MELMED LAW GROUP P.C.
Jonathan Melmed (SBN 290218)
jm@melmedlaw.com
Kyle D. Smith (SBN 280489)
ks@melmedlaw.com
Jaqueline Antillon (SBN 358092)
ja@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (310) 824-3828
Fax: (310) 862-6851

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

FEDERICO MONCADA, 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. SUBZERO CONSTRUCTORS, INC., a California Limited Liability Company; and DOES 1 TO 50, Defendants.	Case Number: 30-2022-01246372-CU-OE-CXC **Plaintiff's Notice of Motion and Motion for Final Approval of Class Action Settlement** Action Filed: February 23, 2022 Trial Date: None Set Preliminary Approval Granted: April 10, 2025 Hearing Date: September 18, 2025 Hearing Time: 2:00 p.m. Dept.: CX-102 Judge: Hon. Layne H. Melzer

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 18, 2025, at 2:00 p.m., or as soon thereafter as the matter may be heard, in Department CX-102 of the Orange County Superior Court for the State of California located at the Civil Complex Center, 751 W. Santa Ana Blvd, Santa Ana, California, 92701, before the Honorable Layne H. Melzer, Plaintiff Federico Moncada ("Plaintiff"), on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated, will and hereby does move this Court for entry of an order:

1. Finally certifying the class, as defined in the *Class Action and PAGA Settlement Agreement* and *Amendment to the Class Action and PAGA Settlement Agreement* (collectively the "Settlement Agreement") between Plaintiff and Defendant Subzero Constructors, Inc. ("Defendant"), for the purpose of settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

2. Finally appointing Plaintiff as class representative for purposes of settlement;

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

4. Finding that the notice of the settlement was properly provided to the class members in accordance with the Court's April 10, 2025, *Order Granting Preliminary Approval of Class and PAGA Action Settlement*;

5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement, including payment by Defendant of the non-reversionary gross settlement amount of $153,369.37 ("Gross Settlement Amount");

6. Finally approving the allocation of attorneys' fees from the Gross Settlement Amount in the amount of one-third of the Gross Settlement Amount (i.e., up to $51,123.12), plus necessary litigation costs in the amount of $15,000.00;

7. Finally approving a class representative service payment in an amount of up to $10,000.00 for Federico Moncada from the Gross Settlement Amount to compensate him for the

responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class as well as his general release which is broader than the release of the proposed class;

8. Finally approving the allocation of $13,369.37 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., $10,027.03) shall be paid to the California Labor and Workforce Development Agency ("LWDA") from the Gross Settlement Amount, with the remaining 25% (i.e., $3,342.34) payable to the aggrieved employees;

9. Finally approving Simpluris, Inc. (the "Settlement Administrator") as the settlement administrator and approving distribution of $8,797.00 from the Gross Settlement Amount to cover the Settlement Administrator's expenses in administering the settlement;

10. Binding all participating class members, and Aggrieved Employees, to the terms of the Settlement Agreement, including the releases specified therein;

11. Retaining jurisdiction to enforce the Settlement Agreement; and

12. Granting Plaintiff leave to file the overlength brief included with this motion due to the complex and unopposed nature of this motion.

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

Dated: August 26, 2025

MELMED LAW GROUP P.C.

KYLE D. SMITH
Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

TABLE OF CONTENTS

I. INTRODUCTION 1
II. BACKGROUND 4
A. The Parties 4
B. Procedural Summary 5
C. The Claims and Defenses 7
D. Summary of the Settlement Agreement 8
III. NOTICE TO THE CLASS MEMBERS 9
A. The Notice Process Was Diligently Carried Out 9
B. The Class Was Given the Best Possible Notice of the Settlement 10
C. The Class Members Overwhelmingly Approve of the Settlement, Which Is Fair and Reasonable 11
IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT 12
A. Class Action Settlements Are Subject to Judicial Review and Approval under the California Rules of Court, and are Subject to a Presumption of Fairness. 12
B. The Settlement Is Entitled to a Presumption of Fairness 14
C. Final Approval of the Settlement Is Warranted 15
1. The Settlement Is the Result of Serious, Informed, and Non-Collusive Negotiations 15
2. The Extent of the Discovery and Investigation Was More Than Sufficient to Permit Final Approval of the Settlement Agreement 16
3. The Settlement Agreement is a Reasonable Compromise of Claims 16
4. The Risks Inherent in Continued Litigation are Great 17
5. Plaintiff's Counsel are Experienced in Similar Wage-and-Hour Litigation 17
V. PLAINTIFF'S SERVICE AWARD IS FAIR, REASONABLE, AND APPROPRIATE 18
VI. THE PROPOSED ATTORNEYS' FEE ALLOCATION IS FAIR, REASONABLE, AND APPROPRIATE 20
A. Plaintiff's Counsel Are Entitled to a Fee from the Common Fund Created 20

B. Courts Routinely Award Attorneys' Fees at or above Those Requested Here..... 22

C. The High Quality of Work and Excellent Result Obtained Support the Award.. 23

D. The Contingent Nature of Plaintiff's Counsel's Representation of Plaintiff and the Class Further Supports the Fee Award at One-Third of the Maximum Common Fund 24

E. Public Policy Considerations Require the Award of Adequate Fees So Competent and Experienced Counsel Will Undertake Such Representations 25

F. The Lodestar Multiplier Approach Confirms the Reasonableness of the Fee Request 27

VII. PLAINTIFF'S COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES ... 29

VIII. SETTLEMENT ADMINISTRATION COSTS 30

IX. SUBMISSION TO THE LWDA 30

X. CONCLUSION 30

TABLE OF AUTHORITIES

CASES

Bell v. Farmers Ins. Exchange (2004) 115 Cal.App.4th 715 18

Boeing Co. v. Van Gemert (1980) 444 U.S. 472 21

Bond v. Ferguson Enterprises, Inc. (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 19

Boyd v. Bank of America Corp. (C.D. Cal., Nov. 18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804 23

Bush v. Superior Court (1992) 10 Cal.App.4th 1374 12

Cho v. Seagate Technology Holdings, Inc. (2009) 177 Cal.App.4th 734 13

Class Plaintiffs v. Jaffe & Schlesinger, P.A. (9th Cir. 1994) 19 F.3d 1306 21

Crommie v. State of Cal., Public Utilities Com'n (N.D. Cal. 1994) 840 F.Supp. 719 24

Cziraki v. Thunder Cats, Inc. (2003) 111 Cal.App.4th 552 21

D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1 21

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794 .... 13, 14, 15, 17, 28

Ellis v. Naval Air Rework Facility (N.D. Cal. 1980) 87 F.R.D. 15 18

Ferguson v. Lieff, Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037 12

Garner v. State Farm Mut. Auto. Ins. Co. (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW EMC, 2010 WL 1687832 19

Glass v. UBS Fin. Servs., Inc. (N.D. Cal. Jan. 26, 2007 No. C-06-4068 MMC) 2007 WL 221862 19

Graham v. DaimlerChrysler Corp. (2004) 34 Cal.4th 553 27

Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16 29

Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260 27

In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation (3d Cir. 1995) 55 F.3d 768 12

In re Heritage Bond Litigation (C.D. Cal., June 10, 2005,] No. 02-ML-1475 DT) 2005 WL 1594403 25

In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706 .... 13, 14

In re Omnivision Technologies, Inc. (N.D. Cal. 2008) 559 F.Supp.2d 1036 11
In re Stauffer's Estate (1959) 53 Cal.2d 124 .... 21, 26
Juris v. Inamed Corp. (11th Cir. 2012) 685 F.3d 1294 10
Ketchum v. Moses (2001) 24 Cal.4th 1122 .... 24, 27
Kraus v. Trinity Management Services, Inc. (2000) 23 Cal.4th 116 26
Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 18
Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480 .... 20, 21
Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19 21
Louie v. Kaiser Found. Health Plan, Inc. (S.D. Cal. Oct. 6, 2008, No. 08CV0795 IEG RBB) 2008 WL 4473183 19
Malibu Outrigger Bd. of Governors v. Superior Court (1980) 103 Cal.App.3d 573 12
Mallick v. Superior Court (1979) 89 Cal.App.3d 434 13
Martin v. FedEx Ground Package System, Inc. (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576 .... 22, 23
McCrary v. Elations Company, LLC (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL 769703 22
Melendres v. City of Los Angeles (1975) 45 Cal.App.3d 267 29
Monterrubio v. Best Buy Stores, L.P. (E.D. Cal., Nov. 20, 2013, No. 2:11-CV-03270-MCE-AC) 2013 WL 12432761 23
Moore v. PetSmart, Inc. (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000 11
National Rural Telecommunications Cooperative v. DIRECTV, Inc. (C.D. Cal. 2004) 221 F.R.D. 523 11
Officers for Justice v. Civil Service Com'n of City and County of San Francisco (9th Cir. 1982) 688 F.2d 615 .... 12, 13
Pearce v. Superior Court (1983) 149 Cal.App.3d 1058 26
Phillips Petroleum Co. v. Shutts (1985) 472 U.S. 797 10
PLCM Group v. Drexler (2000) 22 Cal.4th 1084 27
Press v. Lucky Stores, Inc. (1983) 34 Cal.3d 311 27

Quinn v. State of California (1975) 15 Cal.3d 162 ... 21
Rider v. County of San Diego (1992) 11 Cal.App.4th 1410 ... 29
Rodriguez v. West Publishing Corp. (9th Cir. 2009) 563 F.3d 948 ... 18
Romero v. Producers Dairy Foods, Inc. (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841 ... 22, 23
Ross v. US Bank National Association (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922 ... 19
Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319 ... 26
Serrano v. Priest (1977) 20 Cal.3d 25 ... 21, 27, 29
Silber v. Mabon (9th Cir. 1994) 18 F.3d 1449 ... 10
Singer v. Becton Dickinson and Co. (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104 ... 22, 23
Staton v. Boeing Co. (9th Cir. 2003) 327 F.3d 938 ... 18
Steiner v. American Broadcasting Co., Inc. (9th Cir. 2007) 248 Fed.Appx. 780 ... 28
Sternwest Corp. v. Ash (1986) 183 Cal.App.3d 74 ... 28
Stuart v. Radioshack Corp. (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645 22, 23
Syers Properties III, Inc. v. Rankin (2014) 226 Cal.App.4th 691 ... 28
Van Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F.Supp. 294 ... 28
Vasquez v. Coast Valley Roofing, Inc. (E.D. Cal. 2010) 266 F.R.D. 482 ... 19, 22
Vasquez v. Superior Court (1971) 4 Cal.3d 800 ... 25, 26
Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759 ... 21
Vizcaino v. Microsoft Corp. (9th Cir. 2002) 290 F.3d 1043 ... 24, 28
Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224 ... 13, 27, 28, 29
West v. Circle K Stores, Inc. (E.D. Cal. Oct. 19, 2006 No. CIVS040438WBSGGH) 2006 WL 8458679 ... 19

STATUTES

Bus. & Prof. Code, § 17200 ... 6
Bus. & Prof. Code, § 17210 ... 6

Lab. Code, § 1174 5
Lab. Code, § 1185 5
Lab. Code, § 1194 .... 5, 20, 26
Lab. Code, § 1194.2 5
Lab. Code, § 1197 5
Lab. Code, § 1197.1 5
Lab. Code, § 1198 5
Lab. Code, § 1198.5 5
Lab. Code, § 1199 5
Lab. Code, § 201 5
Lab. Code, § 202 5
Lab. Code, § 203 5
Lab. Code, § 204 5
Lab. Code, § 210 5
Lab. Code, § 218.5 20
Lab. Code, § 226 .... 5, 20
Lab. Code, § 226.3 5
Lab. Code, § 226.7 5
Lab. Code, § 256 5
Lab. Code, § 2698 .... 1, 6
Lab. Code, § 2699 .... 20, 30
Lab. Code, § 2699.6 .... 1, 6
Lab. Code, § 2802 5
Lab. Code, § 2804 5
Lab. Code, § 510 5
Lab. Code, § 512 5

RULES

Cal. Rules of Court, Rule 3.769 .... 10, 12

REGULATIONS

Cal. Code of Regs., tit. 8, § 11040 5

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks final approval of a wage-and-hour class action and PAGA settlement between Plaintiff Federico Moncada ("Plaintiff") and Defendant Subzero Constructors, Inc. ("Defendant") (collectively, the "Parties") for $153,369.37 (the "Gross Settlement Amount") to be distributed to 138 individuals defined as: "All individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period." These employees are referred to individually as the "Class Members" or collectively as the "Class." The "Class Period" for these purposes is defined as the period from February 16, 2018, through January 3, 2025. A true and correct copy of the *Class Action and PAGA Settlement Agreement* and *Amendment to the Class Action and PAGA Settlement Agreement* ("Settlement Amendment") (collectively the "Settlement Agreement") is attached as **Exhibit 1** and **Exhibit 2** to the concurrently-filed *Declaration of Jonathan Melmed in Support of Plaintiff's Motion for Final Approval of Class Action Settlement* ("Melmed FAM Decl." or "Declaration of Jonathan Melmed"). The Settlement Agreement, in its entirety, is incorporated herein by reference.

Plaintiff also represents a group of 86 aggrieved employees on behalf of the State of California as private attorneys general pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"). The "Aggrieved Employees," for these purposes, share an identical definition with the Class except that the applicable "PAGA Period" is defined as the period from February 6, 2021, through January 3, 2025. (Settlement Agreement, ¶ 1.31; Settlement Amendment, ¶ 2(a).) Importantly, the number of PAGA Periods worked by all Aggrieved Employees exceeded Defendant's estimates by greater than 10%, therefore, pursuant to terms of the Class Action and PAGA Settlement, the escalator clause was triggered, thereby increasing the original Gross Settlement Amount of $150,000.00 by $3,369.37. (Admin. Decl., ¶ 6, Settlement Agreement, ¶ 8.)

On April 10, 2025, this Court granted preliminary approval of the Settlement Agreement. Pursuant to that order, on May 13, 2025, Simpluris, Inc. (the "Settlement Administrator") mailed the Court-approved *Notice of Proposed Class Action and PAGA Settlement* (the "Class Notice") to all 138 putative Class Members contained in the data provided by Defendant. (See Declaration of Bentley Conn with Respect to Notice and Settlement Administration ("Admin. Decl."), ¶ 9). A copy of the Class Notice is attached to Admin. Decl. as Exhibit A.

If the Court grants final approval, each participating Class Member will receive a share of approximately **$55,079.88** (the "Net Settlement Amount"), less applicable taxes, in addition to **$3,342.34** to the Aggrieved Employees which is calculated as described below. Plaintiff also provides the following summary to assist the Court in its review:

Gross Settlement Amount:	**$153,369.37**
Attorneys' Fees:	($51,123.12)
Litigation Costs:	($15,000.00)
Settlement Administration Costs:[1]	($8,797.00)
Service Awards to Plaintiff:	($10,000.00)
PAGA Penalties:	($13,369.37)
Net Settlement Amount:	**$55,079.88**

Class Participation	
Eligible Class Members:	138
Requests for Exclusion:	0
Objectors:	0
Participating Class Members:	138
Total Participation Rate:	100%

Relevant Supplemental Data

[1] These costs increased from the Settlement Administrator's original bid due to the need for a Spanish translation, which was inadvertently excluded from original bid submitted to the Court. (Admin. Decl., ¶ 19.) The Settlement Administrator's updated bid is attached as **Exhibit 3** to the Declaration of Jonathan Melmed.

Number of Aggrieved Employees:	86
Workweeks during the Class Period:	13,540
Pay Periods during the PAGA Period:	6,963
Highest Payment to Class Members:	$1,541.08
Average Payment to Class Members:	$423.35
Highest Payment to Aggrieved Employees:	$96.96
Average Payment to Aggrieved Employees:	$38.86
Class Counsel Fee Request:	⅓ 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., ¶ 12.) To date, *zero* Class Members have submitted objections to the Settlement Agreement and *zero* Class Members have requested exclusion. (Admin. Decl., ¶ 12-13.) 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., ¶ 25.) 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, and significant time in post-mediation negotiations culminating in the Parties agreeing to the broad terms of the Settlement Agreement, it should be finally approved. (Melmed FAM Decl., ¶ 31.)

As part of Plaintiff's motion for final approval, Plaintiff's counsel are seeking final approval of attorneys' fees in the amount of one-third of the Gross Settlement Amount, which 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.

Based on the foregoing, Plaintiff respectfully requests that the Court issue an order **(1)** finally certifying the Class for purposes of settlement; **(2)** finally appointing Plaintiff as class representative for purposes of settlement; **(3)** finally appointing Plaintiff's attorneys as class counsel for purposes of settlementl; **(4)** finding that notice of the settlement was properly provided to the Class Members; **(5)** finally approving the Settlement Agreement as fair, adequate, and reasonable; **(6)** finally approving the allocation for attorneys' fees of one-third of the Gross Settlement Amount (i.e., $51,123.12), plus necessary incurred litigation costs in the amount of $15,000.00; **(7)** finally approving Simpluris, Inc. as the settlement administrator and approving distribution of $8,797.00 from the Gross Settlement Amount to cover the Settlement Administrator's expenses in administering the settlement; **(8)** finally approving the allocation of $13,369.37 from the Gross Settlement Amount for PAGA penalties; **(9)** finally approving a class representative service award to Plaintiff in the amount of $10,000.00; **(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. <u>BACKGROUND</u>

A. THE PARTIES

Defendant is a cold storage construction company based in Rancho Santa Margarita, California. Defendant employed non-exempt workers during the Class Period and PAGA Period. (Melmed Decl., ¶ 12.)

Plaintiff was employed by Defendant doing construction cleaning in Santa Ana, California. Plaintiff was employed beginning in approximately June of 2021. (Melmed Decl., ¶ 13.)

Plaintiff alleged that Defendant's employees—including Plaintiff, the Class Members, and the Aggrieved Employees—experienced various violations of California's wage-and-hour laws. (Melmed

FAM Decl., ¶ 14.) There are 138 participating Class Members that worked a total of 13,540 workweeks during the Class Period. (Admin. Decl., ¶¶ 4–5) Additionally, there are 86 Aggrieved Employees that worked a total of 6,963 pay periods during the PAGA Period. (Admin. Decl., ¶¶ 4–5.)

B. PROCEDURAL SUMMARY

On February 16, 2022, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA, pursuant to PAGA, of Plaintiff's intent to seek civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and California Industrial Welfare Commission ("IWC") Wage Order 4-2001 (the "Applicable Wage Order"). (Cal. Code of Regs., tit. 8, § 11040; Melmed Decl., ¶ 15.) The letter attached Plaintiff's original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court's reference, a copy of Plaintiff's letter to the LWDA is attached as **Exhibit 4** to the concurrently filed Declaration of Jonathan Melmed.

On February 16, 2022, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** and deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210. (Melmed Decl., ¶ 16.)

On September 27, 2022, Plaintiff filed a first amended complaint alleging causes of action against Defendant for those described in the original Complaint and adding one cause of action for penalties based on the foregoing, pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The first amended complaint is the operative complaint in the action (the "Operative Complaint"). (Melmed Decl., ¶ 17.)

Thereafter, the Parties agreed to attend a private mediation with Cynthia Remmers. (Melmed Decl., ¶ 18.) Prior to the mediation, Plaintiff's counsel conducted significant informal discovery. (Melmed Decl., ¶ 18.) Discovery, investigation, and prosecution has included, among other things, numerous telephonic conferences with Plaintiff; inspection and analysis of hundreds of pages of documents, including Defendant's relevant policies and employee handbook, and other information produced by Plaintiff and Defendant; analysis of work-related time and payroll data from a sample of Class Members and Aggrieved Employees; an analysis of the legal positions taken by Defendant; investigation into the viability of class treatment of the claims asserted in the action; analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; research of the applicable law with respect to the claims asserted in the Operative Complaint and the potential defenses thereto; and assembling and analyzing of data for calculating damages. (Melmed Decl., ¶ 18.)

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

On April 4, 2024, the Parties participated in a full-day mediation with Cynthia Remmers who is a full-time mediator with extensive experience in California wage and hour class action lawsuits. (Melmed Decl., ¶ 20.) The mediation negotiations were contentious, but the Parties were able to reach the broad terms of an agreement. After further negotiation, the Parties executed the longform Settlement Agreement now before the Court for approval. (Melmed Decl., ¶ 20.)

On April 10, 2025, Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement ("Motion for Preliminary Approval") was granted. (See Order Granting Preliminary Approval of Class and PAGA Action Settlement ("Preliminary Approval Order" or "PAM Order"), ¶ 2.) In granting preliminary approval, this Court determined that the Settlement Agreement appeared to be "fair, adequate, and reasonable to the Class . . . ." (PAM Order, ¶ 6.) This Court further found that the Settlement Agreement falls "within the range of reasonableness and is presumptively valid, subject only to any objections that may be raised at the final fairness hearing and final approval by this Court." (PAM Order, ¶ 7.) Likewise, the Class has shown its strong approval of the Settlement Agreement; as of the date of this filing, there have been ***no objections by the Class Members***. (Admin. Decl., ¶ 13.)

The matter is now before this court for final approval.

C. THE CLAIMS AND DEFENSES

Plaintiff alleged several categories of wage-and-hour violations on behalf of the Class and Aggrieved Employees. Plaintiff's primary claims stem from Defendant's failure to pay employees for each minute worked, failure to properly provide the Employees with meal periods and rest periods, and failure to reimburse all business expenses. From these violations, Plaintiff sought recovery for derivative claims for waiting time penalties, inaccurate itemized wage statements, inaccurate employment records, unfair competition, and PAGA penalties based on the foregoing. (Melmed Decl., ¶ 26.)

The details and settlement value of each of these claims, and their corresponding defenses, were discussed extensively in the Plaintiff's Motion for Preliminary Approval and its accompanying papers, the discussion of which is incorporated by reference herein, and which, for the sake of brevity, Plaintiff will avoid belaboring in this motion. (See Motion for Preliminary Approval, at p. 5–15.)

Defendant has persistently denied all liability of any kind associated with the claims and allegations, and further denied that the Class Members are entitled to any relief. Defendant also denied that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. Defendant maintains, among other things, that it has complied with California laws in all respects. (Melmed FAM Decl., ¶ 28.)

D. SUMMARY OF THE SETTLEMENT AGREEMENT

Under the terms of the Settlement Agreement, Defendant will be released of all claims asserted in the Complaint in exchange for Defendant's agreement to pay a non-reversionary Gross Settlement Amount of $153,369.37. (See generally, Settlement Agreement.) Notably, the number of PAGA Periods worked by all Aggrieved Employees exceeded Defendant's estimates by greater than 10%, therefore, pursuant to terms of the Class Action and PAGA Settlement, the escalator clause was triggered, thereby increasing the Gross Settlement Amount by $3,369.37. (Admin. Decl., ¶ 6, Settlement Agreement, ¶ 8.)

The amount to be paid by Defendant includes: **(1)** the fees and expenses of the Settlement Administrator in the amount of $8,797.00 (Settlement Agreement, at p. 7; Admin. Decl., ¶ 19); **(2)** Plaintiff's counsel's attorney fees of one-third of the Gross Settlement Amount, i.e., $51,123.12 (Settlement Agreement at p. 6); **(3)** litigation expenses and costs in the amount of $15,000.00 (Settlement Agreement, at p. 6); **(4)** a service award of $10,000.00 to the named Plaintiff (Settlement Agreement, at p. 6); **(5)** payment to the LWDA of $10,027.03 for its 75% share of the settlement for civil penalties pursuant to PAGA (Settlement Agreement, at p. 7); and **(6)** payment to the Aggrieved Employees of $3,342.34 for their 25% share of the settlement for civil penalties pursuant to PAGA (Settlement Agreement, at p. 8). The remaining Net Settlement Amount, which consists of approximately $55,079.88, less applicable taxes, will be distributed to the Class Members. (Admin. Decl., ¶ 4.)

Individual payments to the Class Members from the class-portion of the settlement will be calculated and apportioned based on the number of weeks worked as an eligible Class Member in California by the participating Class Member during the Class Period. (Settlement Agreement, at p. 7.) Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period compared to the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement, at p. 8.)

For tax purposes, the Settlement Agreement provides that 30% of each individual settlement payment from the class-portion of the Settlement Agreement shall constitute wages (for which each participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining 70% shall constitute interest, reimbursement, and penalties (for which each participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 5.)

With respect to the individual payments made under the PAGA-portion of the Settlement Agreement, all such payments shall be treated as payments owing for penalties and interest (for which each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 5.)

Defendant will separately pay any and all employer payroll taxes owed on the wage portions of the Individual Class Payments. (Settlement Agreement, at p. 6.)

The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). (Settlement Agreement, at p. 5.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator shall distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. (Settlement Agreement, at p. 5.)

III. NOTICE TO THE CLASS MEMBERS

A. THE NOTICE PROCESS WAS DILIGENTLY CARRIED OUT

Pursuant to this Court's Preliminary Approval Order, the Settlement Administrator has fully completed distributing the Class Notice, as the deadline to respond passed on July 14, 2025. (Admin. Decl., ¶ 12.) The Settlement Administrator was tasked with, among other things: **(1)** preparing, printing and mailing the Class Members the court-approved Class Notice, including Spanish translation of the same; **(2)** receiving and processing requests for exclusion and written objections; **(3)** resolving

Settlement Class Members' disputes over the number of workweeks Defendant has record of them working during the Class Period, which was pre-printed on their individualized Class Notice; and **(4)** calculating individual settlement award amounts. (Admin. Decl., ¶¶ 8-16.)

On April 15, 2025, the Settlement Administrator received the class data list from Defendant's counsel. (Admin. Decl., ¶ 4.) On May 13, 2025, the Settlement Administrator mailed the Court-approved notice to all 138 Class Members contained in the data provided by Defendant. (Admin. Decl., ¶ 9.) To date, nine of the Class Notices have been returned to the Settlement Administrator as undeliverable. (Admin. Decl., ¶ 10.)

The deadline for the 138 Class Members in the class data list to submit an opt-out request, objection, or dispute of workweeks was July 14, 2025. (Admin. Decl., ¶ 12.) The Settlement Administrator has received ***zero*** objections from the Class Members and ***zero*** Class Members have requested exclusion (Admin. Decl., ¶¶ 13-14.) Thus, the Settlement Administrator is reporting a **100% participation rate**—an overwhelmingly favorable response to a Settlement. (Admin. Decl., ¶ 16.)

B. THE CLASS WAS GIVEN THE BEST POSSIBLE NOTICE OF THE SETTLEMENT

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

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

Moreover, the Court diligently reviewed and approved the Class Notice as to form and content. In the Court's Preliminary Approval Order of April 10, 2025, the Court found that the notice and implementation schedule met "the requirements of due process and constitute the best notice practicable under the circumstances and due and sufficient notice to all persons entitled thereto." (PAM Order, ¶ 10.) Therefore, the Court may determine the fairness and adequacy of the settlement and order its approval, secure in the knowledge that all Class Members have been given the opportunity to participate fully in the notice process and have been fully apprised of their rights and options, including their rights to object to the Settlement Agreement. To date, no one has chosen to do so. (Admin. Decl., ¶ 13.)

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

The Class Members have overwhelmingly accepted the Settlement Agreement and 138 Class Members stand to benefit from the settlement on entry of final approval. (Admin. Decl., ¶ 16.) "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." (*In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043, quoting *National Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529; *Moore v. PetSmart, Inc.* (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000, at *7, *aff'd* (9th Cir. 2018) 728 Fed. Appx. 671 [finding that where "less than one percent either opted out or objected, the reaction of the putative class has been very positive. Therefore, this factor strongly favors settlement."].)

Here, ***zero*** of the eligible Class Members have submitted objections to any of the terms of the proposed settlement, including Plaintiff's requested service award and Plaintiff's counsel's proposed attorneys' fees and costs. (Admin. Decl., ¶ 13.) Moreover, ***zero*** Class Members have requested exclusion. (Admin. Decl., ¶ 14.) This response reflects Class Members' clear and overwhelming support of the Settlement Agreement.

IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT

A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT, AND ARE SUBJECT TO A PRESUMPTION OF FAIRNESS.

The law favors settlements. (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1382.) This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and risk of formal litigation. (See *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1054 ["Public policy favoring settlement is especially weighty for class actions. [Citations]. Settlement of class actions is encouraged precisely because they 'consume substantial judicial resources and present unusually large risks for the litigants.'"], quoting *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation* (3d Cir. 1995) 55 F.3d 768, 805.) However, a class action may not be dismissed, compromised, or settled without the Court's approval. (Cal. Rules of Court, rule 3.769(a).) This requirement exists to prevent fraud, collusion, or unfairness to the class and to ensure that their rights are given due regard by the negotiating parties. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578–579; *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) The California Rules of Court set forth the procedures for court approval of a class action settlement: **(1)** the Court preliminarily approves the settlement; **(2)** class members receive notice as directed by the Court; and **(3)** the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. (See Cal. Rules of Court, rule 3.769(c), (e)–(g).)

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

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

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

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

B. THE SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS

A presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th 1794, 1802; see also *In re Microsoft I-V Cases*, *supra*, 135 Cal.App.4th 706, 723.)

Here, the Settlement Agreement was negotiated at arm's length between counsel using a professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 31.) Counsel for all parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Melmed FAM Decl., ¶ 31.) The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of information through informal discovery, settlement negotiations that included a full-day mediation, and significant post-mediation negotiations. (Melmed FAM Decl., ¶ 31.) Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. (Melmed FAM Decl., ¶ 31.)

The Parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the settlement. (Melmed FAM Decl., ¶ 32.) As described above and in the Motion for Preliminary Approval, the Settlement Agreement was reached after extensive informal discovery, investigation, research, thorough calculations, risk evaluation, substantial exchanges of documents, and an exchange of other information required to evaluate the claims at issue. (Melmed FAM Decl., ¶ 32.) The settlement came only after the case was thoroughly investigated by Plaintiff's counsel. (Melmed FAM Decl., ¶ 32.)

The settlement reached is the product of substantial effort by the parties and their counsel. (Melmed FAM Decl., ¶ 33.) Plaintiff and Plaintiff's counsel agree with the Court's preliminary approval order that the Settlement Agreement represents a fair, adequate, and reasonable resolution of the class claims. (Melmed FAM Decl., ¶ 30; PAM Order, ¶¶ 6–7.)

Moreover, Plaintiff's Counsel are experienced in similar class actions. (Melmed FAM Decl., ¶¶ 6–11.) Additionally, the percentage of valid objectors is not only small, *but zero*. (Admin. Decl., ¶ 13.) The presumption of fairness of this settlement applies with full force.

C. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED

This Court found that "[t]he Settlement Agreement falls within the range of reasonableness and is presumptively valid, subject only to any objections that may be raised at the final fairness hearing and final approval by this Court." (PAM Order, ¶ 7.) 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 analysis. (Admin. Decl., ¶ 13.) This Court can thus proceed secure in the knowledge that the factors mentioned above, including arm's length bargaining, sufficient investigation and discovery, experienced counsel, and percentage of objectors, 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 the papers associated with 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. (Melmed FAM Decl., ¶ 31.) Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Melmed FAM Decl., ¶ 31.) The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of information through formal and informal discovery and during settlement negotiations, including a full-day mediation, and significant continued negotiations. (Melmed FAM Decl., ¶ 31.) Although Plaintiff and Plaintiff's counsel believed the class claims had merit and there was a possibility of certifying the class and claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment at trial and/or on the damages awarded, and/or an appeal that can take several more years to litigate. (Melmed FAM Decl., ¶ 34.)

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

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

Counsel for the Parties spent months developing the factual record for this case, engaging in discovery and exchanges of documents and information, as well as drafting detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and weaknesses of their respective positions at the mediation and during subsequent settlement negotiations. (Melmed FAM Decl., ¶ 29.) The Parties and their counsel attended a full-day mediation session before an experienced and well-respected mediator, which resulted in the resolution of the case on a class and representative basis. (Melmed FAM Decl., ¶ 29.) Cynthia Remmers is a full-time mediator with extensive experience in California wage and hour class action lawsuits. (Melmed FAM Decl., ¶ 29.)

In addition, the Parties are represented by skilled and experienced counsel with extensive backgrounds in complex litigation and experience litigating similar wage-and-hour class actions. (Melmed FAM Decl., ¶¶ 6–11.) The Settlement Agreement was reached after extensive investigation and research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiff's counsel's thorough factual investigation, sufficient to evaluate Defendant's defenses. (Melmed FAM Decl., ¶ 30.) The Settlement Agreement came only after the case was thoroughly investigated by Plaintiff's counsel. (Melmed FAM Decl., ¶ 30.) Plaintiff's counsel agree that this settlement is fair, adequate, and reasonable, and in the best interests of Class Members. (Melmed FAM Decl., ¶ 30.)

3. The Settlement Agreement is a Reasonable Compromise of Claims

Although Plaintiff and Plaintiff's counsel believed the class claims had merit and that there was a possibility of certifying the class and claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, adverse outcomes at trial or on the damages awarded, and the potential for appeal that can take several more years to litigate. (Melmed FAM Decl., ¶ 34.) Proceeding with litigation would impose significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. (Melmed FAM Decl., ¶ 34.) The resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive negotiation. (Melmed FAM Decl., ¶ 32.) It takes the risks identified above and others into account in arriving at the non-reversionary Gross Settlement Amount. (Melmed FAM Decl., ¶ 33.)

The Settlement Agreement represents a fair compromise given the risks and uncertainties presented by continued litigation. Defendant asserted and would have continued to assert legal and factual grounds to defend against this action, including factual and legal defenses on the merits. Moreover, continued litigation would be costly, time-consuming, and uncertain. By contrast, the Settlement Agreement ensures timely relief and substantial recovery of the Defendant's realistic exposure. (Melmed FAM Decl., ¶ 35.)

4. The Risks Inherent in Continued Litigation are Great

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should consider "[t]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th 1794, 1801.) As described in this motion and more extensively in the Motion for Preliminary Approval and its accompanying papers, Defendant had viable defenses to Plaintiff's claims, which create a real possibility that the claims might not be certified or may fail on the merits. (Melmed FAM Decl., ¶ 34.) Proceeding with litigation would impose significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. (Melmed FAM Decl., ¶ 34.) If settlement were not achieved, continued litigation of the claims would take substantial time and possibly confer little to no benefit on the Class Members, the State of California, or the Aggrieved Employees. By contrast, the Settlement Agreement will yield a prompt, certain, and substantial recovery for Class Members, and benefits the Parties and the Court. (Melmed FAM Decl., ¶ 34.)

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

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87

F.R.D. 15, 18, *aff'd* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [court must take into account "the experience and view of counsel"], internal quotation and citation omitted.) Plaintiff's counsel are experienced in wage-and-hour class actions. Numerous state and federal courts have certified them as adequate and competent class counsel in similar wage-and-hour class actions. (Melmed FAM Decl., ¶¶ 6–11.) Plaintiff's counsel believe that this settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be finally approved. (Melmed FAM Decl., ¶ 30.)

V. PLAINTIFF'S SERVICE AWARD IS FAIR, REASONABLE, AND APPROPRIATE

The Settlement Agreement provides for a service award payment in the amount of $10,000, in addition to whatever payment he is otherwise entitled to receive as a Class Member and Aggrieved Employee. (Settlement Agreement, at p. 6.) The proposed service award is intended to recognize the time, effort, and risk that Plaintiff undertook in bringing this case and helping to secure the relief obtained for the members of the Class. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding "service payment" to named plaintiff for his efforts in bringing class case]; *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959 [stating that service awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."].) To determine the propriety of a service award, courts consider the actions protecting class interests, the benefit provided to the class based on those actions, and the amount of time and effort expended by the plaintiff. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 976–977.)

The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case, the valuable assistance he provided to counsel, and the fact that he entered into a general release of claims that is broader than the release of the Class. (Melmed Decl., ¶ 37; Settlement Agreement, at p. 10.) Plaintiff provided invaluable assistance to Plaintiff's counsel and the Class Members in this case, including providing factual background for mediation and the Operative Complaint, reviewing the relevant documents, participating in phone calls with Plaintiff's counsel, gathering highly relevant documents, and reviewing the settlement documents. (Melmed Decl., ¶ 38.)

Plaintiff agreed to participate in this case with no guarantee of personal benefit. (Melmed Decl., ¶ 38.) To the contrary, Plaintiff agreed to undertake the financial risk of serving as a class representative and exposed himself to the risk of negative publicity by anyone who opposed this case. (Melmed Decl., ¶ 38.)

The service award requested by Plaintiff represents only 6.52% of the Gross Settlement Amount in this case. Moreover, the service award also falls well within the range of service payments typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 [approving **$11,250.00** service award to each of the two Class Representative in a meal break class action]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 [approving **$20,000.00** enhancement award to the class representative in a California wage-and-hour class action settlement]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **$10,000.00** each from a $300,000.00 settlement fund in a wage-and-hour class action]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006 No. CIVS040438WBSGGH) 2006 WL 8458679, at *8 ["[T]he court finds plaintiffs' enhancement payments of **$15,000** each to be reasonable."]; *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007 No. C-06-4068 MMC) 2007 WL 221862, at *17, *aff'd* (9th Cir. 2009) 331 Fed.Appx. 452 [finding "requested payment of **$25,000** to each of the named plaintiffs is appropriate" in a wage-and-hour settlement]; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008, No. 08CV0795 IEG RBB) 2008 WL 4473183, at *7 [approving "**$25,000** incentive award for each Class Representative" in a wage an hour settlement], emphasis added; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW EMC, 2010 WL 1687832, at *17 n.8 ["Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **$20,000** or more where, as here, the class representative has demonstrated a strong commitment to the class"], emphasis added.) Finally, Plaintiff has agreed to enter into a general release of all claims against Defendant, whereas the Class Members only released the claims alleged. (Settlement Agreement, at p. 10.) The requested service award is modest, fair, and reasonable.

VI. <u>THE PROPOSED ATTORNEYS' FEE ALLOCATION IS FAIR, REASONABLE, AND APPROPRIATE</u>

Plaintiff's counsel seek a fee award under the "common fund" doctrine. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [reaffirming its approval of the use of a percentage of the common fund to compensate counsel].) Plaintiff's counsel are also entitled to fees under various statutes at issue here, including, among others, Labor Code sections 218.5, 226, subdivision (e)(1), 1194, and 2699, subdivision (g)(1), all of which provide for reasonable attorneys' fees to be recovered by the prevailing party.

Specifically, Plaintiff's counsel request attorneys' fees in the amount of one-third of the Gross Settlement Amount (i.e., $50,000.00), as provided in the Settlement Agreement. (Settlement Agreement at p. 5.) As will be explained, this request is reasonable and appropriate under the common fund theory and is supported by: **(1)** case law, **(2)** Plaintiff's counsel's high quality of work, **(3)** the excellent results achieved for the Class Members, **(4)** the risks inherent in the contingent nature of Plaintiff's counsel's representation in this case, and **(5)** public policy considerations.

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

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

It is well-established that, where a lawsuit results in the recovery of a fund or property benefiting others, as well as the plaintiff—as in a class action—the court has inherent equitable power to order the plaintiff's attorneys' 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 a reasonable attorney's fee from the fund as a whole." (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; see also *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *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 establishes 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.*)

Plaintiff's counsel's diligent litigation of this action resulted in the creation of an ascertainable common fund that will substantially benefit the Class. Plaintiff's counsel's request for an award of one-third of the Gross Settlement Amount is well within the range awarded to counsel under similar circumstances in litigation of this type and is abundantly reasonable in light of the excellent results achieved for the Class Members.

These requested amount has not objected to by any Class Member. (Admin. Decl., ¶ 13.) As this Settlement Agreement will result in the recovery of a substantial fund benefiting all participating Class Members, this Court has inherent equitable power to order Plaintiff's counsel's fees and costs to be paid out of the Gross Settlement Amount, pursuant to the common fund theory.

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

The negotiated and unopposed fee should also be approved because it is within the approved range of appropriate awards of attorneys' fees in similar wage-and-hour class action cases in California. (See, e.g., *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–492 [explaining that "[t]he typical range of acceptable attorneys' fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value"]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving attorney fee award of 33.33% of the common fund and noting that award was similar to awards in three other wage-and-hour class action cases where fees ranged from 30.3% to 50%]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [meal break class action where the federal district court approved attorneys' fees of one-third of common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [approving fees at one-third of the common fund in a missed meal break class action and noting that fee awards in class actions average around one-third of the recovery]; *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6 [noting that a fee award of one-third of the settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"]; *McCrary v. Elations Company, LLC* (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL 769703, at *10 [noting that most fee awards are 33%]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov.

18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804, at *12 [finally approving a one-third fee award on a $5,800,000 settlement].)

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

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

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

Plaintiff's counsel diligently, efficiently, and creatively pursued this case and promptly reached a successful settlement for the benefit of the Class Members. Despite the numerous risks and obstacles afflicting Plaintiff's claims as detailed in the Motion for Preliminary Approval and its accompanying papers, Plaintiff's counsel crafted and negotiated a fair and reasonable Settlement Agreement for the benefit of the Class Members. The fact that the settlement was embraced and supported by the Class Members, as evidenced by the complete lack of any objections or opt-outs, clearly demonstrates that the Class Members support the Settlement Agreement and results achieved by Plaintiff's counsel through the litigation of this matter. (Admin. Decl., ¶¶ 13-14.)

As a result of this litigation, the Class Members stand to receive a significant Net Settlement Amount of **$55,079.88**.

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

An additional factor militating in favor of granting the requested fee award is the fact that this case was both legally and financially risky for Plaintiff's counsel, who accepted this representation on a contingency basis. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1049 [noting that "[r]isk is a relevant circumstance" when considering attorneys' fees].) Specifically, there was the prospect of enormous cost inherent in class action litigation, and the many additional risks, discussed at length in Plaintiff's Motion for Preliminary Approval and its accompanying papers. Those risks included difficulties in establishing Defendant's actual or constructive knowledge of unpaid wages; the risk of the Court not certifying the class based on numerosity, commonality, and individualized inquiry grounds; the risk of Defendant prevailing on the merits; difficulties in establishing Defendant's bad faith in maintaining payroll records and in making alleged wage statement errors; the difficulty in proving that Defendant's alleged wage statement errors caused injury to Plaintiff; and the risk of the Court reducing PAGA penalties. In light of these risks, the chances of recovery were far from certain.

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

Finally, the absence of any valid objections to the requested fee award, coupled with the 100% Class Member participation rate, also supports the appropriateness and reasonableness of the requested attorneys' fees. (Admin. Decl., ¶¶ 13,16; *In re Heritage Bond Litigation* (C.D. Cal., June 10, 2005,] No. 02-ML-1475 DT) 2005 WL 1594403, at *21 ["The absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable."].)

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

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

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

> "Thirty years ago commentators, in urging the utility of the class suit to vindicate the rights of stockholders, made this incisive observation: 'Modern society seems increasingly to expose men to . . . group injuries for which individually they are in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive. If each is left to assert his rights alone if and when he can, there will at best be a random and fragmentary enforcement, if there is any at all. This result is not only unfortunate in the particular case, but it will operate seriously to impair the deterrent effect of the sanctions which underlie much

> contemporary law. The problem of fashioning an effective and inclusive group remedy is thus a major one.' [Citation.]" (*Vasquez v. Superior Court*, *supra*, 4 Cal.3d 800, 807.)

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

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

One of the purposes for awarding fees in such situations is:

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

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

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

F. THE LODESTAR MULTIPLIER APPROACH CONFIRMS THE REASONABLENESS OF THE FEE REQUEST

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

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

A lodestar calculation need not be supported by detailed time records. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ["California case law permits fee awards in the absence of detailed time sheets"], disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.) Declarations by counsel as to time spent, even if only estimates, are enough.

(See *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 254–255 ["Here plaintiff's attorneys submitted declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case"]; see also *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th 1794, 1810 [stating that lodestar calculation could be based on counsel's estimate of time spent]; *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698 ["It is well established that 'California courts do not require detailed time records, and trial courts have discretion to award fees based on declarations of counsel describing the work they have done and the court's own view of the number of hours reasonably spent. [Citations]'"].)

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

To date, Plaintiff's counsel's lodestar is **$37,910.00** after expending **60 hours** on this matter. (Melmed FAM Decl., ¶ 52, Exh. 10.) Thus, the fees sought here reflect a lodestar multiplier of only **<u>1.35</u>** (i.e., $51,123.12 ÷ $37,910.00). Moreover, it is anticipated that Plaintiff's counsel will expend time which cannot yet be accounted for in the hours in Plaintiff's counsel's declaration. (Melmed FAM Decl., ¶ 56.) Therefore, the unadjusted lodestar will increase and the multiplier will decrease by the conclusion of this matter.

Historically, courts in California have commonly approved multipliers between two and four. (See, e.g., *Steiner v. American Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed.Appx. 780, 783 [multiplier of 6.85 "falls well within the range of multipliers that courts have allowed"]; *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 [directing the trial court "to enhance the lodestar award by such factor (two, three, four or otherwise) that the court, in its discretion shall deem proper"]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298 ["Multipliers in the 3–4 range are common in lodestar awards for lengthy and complex class action litigation."]; *Vizcaino v. Microsoft*

Corp. (9th Cir. 2002) 290 F.3d 1043, 1052 [appendix listing numerous cases with multipliers exceeding the multiplier at issue here, and even up to a multiplier of 19.6]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ["Multipliers can range from 2 to 4 or even higher."].) The fact that Plaintiff's counsel's lodestar multiplier falls well below those approved by Courts further confirms the reasonableness of the fee request.

VII. PLAINTIFF'S COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES

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

Accordingly, Plaintiff's counsel further request that, in addition to awarding them reasonable attorneys' fees, the Court grant their application for reimbursement of the reasonable out-of-pocket expenses advanced, incurred and expected to be incurred by the law firm representing Plaintiff in connection with the prosecution of this litigation, in the amount of $15,000.00. (Melmed FAM Decl., ¶ 40.) Plaintiff's counsel has documented and verified these costs and expenses for which counsel seeks reimbursement. (Melmed FAM Decl., ¶ 40, Exh. 5.)

All costs were necessarily incurred in the course of this hard-fought litigation and would have been charged to a fee-paying client. No Class Member objected to an award of costs to Plaintiff's counsel of $15,000.00. Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses incurred is appropriate and justified as part of the overall Settlement Agreement and should be awarded by the Court.

VIII. SETTLEMENT ADMINISTRATION COSTS

The parties agreed that the Settlement Administrator, Simpluris, Inc. would be compensated for services performed. The Administrator's requested fee is $8,797.00. (Admin. Decl., ¶ 19.)

IX. SUBMISSION TO THE LWDA

The Settlement Agreement and preliminary approval order have been submitted to the LWDA pursuant to Labor Code section 2699, subdivision (1)(2). (Melmed FAM Decl., ¶ 60.)

X. CONCLUSION

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

Dated: August 26, 2025

MELMED LAW GROUP P.C.

KYLE D. SMITH
Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees