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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

CODY PARKER, 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.

THE CLARY GROUP, L.L.C., a Texas Limited
Liability Company; JBS ENERGY
SOLUTIONS CALIFORNIA LLC, a Delaware
Limited Liability Company; and DOES 1 TO 50,

Defendants.

Case Number: 22CV00417

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

Date: October 7, 2024

Time: 10:00 a.m.

Dept.: 5

Judge: Hon. Colleen K. Stern

Complaint Filed: February 1, 2022

FAC Filed: April 14, 2022

SAC Filed: October 28, 2022

Trial Date: None Set

Preliminary Approval Granted:
March 13, 2024

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

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

3 **PLEASE TAKE NOTICE** that that on October 7, 2024, at 10:00 a.m., or as soon thereafter as
4 the matter may be heard, in Department 5 of the Santa Barbara County Superior Court for the State of
5 California, located at 1100 Anacapa Street, Santa Barbara, California, 93101, before the Honorable
6 Colleen K. Stern, Plaintiff Cody Parker (“Plaintiff”), on behalf of himself, the State of California, as a
7 private attorney general, and on behalf of all others similarly situated, will and hereby does move this
8 court for entry of an order:

9 1. Finally certifying the settlement class, as defined in the *Settlement Agreement and*
10 *Release of Class Action* (the “Settlement Agreement”) between Plaintiff and Defendants The Clary
11 Group, L.L.C. and JBS Energy Solutions California LLC (“Defendants”) (collectively, the “Parties”),
12 for the purpose of settlement pursuant to California Code of Civil Procedure section 382 and California
13 Rules of Court, rule 3.769;

14 2. Finally appointing the named plaintiff, Cody Parker, as class representative for purposes
15 of settlement;

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

18 4. Finding that the notice of the settlement was properly provided to the class members in
19 accordance with the Court’s *Order Granting Preliminary Approval of Class Action Settlement* on
20 March 13, 2024;

21 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms
22 set forth in the Settlement Agreement, including the payment by Defendants of the non-reversionary
23 gross settlement amount of \$177,500.00 (“Gross Settlement Amount”), plus the employer’s portion of
24 applicable payroll taxes;

25 6. Finally approving the allocation for attorneys’ fees of one-third of the Gross Settlement
26 Amount (i.e., \$59,166.67), plus necessary litigation costs of \$7,164.52;

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

4 8. Finally approving class representative service payments in an amount of \$10,000.00 to
5 Plaintiff from the Gross Settlement Amount to compensate him for the burdens, responsibilities, time,
6 effort, and risks involved in coming forward on behalf of the proposed class, as well as his general
7 release which is broader than the release of the proposed class;

8 9. Finally approving the allocation of \$10,000.00 for penalties pursuant to the California
9 Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$7,500.00) shall be paid to the
10 California Labor and Workforce Development Agency (“LWDA”) from the Gross Settlement Amount,
11 with the remaining 25% (i.e., \$2,500.00) 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 Plaintiff 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 Plaintiff’s 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.

21 Dated: September 12, 2024

MELMED LAW GROUP P.C.



KYLE D. SMITH

Attorneys for Plaintiff, 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 Plaintiff
4 Cody Parker (“Plaintiff”) and Defendants The Clary Group, L.L.C. and JBS Energy Solutions
5 California LLC (“Defendants”) (collectively, the “Parties”) for \$177,500.00 (the “Gross Settlement
6 Amount”) to be distributed to 159 individuals defined as:

7 *All individuals who are or were employed by Defendants as nonexempt employees in*
8 *California during the period from February 1, 2018, through October 18, 2023 (the*
9 *“Class Period”).*
10

11 These employees are referred to individually as the “Class Members” or collectively as the
12 “Class.” A true and correct copy of the *Settlement Agreement and Release of Class Action* (the
13 “Settlement Agreement”) is attached as **Exhibit A** to the concurrently-filed *Declaration of Jonathan*
14 *Melmed in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement* (“Melmed FAM
15 Decl.”). The Settlement Agreement, in its entirety, is incorporated herein by reference.

16 Plaintiff also represents a group of aggrieved employees on behalf of the State of California as
17 a private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004,
18 Labor Code sections 2698 through 2699.6 (“PAGA”). The “Aggrieved Employees,” for these purposes,
19 share an identical definition with the Class except that the applicable “PAGA Period” is defined as the
20 period from February 1, 2021, through October 18, 2023. (Settlement Agreement, at p. 8.)

21 The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross
22 Settlement Amount will revert to Defendants. (Settlement Agreement, at p. 13.) Class Members were
23 not required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 20.)
24 The applicable employer-side payroll taxes are to be paid by Defendants outside the Gross Settlement
25 Amount. (Settlement Agreement, at p. 18.)

26 On March 13, 2024, this Court granted preliminary approval of the Settlement Agreement.
27 Pursuant to that order, on July 17, 2024, ILYM Group Inc. (the “Settlement Administrator”) mailed the
28 Court-approved *Notice of Proposed Class Action Settlement* (the “Class Notice”) to all 159 putative

Class Members contained in the data provided by Defendants. (See Declaration of Nick Castro of ILYM Group, Inc., in Support of Motion for Final Approval of Class Action Settlement (“Admin. Decl.”), ¶ 7.) 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 **\$82,918.81** (the “Net Settlement Amount”), less applicable taxes, which is calculated as described below. Plaintiff also provides the following summary to assist the Court in its review:

Gross Settlement Amount:	\$177,500.00
Attorneys’ Fees:	(\$59,166.67)
Litigation Costs:	(\$7,164.52)
Settlement Administration Costs:	(\$8,250.00)
Service Awards to Plaintiff:	(\$10,000.00)
PAGA Penalties:	(\$10,000.00)
Net Settlement Amount:	\$82,918.81

Class Participation	
Eligible Class Members:	159
Requests for Exclusion:	0
Objectors:	0
Participating Class Members:	159
Total Participation Rate:	100%

Relevant Supplemental Data	
Workweeks during the Class Period:	3,780
Highest Payment to Class Members:	\$3,180.75
Average Payment to Class Members:	\$524.80
Class Counsel Fee Request:	⅓ of the Gross Settlement Amount

Percent of Class Payments Attributable to Unpaid Wages (W-2 Income):	20%
Percent of Class Payments Attributable to Non-Wages (1099 Income):	80%
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 submitted objections to the Settlement Agreement and *zero* Class Members have requested exclusion. (Admin. Decl., ¶¶ 11, 12.) 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., ¶ 32.) 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.)

As part of Plaintiff's motion for final approval, Plaintiff's counsel is 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; **(2)** finally appointing Plaintiff as class representative; **(3)** finally appointing Plaintiff's attorneys as class counsel; **(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., \$59,166.67), plus necessary incurred litigation costs in the amount of \$7,164.52; **(7)** finally approving ILYM Group, Inc. 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

1 the settlement; **(8)** finally approving the allocation of \$10,000.00 from the Gross Settlement Amount
2 for PAGA penalties; **(9)** finally approving a class representative service award to Plaintiff in the amount
3 of \$10,000.00; **(10)** binding all participating class members to the terms of the Settlement Agreement,
4 including the release specified therein; and **(11)** retaining jurisdiction to enforce the terms of the
5 Settlement Agreement.

6 **II. CASE BACKGROUND**

7 **A. PROCEDURAL HISTORY**

8 On February 1, 2022, Plaintiff submitted a letter to the California Labor and Workforce
9 Development Agency (“LWDA”) to notify the LWDA, pursuant to PAGA, of Plaintiff’s intent to seek
10 civil penalties against Defendants for violations of Labor Code sections 201, 202, 203, 204, 210, 226,
11 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804,
12 and others that may be applicable; and California Industrial Welfare Commission (“IWC”) Wage Order
13 4-2001 (the “Applicable Wage Order”). (Cal. Code of Regs., tit. 8, § 11040; Melmed FAM Decl., ¶
14 12.) The letter attached Plaintiff’s original complaint, and incorporated the original complaint by
15 reference, and thus sought penalties for claims identical to those alleged in the case. (Melmed FAM
16 Decl., ¶ 12.)

17 On February 1, 2022, Plaintiff commenced this action by filing a class action complaint alleging
18 causes of action against Defendants for **(1)** failure to provide compliant rest periods and pay missed
19 rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Orders;
20 **(2)** failure to provide compliant meal periods and pay missed meal period premiums in violation of
21 Labor Code sections 226.7 and 512, and the Applicable Wage Orders; **(3)** failure to pay all wages due
22 and owing at separation in violation of Labor Code sections 201, 202, and 203; **(4)** failure to indemnify
23 all necessary business expenditures; **(5)** failure to provide complete and accurate wage statements in
24 violation of Labor Code sections 226 and 226.3; **(6)** deceptive, fraudulent, or otherwise unlawful
25 business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. &
26 Prof. Code, §§ 17200–17210); **(7)** violation of Labor Code § 907; **(8)** wrongful termination; and **(9)**
27 whistleblower retaliation. (Melmed FAM Decl., ¶ 13.)
28

1 On April 14, 2022, Plaintiff filed a first amended complaint adding one cause of action for
2 penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) On October 28,
3 2022, Plaintiff filed a second amended complaint pursuant to an agreement with Defendants to add
4 additional facts but no new causes of action. (Melmed FAM Decl., ¶ 14.)

5 Thereafter, the Parties agreed to attend a private mediation with the Honorable Jan M. Adler
6 (Ret.). (Melmed FAM Decl., ¶ 15.) Prior to the mediation, Plaintiff’s counsel conducted significant
7 informal discovery. (Melmed FAM Decl., ¶ 15.) Discovery, investigation, and prosecution has
8 included, among other things, numerous telephonic conferences with Plaintiff; inspection and analysis
9 of hundreds of pages of documents, including Defendants’ relevant policies and employee handbook,
10 and other information produced by Plaintiff and Defendants; analysis of work-related data from a
11 sample of Class Members and Aggrieved Employees; an analysis of the legal positions taken by
12 Defendant; investigation into the viability of class treatment of the claims asserted in the action;
13 analysis of potential class-wide damages, including information sufficient to understand Defendants’
14 potential defenses to Plaintiff’s claims; research of the applicable law with respect to the claims asserted
15 in the operative complaint and the potential defenses thereto; and assembling and analyzing of data for
16 calculating damages. (Melmed FAM Decl., ¶ 15.)

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

26 On July 18, 2023, the Parties participated in a full-day mediation with the Honorable Jan M.
27 Adler (Ret.) who is a full-time mediator and retired judge with extensive experience in California wage
28 and hour class action lawsuits. (Melmed FAM Decl., ¶ 17.) The mediation negotiations were

1 contentious, but the Parties were eventually able to reach the broad terms of an agreement. After further
2 negotiation, the Parties executed the longform Settlement Agreement now before the Court for
3 approval. (Melmed FAM Decl., ¶ 17.)

4 On March 13, 2024, Plaintiff’s *Motion for Preliminary Approval of Class Action Settlement*
5 (“Motion for Preliminary Approval”) was granted. (See Order Granting Preliminary Approval of Class
6 Action Settlement (“Preliminary Approval Order” or “PAM Order”), ¶ 2.) In granting preliminary
7 approval, this Court determined that the Settlement Agreement appeared to be “fair, adequate, and
8 reasonable to the Settlement Class.” (PAM Order, ¶ 2.) This Court further found that the Settlement
9 Agreement falls “within the range of reasonableness and is presumptively valid, subject only to any
10 objections that may be raised at the final fairness hearing and final approval by this Court.” (PAM
11 Order, ¶ 3.) Likewise, the Class has shown its strong approval of the Settlement Agreement; as of the
12 date of this filing, there have been *no objections by the Class Members and no requests for exclusion*.
13 (Admin. Decl., ¶¶ 11, 12.)

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

15 **B. THE CLAIMS AND DEFENSES**

16 Plaintiff alleged several categories of wage-and-hour violations on behalf of the Class
17 Members. Most importantly, Plaintiff alleged that Defendants failed to pay employees for each minute
18 worked, failed to properly provide the Class Members with meal periods and rest periods, and failed to
19 reimburse all business expenses. From these violations, Plaintiff sought damages for derivative claims
20 for waiting time penalties, inaccurate itemized wage statements, unfair competition, and PAGA
21 penalties based on the foregoing. (Melmed FAM Decl., ¶ 22.)

22 The details and settlement value of each of these claims, and their corresponding defenses, were
23 discussed extensively in the Plaintiff’s Motion for Preliminary Approval and its accompanying papers,
24 the discussion of which is incorporated by reference herein, and which, for the sake of brevity, Plaintiff
25 will avoid belaboring in this motion. (See Motion for Preliminary Approval, at p. 5–13.)

26 Defendants have persistently denied all liability of any kind associated with the claims and
27 allegations, and further denied that the Class Members are entitled to any relief. Defendants also deny
28 that these allegations are appropriate for class or representative treatment for any purpose other than

1 the settlement. Defendants maintain, among other things, that they have complied with California laws
2 in all respects. (Melmed FAM Decl., ¶ 24.)

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

4 Under the terms of the Settlement Agreement, Defendants will be released of all claims asserted
5 in the operative complaint in exchange for Defendants' agreement to pay a non-reversionary settlement
6 Gross Settlement Amount of \$177,500.00. (See generally, Settlement Agreement.)

7 The amount to be paid by Defendants includes: **(1)** the fees and expenses of the Settlement
8 Administrator in the amount of \$8,250.00 (Settlement Agreement, at p. 3; Admin. Decl., ¶ 14); **(2)**
9 Plaintiff's counsel's attorney fees of one-third of the Gross Settlement Amount, i.e., \$59,166.67
10 (Settlement Agreement at pp. 4, 17, 22); **(3)** litigation expenses and costs up to the amount of
11 \$10,000.00, but which are expected to be \$7,164.52 (Settlement Agreement, at pp. 4, 17, 22); **(4)** a
12 service award of \$10,000.00 to the named Plaintiff (Settlement Agreement, at pp. 14, 22); **(5)** payment
13 to the LWDA of \$7,500.00 for its 75% share of the settlement for civil penalties pursuant to PAGA
14 (Settlement Agreement, at pp. 8, 15, 22); and **(6)** payment to the Aggrieved Employees of \$2,500.00
15 for their 25% share of the settlement for civil penalties pursuant to PAGA (Settlement Agreement, at
16 pp. 8, 15, 22). The remaining Net Settlement Amount, which consists of approximately \$82,918.81
17 will be distributed to the Class Members. (Admin. Decl., ¶ 13; Settlement Agreement, at pp. 22–25.)

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

26 For tax purposes, the Settlement Agreement provides that 20% of each individual settlement
27 payment from the class-portion of the Settlement Agreement shall constitute wages (for which each
28 participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining

80% 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 pp. 15–16.)

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. 16.)

Participating Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at p. 25.) 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. 25.)

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 September 3, 2024. (Admin. Decl., ¶¶ 11–12.) The Settlement Administrator was tasked with, among other things: **(1)** preparing, printing, and mailing the Class Members the court-approved Class Notice; **(2)** receiving and processing requests for exclusion and written objections; **(3)** resolving any Class Member disputes over the number of workweeks Defendants 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., ¶ 3.)

On June 4, 2024, the Settlement Administrator received the class data list from Defendants’ counsel. (Admin. Decl., ¶ 5.) As part of the preparation for mailing, the Settlement Administrator conducted a National Change of Address search in an attempt to update the class list of addresses as accurately as possible. (Admin. Decl., ¶ 6.) On July 17, 2024, the Settlement Administrator mailed the Court-approved notice to all 159 Class Members contained in the data provided by Defendants. (Admin. Decl., ¶ 7.) When notice packets were returned to the Settlement Administrator, the Settlement

1 Administrator performed a computerized skip trace to obtain updated addresses for the purpose of re-
2 mailing the notice packets. (Admin. Decl., ¶ 8.) As a result of this skip trace, three updated addresses
3 were obtained and the Notice Packets were promptly re-mailed to those Class Members, via U.S First
4 Class Mail. (Admin. Decl., ¶ 8.)

5 The deadline for the 159 Class Members in the class data list to submit an opt-out request,
6 objection, or dispute of workweeks was September 3, 2024. (Admin. Decl., ¶¶ 11–12.) The Settlement
7 Administrator has received **zero** objections and **zero** requests for exclusion from the Class Members.
8 (Admin. Decl., ¶¶ 11–12.) Thus, the Settlement Administrator is reporting a **100% participation**
9 **rate**—the most favorable possible response to a settlement. (Admin. Decl., ¶ 11–12.)

10 **B. THE CLASS WAS GIVEN THE BEST POSSIBLE NOTICE OF THE**
11 **SETTLEMENT**

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

21 The notice procedure approved by the Court was and is the best notice practicable. As discussed
22 above, the Settlement Administrator duly mailed the Class Notices to all Class Members. (Admin.
23 Decl., ¶¶ 5–9.) The terms of the Class Notice, which was approved by the Court, fully complied with
24 the requirements of California Rules of Court, rule 3.769, subdivision (f). It provided Class Members
25 with all relevant information needed to make an informed decision as to whether to opt out, participate
26 in, or object to the settlement. It provided an explanation of the litigation and proposed settlement
27 terms, and procedures on how to opt out, object and/or appear at the final fairness hearing. The Class
28 Notice also provided an explanation of the case, the exclusion date and procedure for exclusion, the

1 proposed attorneys' fees, litigation costs, administration costs, service award, the LWDA payment to
2 be requested, and the individual members' estimated recovery. It also stated that those who do not opt
3 out will be bound by the terms of the Settlement Agreement, including the release of claims described
4 therein. (See Admin. Decl., Exh. A.)

5 Moreover, the Court diligently reviewed and approved the Class Notice as to form and content.
6 In the Court's Preliminary Approval Order of March 13, 2024, the Court found that the notice and
7 implementation schedule met "the requirements of due process and constitute the best notice
8 practicable under the circumstances and due and sufficient notice to all persons entitled thereto." (PAM
9 Order, ¶ 7.) Therefore, the Court may determine the fairness and adequacy of the settlement and order
10 its approval, secure in the knowledge that all Class Members have been given the opportunity to
11 participate fully in the notice process and have been fully apprised of their rights and options, including
12 their rights to object to the Settlement Agreement. To date, no one has chosen to do so. (Admin. Decl.,
13 ¶¶ 11–12.)

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

16 The Class Members have overwhelmingly accepted the Settlement Agreement and 159 Class
17 Members stand to benefit from the settlement on entry of final approval. (Admin. Decl., ¶ 6.) "[T]he
18 absence of a large number of objections to a proposed class action settlement raises a strong
19 presumption that the terms of a proposed class settlement action are favorable to the class members."
20 (*In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043, quoting *National*
21 *Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529;
22 *Moore v. PetSmart, Inc.* (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000, at *7,
23 *aff'd* (9th Cir. 2018) 728 Fed. Appx. 671 [finding that where "less than one percent either opted out or
24 objected, the reaction of the putative class has been very positive. Therefore, this factor strongly favors
25 settlement."].)

26 Here, **zero** of the eligible Class Members have submitted objections to any of the terms of the
27 proposed settlement, including Plaintiff's requested service award and Plaintiff's counsel's proposed
28 attorneys' fees and costs. (Admin. Decl., ¶ 12.) Moreover, **zero** Class Members have requested

1 exclusion. (Admin. Decl., ¶ 11.) This response reflects Class Members’ clear and overwhelming
2 support of the Settlement Agreement.

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

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

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

23 The trial court enjoys broad discretion to determine whether a proposed class action settlement
24 is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The decision to approve or reject a
25 proposed settlement lies within the Court’s sound discretion. (*Wershba v. Apple Computer, Inc.* (2001)
26 91 Cal.App.4th 224, 234–235.) In deciding whether to grant final approval, the Court’s ultimate duty
27 is to determine whether the settlement is fair, adequate, and reasonable. (See *Dunk v. Ford Motor Co.*
28 (1996) 48 Cal.App.4th 1794, 1801 [setting forth the “fair, adequate, and reasonable” standard], citing

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

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

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

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

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

26 A presumption of fairness exists where, as here: “(1) the settlement is reached through arm’s-
27 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
28 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is

1 small.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th 1794, 1802; see also *In re Microsoft I-V Cases*,
2 *supra*, 135 Cal.App.4th 706, 723.)

3 Here, the Settlement Agreement was negotiated at arm’s length between counsel using a
4 professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 27.) Counsel for all parties
5 were thoroughly familiar with the complex legal and factual questions at issue in this litigation.
6 (Melmed FAM Decl., ¶ 27.) The Settlement Agreement is a product of intensive negotiations,
7 supported by investigation and direct exchanges of information through informal discovery, settlement
8 negotiations that included a full-day mediation, and significant post-mediation negotiations. (Melmed
9 FAM Decl., ¶ 27.) Though cordial and professional, the settlement negotiations were adversarial and
10 non-collusive in nature. (Melmed FAM Decl., ¶ 27.)

11 The Parties thoroughly investigated and evaluated the factual and legal strengths and
12 weaknesses of this case before reaching the settlement. (Melmed FAM Decl., ¶ 28.) As described above
13 and in the Motion for Preliminary Approval, the Settlement Agreement was reached after extensive
14 informal discovery, investigation, research, thorough calculations, risk evaluation, substantial
15 exchanges of documents, and an exchange of other information required to evaluate the claims at issue.
16 (Melmed FAM Decl., ¶ 28.) The settlement came only after the case was thoroughly investigated by
17 Plaintiff’s counsel. (Melmed FAM Decl., ¶ 28.)

18 The settlement reached is the product of substantial effort by the parties and their counsel.
19 (Melmed FAM Decl., ¶ 29.) Plaintiff and Plaintiff’s counsel agree with the Court’s preliminary
20 approval order that the Settlement Agreement represents a fair, adequate, and reasonable resolution of
21 the class claims. (Melmed FAM Decl., ¶ 29; PAM Order, ¶¶ 2–3.)

22 Moreover, Plaintiff’s counsel is experienced in similar class actions. (Melmed FAM Decl., ¶¶
23 6–11.) Additionally, the percentage of valid objectors is not only small, *but zero*. (Admin. Decl., ¶ 12.)
24 The presumption of fairness of this settlement applies with full force.

25 C. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED

26 This Court found that “[t]he Settlement falls within the range of reasonableness and is
27 presumptively valid, subject only to any objections that may be raised at the final fairness hearing and
28 final approval by this Court.” (PAM Order, ¶ 3.) The relevant analysis remains unchanged with one

1 exception: the Court now has adequate information to know “the reaction of the class members to the
2 proposed settlement.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) Because the
3 reaction has been overwhelmingly positive, with *zero* objections to the Settlement Agreement, the
4 justifications for approving the Settlement Agreement have only been bolstered since the time of this
5 Court’s original analysis. (Admin. Decl., ¶ 12.) This Court can thus proceed secure in the knowledge
6 that the factors mentioned above, including arm’s length bargaining, sufficient investigation and
7 discovery, experienced counsel, and percentage of objectors, weigh heavily in favor of granting final
8 approval.

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

11 As explained above and in the papers associated with Plaintiff’s Motion for Preliminary
12 Approval, the Settlement Agreement was negotiated at arm’s length between counsel utilizing a
13 professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 27.) Counsel for both
14 parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation.
15 (Melmed FAM Decl., ¶ 27.) The Settlement Agreement is a product of intensive negotiations,
16 supported by investigation and direct exchanges of information through formal and informal discovery
17 and during settlement negotiations, including a full-day mediation, and significant continued
18 negotiations. (Melmed FAM Decl., ¶ 27.) Although Plaintiff and Plaintiff’s counsel believed the class
19 claims had merit and there was a possibility of certifying the class and claims, they recognized the
20 potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class
21 certification, summary judgment at trial and/or on the damages awarded, and/or an appeal that can take
22 several more years to litigate. (Melmed FAM Decl., ¶ 30.)

23 The resulting Settlement Agreement was based on calculations, risk assessment, and non-
24 collusive negotiation. It takes the risks identified above and others into account in arriving at the non-
25 reversionary settlement. (Melmed FAM Decl., ¶ 28.)
26
27
28

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

3 Counsel for the Parties spent months developing the factual record for this case, engaging in
4 discovery and exchanges of documents and information, as well as drafting detailed mediation briefs,
5 all of which ensured both sides were fully informed about the strengths and weaknesses of their
6 respective positions at the mediation and during subsequent settlement negotiations. (Melmed FAM
7 Decl., ¶ 25.) The Parties and their counsel attended a full-day mediation session before an experienced
8 and well-respected mediator, which resulted in the resolution of the case on a class and representative
9 basis. (Melmed FAM Decl., ¶ 25.) The Honorable Jan M. Adler (Ret.) is a full-time mediator with
10 extensive experience in California wage-and-hour class action lawsuits. (Melmed FAM Decl., ¶ 25.)

11 In addition, the Parties are represented by skilled and experienced counsel with extensive
12 backgrounds in complex litigation and experience litigating similar wage-and-hour class actions.
13 (Melmed FAM Decl., ¶¶ 6–11.) The Settlement Agreement was reached after extensive investigation
14 and research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiff’s
15 counsel’s thorough factual investigation, sufficient to evaluate Defendants’ defenses. (Melmed FAM
16 Decl., ¶ 26.) The Settlement Agreement came only after the case was thoroughly investigated by
17 Plaintiff’s counsel. (Melmed FAM Decl., ¶ 26.) Plaintiff’s counsel agree that this settlement is fair,
18 adequate, and reasonable, and in the best interests of Class Members. (Melmed FAM Decl., ¶ 5.)

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

20 Although Plaintiff and Plaintiff’s counsel believed the class claims had merit and that there was
21 a possibility of certifying the class and claims, they recognized the potential risk, expense, and
22 complexity posed by litigation, such as unfavorable decisions on class certification, summary
23 judgment, adverse outcomes at trial or on the damages awarded, and the potential for appeal that can
24 take several more years to litigate. (Melmed FAM Decl., ¶ 30.) Proceeding with litigation would
25 impose significant risk of no recovery as well as ongoing, substantial additional expenditures of time
26 and resources. (Melmed FAM Decl., ¶ 30.) The resulting Settlement Agreement was based on
27 calculations, risk assessment, and non-collusive negotiation. (Melmed FAM Decl., ¶ 28.) It takes the
28

1 risks identified above and others into account in arriving at the non-reversionary Gross Settlement
2 Amount. (Melmed FAM Decl., ¶ 28.)

3 The Settlement Agreement represents a fair compromise given the risks and uncertainties
4 presented by continued litigation. Defendants asserted and would have continued to assert legal and
5 factual grounds to defend against this action, including factual and legal defenses on the merits.
6 Moreover, continued litigation would be costly, time-consuming, and uncertain. By contrast, the
7 Settlement Agreement ensures timely relief and substantial recovery of the Defendants' realistic
8 exposure. (Melmed FAM Decl., ¶ 31.)

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

10 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
11 should consider “[t]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
12 further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.*, *supra*,
13 48 Cal.App.4th 1794, 1801.) As described in this motion and more extensively in the Motion for
14 Preliminary Approval and its accompanying papers, Defendants had viable defenses to Plaintiff’s
15 claims, which create a real possibility that the claims might not be certified or may fail on the merits.
16 (Melmed FAM Decl., ¶ 30.) Proceeding with litigation would impose significant risk of no recovery as
17 well as ongoing, substantial additional expenditures of time and resources. (Melmed FAM Decl., ¶ 30.)
18 If settlement were not achieved, continued litigation of the claims would take substantial time and
19 possibly confer little to no benefit on the Class Members, the State of California, or the Aggrieved
20 Employees. By contrast, the Settlement Agreement will yield a prompt, certain, and substantial
21 recovery for Class Members, and benefits the Parties and the Court. (Melmed FAM Decl., ¶ 30.)

22 **5. Plaintiff’s Counsel are Experienced in Similar Wage-and-Hour Litigation**

23 The view of the attorneys actively conducting the litigation is entitled to significant weight in
24 deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87
25 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
26 Cal.App.4th 116, 128 [court must take into account “the experience and view of counsel”], internal
27 quotation and citation omitted.) Plaintiff’s counsel are experienced in wage-and-hour class actions.
28 Numerous state and federal courts have certified them as adequate and competent class counsel in

1 similar wage-and-hour class actions. (Melmed FAM Decl., ¶¶ 6–11.) Plaintiff’s counsel believe that
2 this settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be
3 finally approved. (Melmed FAM Decl., ¶ 5.)

4 **V. PLAINTIFF’S SERVICE AWARD IS FAIR, REASONABLE, AND APPROPRIATE**

5 The Settlement Agreement provides for a service award payment to Plaintiff in the amount of
6 \$10,000, in addition to whatever payment he is otherwise entitled to receive as a Class Member and
7 Aggrieved Employee. (Settlement Agreement, at p. 14.) The proposed service award is intended to
8 recognize the time, effort, and risk that Plaintiff undertook in bringing this case and helping to secure
9 the relief obtained for the members of the Class. (See *Bell v. Farmers Ins. Exchange* (2004) 115
10 Cal.App.4th 715, 726 [upholding “service payment” to named plaintiff for his efforts in bringing class
11 case]; *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959 [stating that service
12 awards are “intended to compensate class representatives for work done on behalf of the class, to make
13 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
14 their willingness to act as a private attorney general.”].) To determine the propriety of a service award,
15 courts consider the actions protecting class interests, the benefit provided to the class based on those
16 actions, and the amount of time and effort expended by the plaintiff. (*Staton v. Boeing Co.* (9th Cir.
17 2003) 327 F.3d 938, 976–977.)

18 The proposed service award is reasonable compensation given the time and effort that Plaintiff
19 devoted to this case, the valuable assistance he provided to counsel, and the fact that he entered into a
20 general release of claims that is broader than the release of the Class. (Melmed FAM Decl., ¶ 33;
21 Settlement Agreement, at pp. 28–30; Declaration of Cody Parker in Support of Plaintiff’s Motion for
22 *Preliminary Approval of Class Action Settlement* (“Parker Decl.”), ¶¶ 6–10.) Plaintiff provided
23 invaluable assistance to Plaintiff’s counsel and the Class Members in this case, including providing
24 factual background for mediation and the operative complaint, reviewing the relevant documents,
25 participating in phone calls with Plaintiff’s counsel, gathering highly relevant documents, and
26 reviewing the settlement documents. (Melmed FAM Decl., ¶ 34; Parker Decl., ¶¶ 6–10.) Plaintiff
27 agreed to participate in this case with no guarantee of personal benefit. (Melmed FAM Decl., ¶ 34;
28 Parker Decl., ¶ 9.) To the contrary, Plaintiff agreed to undertake the financial risk of serving as a class

1 representative and exposed himself to the risk of negative publicity by anyone who opposed this case.
2 (Melmed FAM Decl., ¶ 34; Parker Decl., ¶ 10.)

3 The service awards requested by Plaintiff represents only 5.63% of the Gross Settlement
4 Amount in this case. Moreover, the service award also falls well within the range of service payments
5 typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson*
6 *Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879
7 [approving **\$11,250.00** service award to each of the two Class Representative in a meal break class
8 action]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010
9 WL 3833922, at *2 [approving **\$20,000.00** enhancement award to the class representative in a
10 California wage-and-hour class action settlement]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal.
11 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **\$10,000.00** each from a
12 \$300,000.00 settlement fund in a wage-and-hour class action]; *West v. Circle K Stores, Inc.* (E.D. Cal.
13 Oct. 19, 2006 No. CIVS040438WBSGGH) 2006 WL 8458679, at *8 “[T]he court finds plaintiffs’
14 enhancement payments of **\$15,000** each to be reasonable.”]; *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal.
15 Jan. 26, 2007 No. C-06-4068 MMC) 2007 WL 221862, at *17, *aff’d* (9th Cir. 2009) 331 Fed.Appx.
16 452 [finding “requested payment of **\$25,000** to each of the named plaintiffs is appropriate” in a wage-
17 and-hour settlement]; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008, No. 08CV0795
18 IEG RBB) 2008 WL 4473183, at *7 [approving “**\$25,000** incentive award for each Class
19 Representative” in a wage an hour settlement], emphasis added; *Garner v. State Farm Mut. Auto. Ins.*
20 *Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW EMC, 2010 WL 1687832, at *17 n.8 [“Numerous
21 courts in the Ninth Circuit and elsewhere have approved incentive awards of **\$20,000** or more where,
22 as here, the class representative has demonstrated a strong commitment to the class”], emphasis added.)
23 Finally, Plaintiff has agreed to enter into a general release of all claims against Defendants, whereas
24 the Class Members only released the claims alleged. (Settlement Agreement, at pp. 29–30; Parker
25 Decl., ¶ 10.) The requested service award is modest, fair, and reasonable.

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

3 Plaintiff's counsel seek a fee award under the "common fund" doctrine. (See *Laffitte v. Robert*
4 *Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [reaffirming its approval of the use of a percentage of the
5 common fund to compensate counsel].) Plaintiff's counsel are also entitled to fees under various
6 statutes at issue here, including, among others, Labor Code sections 218.5, 226, subdivision (e)(1),
7 1194, and 2699, subdivision (g)(1), all of which provide for reasonable attorneys' fees to be recovered
8 by the prevailing party.

9 Specifically, Plaintiff's counsel request attorneys' fees in the amount of one-third of the Gross
10 Settlement Amount (i.e., \$59,166.67), as provided in the Settlement Agreement. (Settlement
11 Agreement at pp. 4, 17, 22.) As will be explained, this request is reasonable and appropriate under the
12 common fund theory and is supported by: (1) case law, (2) Plaintiff's counsel's high quality of work,
13 (3) the excellent results achieved for the Class Members, (4) the risks inherent in the contingent nature
14 of Plaintiff's counsel's representation in this case, and (5) public policy considerations.

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

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

26 It is well-established that, where a lawsuit results in the recovery of a fund or property benefiting
27 others, as well as the plaintiff—as in a class action—the court has inherent equitable power to order
28 the plaintiff's attorneys' fees to be paid out of the common fund or property. (See *Serrano v. Priest*

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

9 As mentioned above, Plaintiff’s counsel are seeking a fee award under the “common fund”
10 doctrine. The common fund doctrine provides that “a litigant or a lawyer who recovers a common fund
11 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from
12 the fund as a whole.” (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; see also *Vincent v. Hughes*
13 *Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Class Plaintiffs v. Jaffe & Schlesinger, P.A.* (9th Cir.
14 1994) 19 F.3d 1306, 1308.) The doctrine is founded on the understanding that attorneys should
15 normally be paid by their clients, and that unless attorneys’ fees are paid out of the common fund where
16 the attorneys’ unnamed class member “clients” have no express retainer agreement, those who
17 benefited from the fund without contributing to those who created it would be unjustly enriched.
18 (*Boeing Co. v. Van Gemert, supra*, 444 U.S. 472, 478.)

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

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

6 These requested amount has not objected to by any Class Member. (Admin. Decl., ¶ 12.) As
7 this Settlement Agreement will result in the recovery of a substantial fund benefiting all participating
8 Class Members, this Court has inherent equitable power to order Plaintiff's counsel's fees and costs to
9 be paid out of the Gross Settlement Amount, pursuant to the common fund theory.

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

12 The negotiated and unopposed fee should also be approved because it is within the approved
13 range of appropriate awards of attorneys' fees in similar wage-and-hour class action cases in California.
14 (See, e.g., *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–492 [explaining
15 that “[t]he typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total
16 settlement value”]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG
17 (BLM)) 2010 WL 2196104, at *8 [approving attorney fee award of 33.33% of the common fund and
18 noting that award was similar to awards in three other wage-and-hour class action cases where fees
19 ranged from 30.3% to 50%]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008,
20 No. C 06-6883 VRW) 2008 WL 5478576, at *8 [meal break class action where the federal district court
21 approved attorneys’ fees of one-third of common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D.
22 Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [approving fees at one-third of
23 the common fund in a missed meal break class action and noting that fee awards in class actions average
24 around one-third of the recovery]; *Williams v. TriCap International LLC* (Final Approval Order, March
25 7, 2019) LASC No. BC644383 [awarding one-third of gross settlement amount]; *Stuart v. Radioshack*
26 *Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6 [noting that a fee
27 award of one-third of the settlement was “well within the range of percentages which courts have
28 upheld as reasonable in other class action lawsuits”]; *McCrary v. Elations Company, LLC* (C.D. Cal.,

1 Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL 769703, at *10 [noting that most fee awards are
2 33%]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov. 18, 2014, No. SACV 13-0561-DOC) 2014 WL
3 6473804, at *12 [finally approving a one-third fee award on a \$5,800,000 settlement].)

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

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

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

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

1 Members, as evidenced by the complete lack of any objections and not even one opt-out, clearly
2 demonstrates that the Class Members support the Settlement Agreement and results achieved by
3 Plaintiff's counsel through the litigation of this matter. (Admin. Decl., ¶¶ 11–12.)

4 As a result of this litigation, the Class Members stand to receive a significant Net Settlement
5 Amount of **\$82,918.81**.

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

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

23 This risk further justifies the requested fee award. As explained by the California Supreme
24 Court, “[a] lawyer who both bears the risk of not being paid and provides legal services is not receiving
25 the fair market value of his work if he is paid only for the second of these functions. If he is paid no
26 more, competent counsel will be reluctant to accept fee award cases.” (*Ketchum v. Moses* (2001) 24
27 Cal.4th 1122, 1133, quotation marks omitted; see also *Crommie v. State of Cal., Public Utilities Com’n*
28

1 (N.D. Cal. 1994) 840 F.Supp. 719, 725 [“The purpose of contingent risk inquiry is to determine a fee
2 that is likely to entice competent counsel to undertake difficult public interest cases.”].)

3 Finally, the absence of any valid objections to the requested fee award, coupled with the 100%
4 Class Member participation rate, also supports the appropriateness and reasonableness of the requested
5 attorneys’ fees. (Admin. Decl., ¶¶ 11, 12; *In re Heritage Bond Litigation* (C.D. Cal., June 10, 2005,]
6 No. 02-ML-1475 DT) 2005 WL 1594403, at *21 [“The absence of objections or disapproval by class
7 members to Class Counsel’s fee request further supports finding the fee request reasonable.”].)

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

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

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

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

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

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

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

20
21 One of the purposes for awarding fees in such situations is:

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

26
27 Conversely, a reduction in attorneys’ fees due to the size of the settlement in this case would
28 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

1 attorneys to recover the greatest amount reasonably possible on behalf of the injured class members.
2 The award of attorneys' fees as requested by Plaintiff's counsel would properly reward Plaintiff's
3 counsel's efforts in advancing a clear public policy and would encourage additional such efforts.

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

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

6 Under the common fund method, the attorneys representing the class members are permitted to
7 recover their litigation costs and expenses from the common fund. (See *Serrano v. Priest* (1977) 20
8 Cal.3d 25, 35 [common fund doctrine permits recovery of fees and costs from the fund]; *Rider v.*
9 *County of San Diego* (1992) 11 Cal.App.4th 1410, 1424, fn. 6 [costs are recoverable from the common
10 fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery
11 of attorney fees by . . . [Plaintiffs'] attorneys"]; *Melendres v. City of Los Angeles* (1975) 45 Cal.App.3d
12 267, 277.) In fact, this is true for whatever method is chosen by the Court to calculate attorneys' fees:
13 Plaintiff's counsel is entitled to recover "those out-of-pocket expenses that would normally be charged
14 to a fee-paying client." (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19, internal quotation and
15 citation omitted.)

16 Accordingly, Plaintiff's counsel further request that, in addition to awarding them reasonable
17 attorneys' fees, the Court grant their application for reimbursement of the reasonable out-of-pocket
18 expenses advanced, incurred and expected to be incurred by the law firm representing Plaintiff in
19 connection with the prosecution of this litigation, in the amount of \$7,164.52, which less than
20 \$10,000.00 provided by the Settlement Agreement and preliminarily approved by this Court.
21 (Settlement Agreement, at pp. 4, 17, 23; Melmed FAM Decl., ¶ 36, Exh. B; PAM Order, ¶ 4.) Plaintiff's
22 counsel has documented and verified these costs and expenses for which counsel seeks reimbursement.
23 (Melmed FAM Decl., ¶ 36, Exh. B.)

24 All costs were necessarily incurred in the course of this hard-fought litigation and would have
25 been charged to a fee-paying client. No Class Member objected to an award of costs to Plaintiff's
26 counsel of \$10,000.00 and Plaintiff's counsel seeks a lesser amount than what was actually spent by
27 their firms. (Melmed FAM Decl., ¶ 36, Exh. B; Admin. Decl., ¶ 12, see also Admin. Decl., Exh. A.)
28 Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses incurred is

1 appropriate and justified as part of the overall Settlement Agreement and should be awarded by the
2 Court.

3 **VIII. SETTLEMENT ADMINISTRATION COSTS**

4 The parties agreed that the Settlement Administrator, ILYM Group, Inc. would be compensated
5 for services performed. The Administrator's requested fee is \$8,250.00. (Admin. Decl., ¶¶ 13, 14.) The
6 fee was previously provided in the Settlement Agreement, preliminarily approved by the Court, and
7 noticed to the Class Members.

8 **IX. SUBMISSION TO THE LWDA**

9 The Settlement Agreement has been submitted to the LWDA pursuant to Labor Code section
10 2699, subdivision (1)(2). (Melmed FAM Decl., ¶ 49.)

11 **X. CONCLUSION**

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

14 Dated: September 12, 2024

MELMED LAW GROUP P.C.



KYLE D. SMITH

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Class, and the Aggrieved Employees