement provides that 30% of each individual settlement
2 payment from the class-portion of the Settlement Agreement shall constitute wages (for which each
3 participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining
4 70% shall constitute interest, reimbursement, and penalties (for which each participating Class Member
5 will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p.
6 16.) With respect to the individual payments made under the PAGA-portion of the Settlement
7 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which
8 each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation).
9 (Settlement Agreement, at p. 17.)

10 Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at
11 p. 27.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator
12 shall distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund
13 in the name of the individual whose check was uncashed. (Settlement Agreement, at p. 27.)

14 **III. THE NOTICE PROCESS WAS DILIGENTLY CARRIED OUT**

15 Pursuant to this Court's Preliminary Approval Order, the Settlement Administrator has fully
16 completed distributing the Class Notice. (Admin. Decl., ¶¶ 3–11.) As of the date of this filing, the
17 response deadline has passed for all 548 Class Members. (Admin. Decl., ¶¶ 8–10.) No Class Member
18 has objected to the Settlement Agreement and no Class Member has requested exclusion from the
19 Settlement Agreement. (Admin. Decl., ¶¶ 8–10.)

20 The Settlement Administrator was tasked with, among other things: (1) printing and mailing
21 the Class Members the court-approved Class Notice; (2) processing undeliverable mail and locating
22 updated addresses for Class Members; (3) receiving other communications about the Settlement
23 Agreement; (4) receiving and processing requests for exclusion; (5) resolving disputes over the number
24 of workweeks allocated to each Class Member during the Class Period; and (6) calculating estimated
25 individual settlement award amounts. (Admin. Decl., ¶ 2.)

26 On June 28, 2023, the Settlement Administrator received the class data list from Defendant's
27 counsel containing Class Member names, last known addresses, social security numbers, and
28 applicable employment information. (Admin. Decl., ¶ 3.) The class data list contained 548 putative

1 Class Members. (Admin. Decl., ¶ 3.) On July 7, 2023, Class Notices were mailed to all Class Members.
2 (Admin. Decl., ¶ 5.)

3 For any Class Notices that were returned, the Settlement Administrator conducted a
4 computerized skip trace to update the class list of addresses as accurately as possible, updating the
5 addresses of Class Members as applicable. (Admin. Decl., ¶ 6.) As a result of this skip trace, 15 updated
6 addresses were obtained and the Class Notices were promptly re-mailed to those Class Members.
7 (Admin. Decl., ¶ 6.) To date, only 14 of the 548 Class Notices remain undeliverable with no forwarding
8 address, where no new addresses could be found through skip trace or through a forwarding address
9 provided by the United States Postal Service. (Admin. Decl., ¶¶ 6–7.)

10 The deadline for the 548 Class Members in the class data list to submit an opt-out request,
11 objection, or dispute of workweeks was August 21, 2023. (Admin. Decl., ¶¶ 8–10.) The Settlement
12 Administrator has received **zero** objections and **zero** requests for exclusion. (Admin. Decl., ¶¶ 8–10.)
13 Thus, the Settlement Administrator is effectively reporting a **100% participation rate**—an
14 overwhelmingly favorable response to a Settlement.

15 **A. THE CLASS WAS GIVEN THE BEST POSSIBLE NOTICE OF THE**
16 **SETTLEMENT**

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

26 The notice procedure approved by the Court was and is the best notice practicable. As discussed
27 above, the Settlement Administrator duly mailed the Class Notices to all Class Members. (Admin.
28 Decl., ¶¶ 3–11.) When a Class Notice was returned undeliverable, the settlement administrator made

1 reasonable efforts to obtain a valid mailing address by performing a computerized skip trace or by
2 obtaining a forwarding address through the United States Postal Service. (Admin. Decl., ¶¶ 6–7.)

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

13 Moreover, the Court diligently reviewed and approved the Class Notice as to form and content.
14 (PAM Order, ¶ 5.) Therefore, the Court may determine the fairness and adequacy of the settlement and
15 order its approval, secure in the knowledge that all Class Members have been given the opportunity to
16 participate fully in the notice process and have been fully apprised of their rights and options, including
17 their rights to object to the Settlement Agreement. To date, no one has chosen to do so. (Admin. Decl.,
18 ¶¶ 8–10.)

19 **B. THE CLASS MEMBERS OVERWHELMINGLY APPROVE OF THE**
20 **SETTLEMENT, WHICH IS FAIR AND REASONABLE**

21 The Class Members have overwhelmingly accepted the Settlement Agreement and 548 putative
22 Class Members, 318 Aggrieved Employees, and the State of California all stand to benefit from the
23 settlement on entry of final approval. (Admin. Decl., ¶¶ 12, 14.) “[T]he absence of a large number of
24 objections to a proposed class action settlement raises a strong presumption that the terms of a proposed
25 class settlement action are favorable to the class members.” (*In re Omnivision Technologies, Inc.* (N.D.
26 Cal. 2008) 559 F.Supp.2d 1036, 1043, quoting *National Rural Telecommunications Cooperative v.*
27 *DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529; *Moore v. PetSmart, Inc.* (N.D. Cal., Aug. 4,
28 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000, at *7 [finding that where “less than one percent

1 either opted out or objected, the reaction of the putative class has been very positive. Therefore, this
2 factor strongly favors settlement.”].)

3 Here, **zero** members of the eligible Class Members have submitted objections to any of the
4 terms of the proposed settlement, including Plaintiffs’ requested service award or Plaintiffs’ counsel’s
5 proposed attorneys’ fees and costs. (Admin. Decl., ¶ 9.) Moreover, **zero** Class Members have requested
6 exclusion out of 548 eligible Class Members—evidencing that all Class Members desire to receive the
7 benefits of this Settlement Agreement. (Admin. Decl., ¶ 8.) This response evidences the Class
8 Members’ clear and overwhelmingly support the Settlement Agreement.

9 **IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT**

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

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

24 The trial court enjoys broad discretion to determine whether a proposed class action settlement
25 is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The decision to approve or reject a
26 proposed settlement lies within the Court’s sound discretion. (*Wershba v. Apple Computer, Inc.* (2001)
27 91 Cal.App.4th 224, 234–235.) In deciding whether to grant final approval, the Court’s ultimate duty
28 is to determine whether the settlement is fair, adequate, and reasonable. (See *Dunk v. Ford Motor Co.*

1 (1996) 48 Cal.App.4th 1794, 1801 [setting forth the “fair, adequate, and reasonable” standard], citing
2 *Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, *supra*, 688 F.2d 615,
3 625; see also *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742–743 [a trial
4 court must approve a class action settlement agreement, but only after determining that it is ““fair,
5 adequate and reasonable,”” considering factors such as the ““risk, expense, [and] complexity”” of
6 continued litigation], citations omitted.) The Court should consider several factors including, but not
7 limited to:

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

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

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

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

27 A presumption of fairness exists where, as here: “(1) the settlement is reached through arm’s-
28 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act

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

7 Here, the Settlement Agreement was negotiated at arm’s length between counsel using a
8 professional and well-respected third-party neutral. Counsel for all parties were thoroughly familiar
9 with the complex legal and factual questions at issue in this litigation. The Settlement Agreement is a
10 product of intensive negotiations, supported by investigation and direct exchanges of information
11 through informal discovery, during settlement negotiations, including a full-day mediation, and
12 significant post-mediation negotiations. Though cordial and professional, the settlement negotiations
13 were adversarial and non-collusive in nature. (Melmed FAM Decl., ¶ 28.)

14 The parties thoroughly investigated and evaluated the factual and legal strengths and
15 weaknesses of this case before reaching the settlement. As described above, the Settlement Agreement
16 was reached after extensive informal discovery, investigation, research, thorough calculations, risk
17 evaluation, substantial exchanges of documents, and an exchange of other information required to
18 evaluate the claims at issue. The settlement came only after the case was thoroughly investigated by
19 Plaintiffs’ counsel. (Melmed FAM Decl., ¶ 29.)

20 The settlement reached is the product of substantial effort by the parties and their counsel.
21 Plaintiffs and Plaintiffs’ counsel agree that the Settlement Agreement represents a fair, adequate, and
22 reasonable resolution of the claims. (PAM Order ¶ 2; Melmed FAM Decl., ¶ 30.) Moreover, Plaintiffs’
23 counsel are experienced in similar class actions. (Melmed FAM Decl., ¶ 30.) Additionally, the
24 percentage of objectors is not only small, *but zero*. (Admin. Decl., ¶ 9.) The presumption of fairness of
25 this settlement applies with full force.
26
27
28

1 **C. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED**

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

4 As explained above, the Settlement Agreement was negotiated at arm's length between counsel
5 utilizing a professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 31.) Counsel for
6 all parties were thoroughly familiar with the complex legal and factual questions at issue in this
7 litigation. (Melmed FAM Decl., ¶ 31.) The Settlement Agreement is a product of intensive negotiations,
8 supported by investigation and direct exchanges of information through informal discovery, during the
9 course of settlement negotiations, including a full-day mediation. (Melmed FAM Decl., ¶ 31.) Although
10 Plaintiffs and Plaintiffs' counsel believed the class claims had merit and there was a possibility of
11 certifying the class and claims, they recognized the potential risk, expense, and complexity posed by
12 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on
13 the damages awarded, and/or on an appeal that can take several more years to litigate. (Melmed FAM
14 Decl., ¶ 31.)

15 The resulting Settlement Agreement was based on calculations, risk assessment, and non-
16 collusive negotiation. It takes the risks identified above and others into account in arriving at the non-
17 reversionary settlement. (Melmed FAM Decl., ¶ 32.)

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

20 Counsel for the Parties spent months prior to the mediation developing the factual record for
21 this case, engaging in informal discovery and exchanges of documents and information, drafting
22 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and
23 weaknesses of their respective positions at the mediation and during subsequent settlement
24 negotiations. (Melmed FAM Decl., ¶ 33.) The Parties and their counsel attended a full-day mediation
25 session before an experienced and well-respected mediator which resulted in the resolution of the case
26 on a class and representative basis. (Melmed FAM Decl., ¶ 33.) Judge Howard Broadman (Ret.) is a
27 well-respected and widely-recognized mediator of complex class actions and commercial matters.
28

1 In addition, the Parties are represented by skilled and experienced counsel with extensive
2 backgrounds in complex litigation and experience litigating similar wage and hour class actions.
3 (Melmed FAM Decl., ¶ 34.) The Settlement Agreement was reached after extensive investigation and
4 research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiffs' counsel
5 thorough factual investigation, sufficient to evaluate Defendant's defenses. (Melmed FAM Decl., ¶
6 34.) The Settlement Agreement came only after the case was thoroughly investigated by Plaintiffs'
7 counsel. (Melmed FAM Decl., ¶ 34.) Plaintiffs' counsel agree that this settlement is fair, adequate, and
8 reasonable, and in the best interests of Class Members, the State of California, and the Aggrieved
9 Employees. (Melmed FAM Decl., ¶ 34.)

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

11 Although Plaintiffs and Plaintiffs' counsel believed the class claims had merit and that there
12 was a possibility of certifying the class and claims, they recognized the potential risk, expense, and
13 complexity posed by litigation, such as unfavorable decisions on class certification, summary
14 judgment, adverse outcomes at trial or on the damages awarded, and the potential for appeal that can
15 take several more years to litigate. (Melmed FAM Decl., ¶ 35.) The resulting Settlement Agreement
16 was based on calculations, risk assessment, and non-collusive negotiation. (Melmed FAM Decl., ¶ 35.)
17 It takes the risks identified above and others into account in arriving at the non-reversionary Gross
18 Settlement Amount of \$400,000.00. (Melmed FAM Decl., ¶ 35.)

19 The Settlement Agreement represents a fair compromise given the risks and uncertainties
20 presented by continued litigation. Defendant asserted and would have continued to assert legal and
21 factual grounds to defend against this action, including factual and legal defenses on the merits.
22 Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the
23 Settlement Agreement ensures timely relief and substantial recovery of the Defendant's realistic
24 exposure. (Melmed FAM Decl., ¶ 36.)

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

26 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
27 should consider "[t]he strength of Plaintiffs' case, the risk, expense, complexity and likely duration of
28 further litigation, [and] the risk of maintaining class action status." (*Dunk v. Ford Motor Co.*, *supra*,

1 48 Cal.App.4th 1794, 1801.) As described in the Preliminary Approval Motion and its accompanying
2 papers, Defendant had viable defenses to Plaintiffs' claims, which create a real possibility that the
3 claims might not be certified or may fail on the merits. (Melmed FAM Decl., ¶ 37.) Proceeding with
4 litigation would impose significant risk of no recovery as well as ongoing, substantial additional
5 expenditures of time and resources. (Melmed FAM Decl., ¶ 37.) If settlement were not achieved,
6 continued litigation of the claims would take substantial time and possibly confer little to no benefit on
7 Class Members, the State of California, or the Aggrieved Employees. By contrast, the settlement will
8 yield a prompt, certain, and substantial recovery, and benefits the Parties, the Court, the Class
9 Members, the State of California, and the Aggrieved Employees. (Melmed FAM Decl., ¶ 37.)

10 **5. Plaintiffs' Counsel are Experienced in Similar Wage-and-Hour Litigation**

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

20 **V. THE CLASS REPRESENTATIVES' SERVICE AWARD IS FAIR, REASONABLE,** 21 **AND APPROPRIATE**

22 The Settlement Agreement provides for a service award payment of \$7,500 to each of the named
23 plaintiffs (totaling \$15,000.00) in addition to whatever payment they are otherwise entitled to receive
24 as Class Members and Aggrieved Employees. (Settlement Agreement, at p. 23.) The proposed service
25 awards are intended to recognize the time, effort, and risk Plaintiffs undertook in bringing this case and
26 helping to secure the relief obtained for the Class Members, the State of California, and the Aggrieved
27 Employees. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding "service
28 payment" to named plaintiff for his efforts in bringing class case]; *Rodriguez v. West Publishing Corp.*

1 (9th Cir. 2009) 563 F.3d 948, 958–959 [stating that incentive awards are “intended to compensate class
2 representatives for work done on behalf of the class, to make up for financial or reputational risk
3 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
4 attorney general.”].) To determine the propriety of a service award, courts consider the actions
5 protecting class interests, the benefit provided to the class based on those actions, and the amount of
6 time and effort expended by the plaintiffs. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 976–
7 977.)

8 Here, Plaintiffs provided invaluable assistance to Plaintiffs’ counsel and the Class Members in
9 this case, including providing factual background for mediation and the operative complaint, reviewing
10 the relevant documents, participating in phone calls with Plaintiffs’ counsel, gathering highly relevant
11 documents, and reviewing the settlement documents. (Melmed FAM Decl., ¶ 40.) Plaintiffs agreed to
12 participate in this case with no guarantee of personal benefit. (*Ibid.*) Further, Plaintiffs agreed to
13 undertake the financial risk of serving as class representatives and exposed themselves to the risk of
14 negative publicity by anyone who opposed this case. (*Ibid.*) The service award requested by Plaintiffs
15 represents only 3.75% of the Gross Settlement Amount in this case ($\$15,000 \div \$400,000 \times 100 =$
16 3.75%).

17 The service awards also fall within the range of service awards typically awarded to class
18 representatives in similar class actions. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal., June
19 30, 2011, No. 1:09-CV-1662 OWW MJS) 2011 WL 2648879, at *6 [approving **\$11,250** service award
20 to each of the two class representatives in a trucker meal break class action]; *Ross v. U.S. Bank Nat.*
21 *Ass’n* (N.D. Cal., Sept. 29, 2010, No. C07-02951SI) 2010 WL 3833922, at *2 [approving **\$20,000**
22 enhancement award to class representative in California wage-and-hour class action settlement];
23 *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards
24 in the amount of **\$10,000** each from a \$300,000 settlement fund in a wage/hour class action]; *West v.*
25 *Circle K Stores, Inc.* (E.D. Cal., Oct. 20, 2006, No. CIVS040438WBSGGH) 2006 WL 8458679, at *8
26 [“[T]he court finds plaintiffs’ enhancement payments of **\$15,000** each to be reasonable.”]; *Glass v.*
27 *UBS Financial Services, Inc.* (N.D. Cal., Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862, at
28 *17 [“the Court finds the requested payment of **\$25,000** to each of the named plaintiffs is appropriate.”],

1 emphasis added; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal., Apr. 22, 2010, No. CV 08 1365
2 CW EMC) 2010 WL 1687832, at *17 fn.8 [“Numerous courts in the Ninth Circuit and elsewhere have
3 approved incentive awards of **\$20,000** or more where, as here, the class representative has
4 demonstrated a strong commitment to the class”], emphasis added.) Finally, Plaintiffs have agreed to
5 enter into a general release of all claims against Defendant, whereas the Class Members only released the
6 claims alleged. (Settlement Agreement, at pp. 31–32.) The requested service award is modest, fair, and
7 reasonable.

8 **VI. THE PROPOSED ATTORNEYS’ FEE ALLOCATION IS FAIR, REASONABLE,**
9 **AND APPROPRIATE**

10 Plaintiffs’ counsel seek a fee award under the “common fund” doctrine. (See *Laffitte v. Robert*
11 *Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [reaffirming its approval of the use of a percentage of the
12 common fund to compensate counsel].) Plaintiffs’ counsel are also entitled to fees under various
13 statutes at issue here, including, among others, Labor Code sections 218.5, 226, subdivision (e)(1),
14 1194.2, and 2699, subdivision (g)(1), all of which provide for reasonable attorneys’ fees to be recovered
15 by the prevailing party.

16 Specifically, Plaintiffs’ counsel requests attorneys’ fees of \$133,333.33 (i.e., one-third of the
17 Gross Settlement Amount), as provided in the Settlement Agreement. (Settlement Agreement, at p. 18.)
18 As will be explained, this request is reasonable and appropriate under the common fund theory and is
19 supported by: (1) case law, (2) the high-quality of work performed by Plaintiffs’ counsel, (3) the
20 excellent results achieved for the Class Members, (4) the risks inherent in the contingent nature of
21 Plaintiffs’ counsel’s representation in this case, and (5) public policy considerations.

22 **A. PLAINTIFFS’ COUNSEL ARE ENTITLED TO A FEE FROM THE**
23 **COMMON FUND CREATED**

24 As the California Supreme Court has made clear, one-third of the common fund is a reasonable
25 percentage for a trial court to award as attorneys’ fees in a class action where a common fund was
26 generated because of the case. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506
27 [“We therefore agree with the Court of Appeal below that ‘the percentage of fund method survives in
28 California class action cases, and the trial court did not abuse its discretion in using it, in part, to approve

1 the fee request [of one-third of the common fund] in this class action”).) The California Supreme Court
2 further clarified that trial courts “have discretion to conduct a lodestar cross-check on a percentage fee,
3 as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means
4 to evaluate the reasonableness of a requested percentage fee.” (*Ibid.*)

5 It is well-established that, where a lawsuit results in the recovery of a fund or property benefiting
6 others, as well as the plaintiffs—as in a class action—the court has inherent equitable power to order
7 the plaintiff’s attorney fees to be paid out of the common fund or property. (See *Serrano v. Priest*
8 (1977) 20 Cal.3d 25, 35; *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 25 [“when a
9 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
10 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
11 plaintiffs may be awarded attorney’s fees out of the fund”]; *Quinn v. State of California* (1975) 15
12 Cal.3d 162, 168; *In re Stauffer’s Estate* (1959) 53 Cal.2d 124, 132.) This “fee spreading” is premised
13 on assuring that all those benefitted by the litigation pay their fair share of the costs for obtaining the
14 recovery. (See *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26; *Cziraki v. Thunder*
15 *Cats, Inc.* (2003) 111 Cal.App.4th 552, 558.)

16 As mentioned above, Plaintiffs’ counsel are seeking a fee award under the “common fund”
17 doctrine. The common fund doctrine provides that “a litigant or a lawyer who recovers a common fund
18 for the benefit of persons other than himself or his client is entitled to reasonable attorneys’ fees from
19 the fund as a whole.” (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*
20 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; see also *Class Plaintiffs v. Jaffe & Schlesinger, P.A.* (9th
21 Cir. 1994) 19 F.3d 1306, 1308.) The doctrine is founded on the understanding that attorneys should
22 normally be paid by their clients, and that unless attorneys’ fees are paid out of the common fund where
23 the attorneys’ unnamed class member “clients” have no express retainer agreement, those who
24 benefited from the fund without contributing to those who created it would be unjustly enriched.
25 (*Boeing Co. v. Van Gemert, supra*, 444 U.S. 472, 478.)

26 In *Laffitte v. Robert Half Internat., Inc., supra*, 1 Cal.5th 480, the California Supreme Court
27 unequivocally held “that when class action litigation established a monetary fund for the benefit of the
28 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,

1 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
2 fund created” without considering the amount of hours expended on the case. (*Id.* at p. 503.) The court
3 further held that “[t]he recognized advantages of the percentage method—including relative ease of
4 calculation, alignment of incentives between counsel and the class, a better approximation of market
5 conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement
6 and avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a
7 valuable tool that should not be denied our trial courts.” (*Ibid.*)

8 Plaintiffs’ counsel’s diligent litigation of this action resulted in the creation of an ascertainable
9 common fund that will substantially benefit the Class. Plaintiffs’ counsel’s request for an award of one-
10 third of the Gross Settlement Amount is well within the range of awarded to counsel under similar
11 circumstances in litigation of this type. These requested amounts are unopposed by Defendant and not
12 objected to by any Class Member. (Admin. Decl., ¶ 9.) As this Settlement Agreement will result in the
13 recovery of a substantial fund benefiting all participating Class Members, the State of California, and
14 the Aggrieved Employees, this Court has inherent equitable power to order Plaintiffs’ counsel’s fees
15 and costs to be paid out of the Gross Settlement Amount, pursuant to the common fund theory.

16 **B. COURTS ROUTINELY AWARD ATTORNEYS’ FEES AT OR ABOVE**
17 **THOSE REQUESTED HERE**

18 The negotiated and unopposed fee award should also be approved because it is within the
19 approved range of appropriate awards of attorneys’ fees in similar wage and hour class action cases in
20 California. (See, e.g., *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–492
21 [citing to five recent wage and hour class actions where federal district courts approved attorney fee
22 awards ranging from 30 to 33%]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-
23 CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving attorney fee award of 33.33% of the
24 common fund and noting that award was similar to awards in three other wage and hour class action
25 cases where fees ranged from 30.3% to 40%]; *Martin v. FedEx Ground Package System, Inc.* (N.D.
26 Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [meal break class action where
27 the federal district court approved attorneys’ fees of one-third of common fund]; *Romero v. Producers*
28 *Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4

1 [approving fees at one-third of the common fund in a missed meal break class action and noting that
2 fee awards in class actions average around one-third of the recovery]; *Williams v. TriCap International*
3 *LLC* (Final Approval Order, March 7, 2019) LASC No. BC644383 [awarding one-third of gross
4 settlement amount]; *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010
5 WL 3155645, at *6 [noting that a fee award of one-third of the settlement was “well within the range
6 of percentages which courts have upheld as reasonable in other class action lawsuits”]; *McCrory v.*
7 *Elations Company, LLC* (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL 769703, at
8 *10 [noting that most fee awards are 33%]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov. 18, 2014,
9 No. SACV 13-0561-DOC) 2014 WL 6473804, at *12 [finally approving a 33.34% fee award on a
10 \$5,800,000 settlement].)

11 Thus, a fee in the amount of one-third of the common fund is fair and reasonable as it falls
12 squarely within the range of fee awards approved by courts in similar wage-and-hour matters. (See
13 *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6
14 [approving fee award of one-third of the total maximum settlement amount of \$4.5 million and noting
15 that the fee award of one-third of the total settlement was “well within the range of percentages which
16 courts have upheld as reasonable in other class action lawsuits”]; *Monterrubio v. Best Buy Stores, L.P.*
17 (E.D. Cal., Nov. 20, 2013, No. 2:11-CV-03270-MCE-AC) 2013 WL 12432761, at *12 [finally
18 approving fee award of 30%]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-
19 CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving fee award of 33.33% of the common fund];
20 *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL
21 3492841, at *4 [awarding fees of one-third of common fund in a wage and hour class action, noting:
22 “[f]ee awards in class actions average around one-third of the recovery”]; *Martin v. FedEx Ground*
23 *Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8
24 [approving attorneys’ fees of one-third of common fund].)

25 **C. THE HIGH QUALITY OF WORK AND EXCELLENT RESULT OBTAINED**
26 **SUPPORT THE AWARD**

27 In addition to the fact that a benefit was created with a significant common fund, the fairness
28 of the requested fee award of one-third of that common fund is supported by the high quality of work

1 performed by Plaintiffs’ counsel and the favorable result obtained for the Class Members and
2 Aggrieved Employees given the significant challenges faced by Plaintiffs in this action.

3 Plaintiffs’ counsel diligently, efficiently, and creatively pursued this case and promptly reached
4 a successful settlement for the benefit of the Class Members. Despite the numerous risks and obstacles
5 afflicting Plaintiffs’ claims as detailed in the Preliminary Approval Motion and its accompanying
6 papers, Plaintiffs’ counsel crafted and negotiated a fair and reasonable Settlement Agreement for the
7 benefit of the Class Members. The fact that the settlement was embraced and supported by the Class
8 Members, as evidenced by the complete lack of any objections, clearly demonstrates that the Class
9 Members support the Settlement Agreement and results achieved by Plaintiffs’ counsel through the
10 litigation of this matter. (Admin. Decl., ¶ 9.)

11 As a result of this litigation, the Class Members, the State of California, and the Aggrieved
12 Employees all stand to receive a significant Net Settlement Amount of **\$120,963.71**.

13 **D. THE CONTINGENT NATURE OF PLAINTIFFS’ COUNSEL’S**
14 **REPRESENTATION OF PLAINTIFFS AND THE CLASS MEMBERS**
15 **FURTHER SUPPORTS THE FEE AWARD AT ONE-THIRD OF THE**
16 **MAXIMUM COMMON FUND**

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

27 This risk further justifies the requested fee award. As explained by the California Supreme
28 Court, “[a] lawyer who both bears the risk of not being paid and provides legal services is not receiving

1 the fair market value of his work if he is paid only for the second of these functions. If he is paid no
2 more, competent counsel will be reluctant to accept fee award cases.” (*Ketchum v. Moses* (2001) 24
3 Cal.4th 1122, 1133, quotation marks omitted; see also *Crommie v. State of Cal., Public Utilities Com’n*
4 (N.D. Cal. 1994) 840 F.Supp. 719, 725 [“The purpose of contingent risk inquiry is to determine a fee
5 that is likely to entice competent counsel to undertake difficult public interest cases.”].)

6 Finally, the absence of any objections to the requested fee award, coupled with the 100% Class
7 participation rate, also supports the appropriateness and reasonableness of the requested attorneys’ fees.
8 (Admin. Decl., ¶¶ 8–11; *In re Heritage Bond Litigation* (C.D. Cal., June 10, 2005, No. 02-ML-1475
9 DT) 2005 WL 1594403, at *21 [“The absence of objections or disapproval by class members to
10 Plaintiffs’ counsel’s fee further supports finding the fee request reasonable.”].)

11 **E. PUBLIC POLICY CONSIDERATIONS REQUIRE THE AWARD OF**
12 **ADEQUATE FEES SO COMPETENT AND EXPERIENCED COUNSEL WILL**
13 **UNDERTAKE SUCH REPRESENTATIONS**

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

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

24 “Thirty years ago commentators, in urging the utility of the class suit to vindicate the
25 rights of stockholders, made this incisive observation: ‘Modern society seems
26 increasingly to expose men to . . . group injuries for which individually they are in a
27 poor position to seek legal redress, either because they do not know enough or because
28

1 such redress is disproportionately expensive. If each is left to assert his rights alone if
2 and when he can, there will at best be a random and fragmentary enforcement, if there
3 is any at all. This result is not only unfortunate in the particular case, but it will operate
4 seriously to impair the deterrent effect of the sanctions which underlie much
5 contemporary law. The problem of fashioning an effective and inclusive group remedy
6 is thus a major one.’ [Citation.]” (*Vasquez v. Superior Court, supra*, 4 Cal.3d 800, 807.)

7
8 The same rationale applies to this litigation. The express judicial policy of California is to favor
9 the maintenance of these types of representative actions. (See, e.g., *Sav-On Drug Stores, Inc. v.*
10 *Superior Court* (2004) 34 Cal.4th 319, 340; *Pearce v. Superior Court* (1983) 149 Cal.App.3d 1058,
11 1065; *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 126.) As recognized by the
12 California Supreme Court in *Sav-On Drug Stores, Inc.*:

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

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

25
26 “[E]ncouragement of the attorney for the successful litigant, who will be more willing
27 to undertake and diligently prosecute proper litigation for the protection or recovery of
28

1 the fund if he is assured that he will be promptly and directly compensated should his
2 efforts be successful.” (*In re Stauffer’s Estate* (1959) 53 Cal.2d 124, 132.)

3
4 Conversely, a reduction in attorneys’ fees due to the size of the settlement in this case would
5 create perverse incentives for class action attorneys—effectively penalizing them for obtaining more
6 favorable results on behalf of the class. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th
7 19, 52 [“counsel should be rewarded, not punished, for helping to achieve that goal”].) Public policy
8 would be best served by encouraging class action attorneys to recover the greatest amount reasonably
9 possible on behalf of the injured class members. (*Id.* at p. 53 [“[Fee] awards that are too small can also
10 be problematic, as they chill the private enforcement essential to the vindication of many legal rights
11 and obstruct the representative actions that often relieve the courts of the need to separately adjudicate
12 numerous claims.”].) The award of attorneys’ fees as requested by Plaintiffs’ counsel would properly
13 reward Plaintiffs’ counsel’s efforts in advancing a clear public policy and would encourage additional
14 such efforts.

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

16 **F. THE LODESTAR MULTIPLIER APPROACH CONFIRMS THE**
17 **REASONABLENESS OF THE FEE REQUEST**

18 A lodestar cross-check further confirms that the percentage requested is patently reasonable.
19 The “lodestar-multiplier” is an alternative accepted approach of evaluating the reasonableness of
20 attorneys’ fees whereby the court computes the “lodestar” amount by multiplying the number of hours
21 reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances
22 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty or difficulty
23 of the case, its contingent nature, and the degree of success achieved. (See *PLCM Group v. Drexler*
24 (2000) 22 Cal.4th 1084, 1095–1096; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Serrano v.*
25 *Priest, supra*, 20 Cal.3d 25, 48–49.) As noted, using the loadstar approach, the court first computes the
26 reasonable market value of the service rendered. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138, fn.
27 3.) The first step is to calculate the lodestar, which is determined by multiplying the time spent by the
28 attorneys and other timekeepers by their reasonable hourly rates. (*Id.* at p. 1132.)

1 When a court adopts the “lodestar multiplier” method, after initially calculating the combined
2 total lodestar, the court may then adjust the lodestar based on several factors in order to “fix a fee at
3 the fair market value for the particular action.” (*Id.* at p. 1132; *Graham v. DaimlerChrysler Corp.*
4 (2004) 34 Cal.4th 553, 574.) As noted, these additional factors include the contingent risk of the
5 litigation, the novelty and complexity of the issues, and exceptional results obtained. (*Ketchum v.*
6 *Moses, supra*, 24 Cal.4th at p. 1132; *Serrano v. Priest, supra*, 20 Cal.3d at p. 48.)

7 A lodestar calculation need not be supported by detailed time records. (*Wershba v. Apple*
8 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [“California case law permits fee awards in the absence
9 of detailed time sheets”], disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*
10 (2018) 4 Cal.5th 260.) Declarations by counsel as to time spent, even if only estimates, are enough.
11 (See *Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 254–255 [“Here plaintiff’s
12 attorneys submitted declarations evidencing the reasonable hourly rate for their services and
13 establishing the number of hours spent working on the case”]; see also *Dunk v. Ford Motor Co., supra*,
14 48 Cal.App.4th 1794, 1810 [stating that lodestar calculation could be based on counsel’s estimate of
15 time spent]; *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698 [“It is well established
16 that ‘California courts do not require detailed time records, and trial courts have discretion to award
17 fees based on declarations of counsel describing the work they have done and the court’s own view of
18 the number of hours reasonably spent. [Citations]’”].)

19 As set forth above, Plaintiffs’ counsel are not requesting attorneys’ fees under the lodestar
20 multiplier approach. Nevertheless, Plaintiffs’ counsel in their declaration have provided a summary of
21 the hours they expended throughout the course of the litigation, including drafting and filing of the
22 complaint, defending the pleadings, engaging in discovery, preparing damages analyses, reviewing the
23 formal and informal discovery, preparing and negotiating the settlement agreement, preparing the class
24 notice, preparing papers for and moving for preliminary approval (including supplemental briefing),
25 preparing papers and moving for final approval, and attorneys’ fees, amongst other things.

26 To date, Plaintiffs’ counsel’s lodestar to date is \$65,083.30 after collectively expending 90.5
27 hours on this matter. (Melmed FAM Decl., ¶ 55.) Thus, the fees sought here reflect a lodestar multiplier
28 of only **2.049** (i.e., \$133,333.33 ÷ \$65,083.30). Moreover, it is anticipated that Plaintiffs’ counsel will

1 expend time which cannot yet be accounted for in the hours in Plaintiffs’ counsel’s declaration.
2 (Melmed FAM Decl., ¶ 59.) Therefore, the unadjusted lodestar will increase and the multiplier will
3 decrease by the conclusion of this matter.

4 Historically, courts in California have commonly approved multipliers between two and four.
5 (See, e.g., *Steiner v. American Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed.Appx. 780, 783
6 [multiplier of 6.85 “falls well within the range of multipliers that courts have allowed”]; *Sternwest*
7 *Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 [directing the trial court “to enhance the lodestar award by
8 such factor (two, three, four or otherwise) that the court, in its discretion shall deem proper”]; *Van*
9 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298 [“Multipliers in the 3–4 range
10 are common in lodestar awards for lengthy and complex class action litigation.”]; *Vizcaino v. Microsoft*
11 *Corp.* (9th Cir. 2002) 290 F.3d 1043, 1052 [appendix listing numerous cases with multipliers exceeding
12 the multiplier at issue here, and even up to a multiplier of 19.6]; *Wershba v. Apple Computer, Inc.*
13 (2001) 91 Cal.App.4th 224, 255 [“Multipliers can range from 2 to 4 or even higher.”].) The fact that
14 Plaintiffs’ counsel’s lodestar multiplier falls in the lower range of those approved by Courts further
15 confirms the reasonableness of the fee request.

16 **VII. PLAINTIFFS’ COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES**

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

26 Accordingly, Plaintiffs’ counsel further request that, in addition to awarding them reasonable
27 attorneys’ fees, the Court grant their application for reimbursement of the reasonable out-of-pocket
28 expenses advanced, incurred and expected to be incurred by counsel representing Plaintiffs in

1 connection with the prosecution of this litigation in the amount of \$12,452.96, which is less than the
2 actual out-of-pocket expenses borne by Plaintiffs' counsel in this case. (Settlement Agreement, at pp.
3 4, 18; Melmed FAM Decl., ¶ 42, Exh. 2.) Plaintiffs' counsel has documented and verified these costs
4 and expenses for which counsel seeks reimbursement. (Melmed FAM Decl., ¶ 42, Exh. 2.) All these
5 costs were necessarily incurred in the course of this hard-fought litigation and would have been charged
6 to a fee-paying client. No Class member objected to an award of costs to Plaintiffs' counsel.
7 Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses advanced and/or
8 incurred is appropriate and justified as part of the overall Settlement Agreement and should be awarded
9 by the Court.

10 **VIII. SETTLEMENT ADMINISTRATION COSTS**

11 The parties agreed that the Settlement Administrator, Phoenix Settlement Administrators,
12 would be compensated for services performed. (Settlement Agreement, at pp. 10, 19.) The
13 Settlement Administrator's requested fee is \$8,250.00. (Admin. Decl., ¶ 12.)

14 **IX. SUBMISSION TO THE LWDA**

15 The Settlement Agreement and this motion have been concurrently submitted to the LWDA
16 pursuant to Labor Code section 2699, subdivision (1)(2). (Melmed FAM Decl., ¶ 65.)

17 **X. CONCLUSION**

18 Plaintiffs respectfully submit that the Settlement Agreement is fair, adequate, and reasonable,
19 and merits final approval.

20 Dated: October 9, 2023

MELMED LAW GROUP P.C.

21
22 

23 **KYLE D. SMITH**

24 Attorney for Plaintiffs, the Preliminarily-Approved
25 Class, and the Aggrieved Employees
26
27
28