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

JOSEPH D. AGUILAR and CHRISTIAN  
BELLER, individuals on behalf of themselves,  
the State of California, as a private attorneys  
general, and on behalf of all others similarly  
situated,

Plaintiffs,

v.

TASTES & TALES, LLC, a California Limited  
Liability Company; WATERSIDE, LLC, a  
California Limited Liability Company;  
VENTURA HARBOR RESTAURANT  
ASSOCIATES, INC., a California Corporation;  
WATER'S EDGE RESTAURANT AND BAR,  
a Business of Unknown Formation;  
CHRYSILIOS CHRYSILIOU, an Individual;  
ORESTIS SIMOS, an Individual; and DOES 1  
TO 50,

Defendants.

Case Number: 56-2022-00563241-CU-OE-VTA

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

Complaint Filed: March 1, 2022

Trial Date: None Set

Hearing Date: July 12, 2023

Hearing Time: 8:20 a.m.

Dept.: 41

Judge: Hon. Ronda J. McKaig

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

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

3                    **PLEASE TAKE NOTICE** that that on July 12, 2023, at 8:20 a.m., or as soon thereafter as the  
4 matter may be heard, in Department 41 of the Ventura County Superior Court for the State of  
5 California, located at the Ventura Hall of Justice, 800 South Victoria Avenue, Ventura, California  
6 93009, before the Honorable Ronda J. McKaig, Plaintiffs Joseph D. Aguilar and Christian Beller  
7 (collectively, “Plaintiffs”), on behalf of themselves, the State of California, as a private attorneys  
8 general, and on behalf of all others similarly situated, will and hereby do move this court for an order:

9                    1.        Preliminarily certifying the settlement class for purposes of settlement pursuant to  
10 California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

11                    2.        Preliminarily appointing Plaintiffs as class representatives for purposes of settlement;

12                    3.        Preliminarily appointing Jonathan Melmed, Kyle Smith, and Joanne Kim of Melmed  
13 Law Group P.C. as class counsel for purposes of settlement;

14                    4.        Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the  
15 terms set forth in the parties’ *Class Action and PAGA Settlement Agreement and Class Notice* (the  
16 “Settlement Agreement”), including payment by Defendants Tastes & Tales, LLC, Waterside, LLC,  
17 Ventura Harbor Restaurant Associates, Inc., Water’s Edge Restaurant and Bar, Chrysilios Chrysiliou,  
18 and Orestis Simos (“Defendants”) of the non-reversionary gross settlement amount of \$350,000.00  
19 (“Gross Settlement Amount”);

20                    5.        Preliminarily approving payment of reasonable attorneys’ fees from the Gross  
21 Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to  
22 \$116,666.67), plus necessary litigation costs not to exceed \$15,000.00;

23                    6.        Preliminarily approving class representative service payments in an amount of up to  
24 \$10,000.00 for Joseph D. Aguilar and \$10,000.00 for Christian Beller from the Gross Settlement  
25 Amount to compensate them for the responsibilities, time, effort, and risks involved in coming forward  
26 on behalf of the proposed class;

27                    7.        Preliminarily approving the allocation of \$50,000.00 for penalties pursuant to the  
28 California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$37,500.00) shall

1 be paid to the California Labor and Workforce Development Agency (“LWDA”) from the Gross  
2 Settlement Amount, with the remaining 25% (i.e., \$12,500.00) payable to the aggrieved employees;

3 8. Appointing Phoenix Settlement Administrators (the “Settlement Administrator”) as the  
4 settlement administrator to handle the notice and administration process and preliminarily approving  
5 settlement administration costs estimated to be \$8,500.00;

6 9. Dismissing, without prejudice, Defendant Orestis Simos and Defendant Water’s Edge  
7 Restaurant and Bar from the action;

8 10. Approving the proposed class notice and ordering it be disseminated to the class  
9 members as provided in the Settlement Agreement;

10 11. Directing the Settlement Administrator to mail the class notice to the proposed class;

11 12. Approving the proposed deadlines for the notice and administration process as reflected  
12 in this motion and in the Settlement Agreement;

13 13. Setting a date for a final fairness hearing to determine, following dissemination of the  
14 proposed class notice packet, whether to grant final approval of the settlement; and

15 14. Granting Plaintiffs leave to file the overlength brief included with this motion.

16 This motion is based on this Notice of Motion and Motion for Preliminary Approval of Class  
17 Action Settlement; the Memorandum of Points and Authorities in support thereof; the declaration of  
18 Plaintiffs’ counsel Jonathan Melmed; the declarations of Plaintiffs; the Settlement Agreement; the  
19 proposed class notice; the proposed order granting preliminary approval of the Settlement Agreement  
20 and setting a settlement fairness hearing; the other records, pleadings, and papers filed in this action;  
21 and upon such other evidence or argument as may be presented to the court at the hearing of this motion.

22 Dated: June 20, 2023

**MELMED LAW GROUP P.C.**



**KYLE D. SMITH**

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks preliminary approval of a wage-and-hour class action settlement between  
4 Plaintiffs Joseph D. Aguilar and Christian Beller (collectively, “Plaintiffs”) and Defendants Tastes &  
5 Tales, LLC, Waterside, LLC, Ventura Harbor Restaurant Associates, Inc., Water’s Edge Restaurant  
6 and Bar, Chrysilios Chrysiliou, and Orestis Simos (“Defendants”) (collectively, the “Parties”) for the  
7 Gross Settlement Amount of \$350,000.00 to be distributed to approximately 431 individuals defined  
8 as:

9 All current and former non-exempt employees who were employed by Defendants in  
10 California during the Class Period and who were paid wages by Waterside, LLC or  
11 Ventura Harbor Restaurant Associates, Inc. (or if any such person is incompetent,  
12 deceased, or unavailable due to military service, the person's legal representative or  
13 successor in interest evidenced by reasonable verification)  
14

15 These employees are referred to herein individually as the “Class Members” or collectively as  
16 the “Class.” The “Class Period” for these purposes is defined as the period from March 1, 2018, through  
17 January 29, 2023. A true and correct copy of the *Class Action and PAGA Settlement Agreement and*  
18 *Class Notice* (the “Settlement Agreement”), which is based on the Los Angeles Superior Court’s  
19 *[Model] Class Action and PAGA Settlement Agreement* (LASC CIV 296), is attached as **Exhibit 1** to  
20 the concurrently filed *Declaration of Jonathan Melmed in Support of Plaintiffs’ Motion for Preliminary*  
21 *Approval of Class Action Settlement* (“Declaration of Jonathan Melmed” or “Melmed Decl.”). A  
22 version of the Settlement Agreement showing redlines from the model agreement is attached to the  
23 Declaration of Jonathan Melmed as **Exhibit 2**. The Settlement Agreement, in its entirety, is  
24 incorporated herein by reference.

25 Plaintiffs also represent a group of approximately 125 aggrieved employees on behalf of the  
26 State of California as a private attorney general pursuant to the California Labor Code Private Attorneys  
27 General Act of 2004, Labor Code sections 2698 through 2699.6 (“PAGA”). The “PAGA Period” for  
28

these purposes is defined as the period from March 1, 2021, through January 29, 2023. The “Aggrieved Employees,” for these purposes, are defined as:

All current and former non-exempt employees who were employed by Defendants in California during the PAGA Period and who were paid wages by Defendants (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification).

The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendants. (Settlement Agreement, at p. 6.) Class Members are not required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 4.) The applicable employer-side payroll taxes are to be paid by Defendants outside the Gross Settlement Amount. (Settlement Agreement, at p. 6.)

Because the settlement is fair and reasonable, was negotiated at arm’s length between counsel following extensive investigation and discovery, was reached after participation in a full-day mediation, it should be preliminarily approved. (Melmed Decl., ¶ 7.) Subject to court approval, the “Net Settlement Amount” of at least **\$152,333.33**, will be distributed to Class Members who do not request exclusion from the settlement and the Aggrieved Employees.

|                                 |                      |
|---------------------------------|----------------------|
| <b>Gross Settlement Amount</b>  | <b>\$350,000.00</b>  |
| Attorneys’ Fees                 | (up to \$116,666.67) |
| Litigation Costs                | (up to \$15,000.00)  |
| Settlement Administration Costs | (up to \$8,500.00)   |
| Service Awards to Plaintiffs    | (up to \$20,000.00)  |
| PAGA Payment to LWDA            | (\$37,500.00)        |
| <b>Net Settlement Amount</b>    | <b>\$152,333.33</b>  |

1 This settlement is an excellent result considering the number of Class Members affected.  
2 Because the Settlement is well within the zone of reasonableness, Plaintiffs request entry of an order:  
3 (1) preliminarily certifying the Settlement Class under California Code of Civil Procedure section 382  
4 and California Rules of Court, rule 3.769(c), for settlement purposes and preliminarily approving the  
5 settlement; (2) preliminarily appointing Plaintiffs as class representatives for purposes of settlement;  
6 (3) preliminarily appointing Plaintiffs' counsel as class counsel for the purposes of settlement;  
7 (4) preliminarily approving the settlement as fair, adequate, and reasonable; (5) preliminarily  
8 approving the proposed deductions from the Gross Settlement Amount, including the proposed  
9 allocation of PAGA penalties, the attorneys' fees, litigation costs, service award to the named Plaintiffs,  
10 and administration costs; (6) approving the proposed class notice attached as Exhibit A to the  
11 Settlement Agreement ("Class Notice"), to be distributed to Class Members pursuant to the Settlement  
12 Agreement; (7) appointing Phoenix Settlement Administrators ("Settlement Administrator") to  
13 administer the settlement and directing the Settlement Administrator to distribute the Class Notice; and  
14 (8) scheduling a hearing for final approval after the completion of the settlement notice process.

## 15 **II. BACKGROUND**

### 16 **A. THE PARTIES**

17 Plaintiffs are former restaurant employees at Defendants' Water's Edge Restaurant and Bar  
18 location. Plaintiff Aguilar served as a food runner from September 2021 through February 2022.  
19 Plaintiff Beller served variously as a busser, a food runner, and a server. His employment ended in  
20 early July 2022. Both plaintiffs were paid at a rate of \$15.00 per hour, plus tips. (Melmed Decl., ¶ 15.)

21 Defendants operate several restaurants in the County of Ventura. The Class Members and  
22 Aggrieved Employees were paid variously by Defendants Ventura Harbor Restaurant Associates Inc.  
23 and Waterside, LLC. Plaintiffs alleged that Defendants' employees—including Plaintiffs, the Class  
24 Members, and the Aggrieved Employees (collectively, the "Employees")—experienced various  
25 violations of California's wage-and-hour laws. (Melmed Decl., ¶ 16.)

### 26 **B. PROCEDURAL SUMMARY**

27 On March 1, 2022, Plaintiff Aguilar submitted a letter to the California Labor and Workforce  
28 Development Agency ("LWDA") to notify the LWDA, pursuant to PAGA, of Plaintiff Aguilar's intent

1 to seek civil penalties against Defendants for violations of Labor Code sections 201, 202, 203, 204,  
2 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,  
3 and others that may be applicable; and California Industrial Welfare Commission (“IWC”) Wage  
4 Orders 1-2001 and/or 5-2001 (the “Applicable Wage Orders”). (Cal. Code of Regs., tit. 8, §§ 11010,  
5 11050; Melmed Decl., ¶ 17.) The letter attached Plaintiffs’ original complaint, and incorporated the  
6 original complaint by reference, and thus sought penalties for claims identical to those alleged in the  
7 case.

8 On March 1, 2022, Plaintiff Aguilar commenced this action by filing a class action complaint  
9 alleging causes of action against Defendants for **(1)** failure to pay minimum wage for all hours worked  
10 in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Orders; **(2)** failure to  
11 pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable  
12 Wage Orders; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in  
13 violation of Labor Code section 226.7 and the Applicable Wage Orders; **(4)** failure to provide  
14 compliant meal periods and pay missed meal period premiums in violation of Labor Code sections  
15 226.7 and 512, and the Applicable Wage Orders; **(5)** failure to maintain accurate employment records  
16 in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in  
17 violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in  
18 violation of Labor Code sections 201, 202, and 203; **(8)** failure to provide complete and accurate wage  
19 statements in violation of Labor Code sections 226 and 226.3; **(9)** deceptive, fraudulent, or otherwise  
20 unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law  
21 (Bus. & Prof. Code, §§ 17200–17210). (Melmed Decl., ¶ 18.)

22 On March 7, 2022, Plaintiffs filed a supplemental PAGA letter notifying the LWDA of their  
23 intent to add Plaintiff Beller to the action and adding one cause of action for failure to pay all split shift  
24 premiums in violation of Labor Code sections 1197 and 1198, and the Applicable Wage Orders.  
25 (Melmed Decl., ¶ 19.)

26 On March 14, 2022, Plaintiffs filed a first amended complaint adding Plaintiff Beller to the  
27 action and adding one cause of action for failure to pay all split shift premiums in violation of Labor  
28 Code sections 1197 and 1198, and the Applicable Wage Orders. (Melmed Decl., ¶ 20.)

1 On May 31, 2022, Plaintiffs filed a second amended complaint alleging all causes of action  
2 against Defendants for those described in the second amended complaint and adding one cause of action  
3 for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The second  
4 amended complaint is the operative complaint in the action (the “Operative Complaint”). (Melmed  
5 Decl., ¶ 21.)

6 Thereafter, the Parties agreed to attend a private mediation with David S. Phillips. Prior to the  
7 mediation, Plaintiffs’ counsel conducted significant informal discovery. Discovery, investigation, and  
8 prosecution has included, among other things, numerous telephonic conferences with Plaintiffs;  
9 inspection and analysis of thousands of pages of documents, including Defendants’ relevant policies  
10 and employee handbook, and other information produced by Plaintiffs and Defendants; analysis of  
11 work-related data from a sample of Class Members and Aggrieved Employees; an analysis of the legal  
12 positions taken by Defendants; investigation into the viability of class treatment of the claims asserted  
13 in the action; analysis of potential class-wide damages, including information sufficient to understand  
14 Defendants’ potential defenses to Plaintiffs’ claims; research of the applicable law with respect to the  
15 claims asserted in the Operative Complaint and the potential defenses thereto; and assembling and  
16 analyzing of data for calculating damages. (Melmed Decl., ¶ 22.)

17 Among other key pieces of information, Plaintiffs’ 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. The Parties agreed on, and Defendants produced, a 29% sampling of randomly-  
20 selected employees, which Plaintiffs’ counsel determined would provide a statistically significant  
21 sample size with a high-degree of confidence for Plaintiffs’ expert’s statistical analysis. This sampling  
22 included payroll records and timesheets for the Class Members’ shifts during the Class Period. From  
23 these records, Plaintiffs’ expert was able to carefully craft a damages model for each of the categories  
24 of alleged claims for which the data would reflect violations. (Melmed Decl., ¶ 23.)

25 On November 29, 2022, the Parties participated in a full-day mediation with David S. Phillips  
26 who is a full-time mediator with extensive experience in California wage and hour class action lawsuits.  
27 The mediation negotiations were contentious and the mediation was initially unsuccessful. The Parties,  
28 however, continued their negotiations through the mediator. On January 3, 2023, the Parties accepted

1 a mediator's proposal concerning the broad terms of a settlement agreement between the Parties.  
2 (Melmed Decl., ¶ 24.)

3       Thereafter, the Parties spent several more months negotiating the details of a settlement  
4 agreement embodying the Parties' agreement. On or about May 24, 2023, the Parties executed the  
5 longform Settlement Agreement now before the Court for approval. (Melmed Decl., ¶ 25.) The  
6 Settlement Agreement generally follows the Los Angeles Superior Court's *[Model] Class Action and*  
7 *PAGA Settlement Agreement* (LASC CIV 296), with changes reflecting the specific terms of the  
8 Parties' agreement.

9       Plaintiffs now seek the Court's preliminary approval of the Settlement Agreement.

### 10 **III. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE**

11       Plaintiffs allege several categories of wage and hour violations on behalf of the Employees.  
12 Plaintiffs' primary claims stem from Defendants' alleged unlawful practices concerning the  
13 Employees' meal periods, rest periods, and overtime payments. These alleged errors would also trigger  
14 derivative claims for wage statement penalties, waiting time penalties, and PAGA penalties. (Melmed  
15 Decl., ¶ 26.)

16       Defendants have persistently denied all liability of any kind associated with the claims and  
17 allegations, and further denied that the Employees are entitled to any relief. Defendants also deny that  
18 these allegations are appropriate for class or representative treatment for any purpose other than the  
19 settlement. Defendants maintain, among other things, that they have complied with California laws in  
20 all respects. (Melmed Decl., ¶ 27.)

21       A summary of the legal and factual basis for each claim, the applicable defenses, and the  
22 potential damages are summarized in more detail below. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168  
23 Cal.App.4th 116, 133; *Munoz v. BCI CocaCola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th  
24 399, 409.)

#### 25 **A. OVERTIME ALLEGATIONS**

26       Labor Code section 510 requires an employer to compensate an employee who works more  
27 than eight hours in one workday, 40 hours in a workweek, and for the first eight hours worked on the  
28 seventh consecutive day no less than one and one-half times the regular rate of pay for the employee.

1 It further obligates employers to compensate employees at no less than twice the regular rate of pay  
2 when an employee works more than 12 hours in a day or more than eight hours on the seventh  
3 consecutive day of work. The “regular rate of pay” for these purposes is not the same as the employee’s  
4 base hourly rate, but rather it must include “adjustments to the straight time rate, reflecting, among  
5 other things, shift differentials and the per-hour value of any nonhourly compensation the employee  
6 has earned.” (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

7 Here, Plaintiffs alleged that the Employees who worked overtime would often be provided with  
8 wage statements from two separate entities for the same work period. Thus, on paper it would appear  
9 that the employee was not entitled to overtime because the hours reflected by each separate entity did  
10 not exceed the threshold required to pay overtime. In reality, however, the employee worked overtime  
11 hours for a single employer and was only paid for those hours at their base hourly rate. (Melmed Decl.,  
12 ¶ 29.)

13 Defendants argued that most employees did not work overtime hours, and when they did, they  
14 were fully paid at the legally-required overtime rates. Indeed, Defendants’ employee handbook  
15 correctly informed the Employees of their entitlement to overtime if they worked more than eight hours  
16 in a day or 40 hours in a week. Defendants further argued that, to the extent any overtime violations  
17 occurred, the allegations for unpaid overtime wages would yield minimal exposure. (Melmed Decl., ¶  
18 30.)

19 Plaintiffs alleged that unpaid overtime occurred in approximately 10% of all workweeks at an  
20 average rate of approximately three underpaid hours per workweek. Across 16,040 workweeks during  
21 the Class Period, with an average base hourly rate of \$13.91, Plaintiffs estimated Defendants’  
22 maximum exposure for this claim to be **\$66,934.92** in unpaid overtime wages. (Melmed Decl., ¶ 31.)

## 23 **B. REST PERIOD ALLEGATIONS**

24 Under Labor Code section 226.7 and the Applicable Wage Orders, employers are required to  
25 provide their non-exempt employees with compensated, duty-free rest periods of not less than ten  
26 minutes for every major fraction of four hours worked. Likewise, Labor Code section 226.7 provides  
27 that “[a]n employer shall not require an employee to work during a meal or rest or recovery period  
28 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial

1 Welfare Commission . . . .” (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides  
2 that employers must pay their employees one additional hour of pay at the employee’s regular rate for  
3 each workday that a “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).)

4 The California Supreme Court has held that, during required rest periods, “employers must  
5 relieve their employees of all duties and relinquish any control over how employees spend their break  
6 time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing control over  
7 employees during rest periods requires that employees be “free to leave the employer’s premises” and  
8 be “permitted to attend to personal business.” (*Id.* at p. 275.)

9 Here, Plaintiffs alleged that the Employees were routinely denied their rest periods. Plaintiffs  
10 further alleged that even when the Employees were given rest breaks, Defendants retained control over  
11 what the Employees could do and where they could be located, such that the rest periods given  
12 remained unlawful. Defendants, for example, posted a memorandum that stated: “Coffee and food can  
13 be consumed only before clocking in. Food and coffee breaks will not be allowed once you clock in.”  
14 Thus, Plaintiffs alleged that it was the uniform policy and practice of Defendants to completely deny  
15 the Employees their rest breaks. (Melmed Decl., ¶ 32.)

16 Plaintiffs further argued that Defendants adopted an unlawful on-premises rest period policy in  
17 their handbook, stating “All breaks must be taken on the WE premises.” Plaintiffs argued that this  
18 policy violates California’s rest period rules, as it keeps the employees “tethered by time and policy to  
19 particular locations.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269; Melmed  
20 Decl., ¶ 33.)

21 Defendants argued that the Employees were provided with compliant rest periods. First,  
22 Defendants pointed to their rest period policy, which provided that “If you work four hours or more,  
23 you may take one ten (10) minute break. . . . If you work eight hours or more, you may take two ten  
24 (10) minute breaks . . . .” (Melmed Decl., ¶ 34.) Defendants argued that this policy fully complied with  
25 California law and Plaintiffs would therefore be unable to establish liability for rest period violations.  
26 Plaintiffs, however, argued that Defendants’ policy actually misstates California law—the Employees  
27 should have been entitled to a rest period if they worked a “major fraction” of a four-hour period. A  
28 “major fraction” of a four-hour period, for these purposes, is more than two hours, not four hours as

1 described in Defendants' policy. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004,  
2 1029; Melmed Decl., ¶ 34.)

3 Defendants further argued that Plaintiffs' rest period claims were highly individualized, such  
4 that Plaintiffs would not be able to obtain class certification. Defendants argued that "[the] reasons that  
5 employees fail to take [rest] breaks can be manifold: the employees could have forgotten, wanted to  
6 finish assignments, were not hungry, did not want to leave the premises, wanted to leave early or,  
7 possibly, were manipulating their timecards." (*Sultan v. Medtronic, Inc.* (C.D. Cal., July 23, 2012, No.  
8 CV 11-4132-MWF PLAX) 2012 WL 3042212, at \*2; see also *Sotelo v. MediaNews Group, Inc.* (2012)  
9 207 Cal. App. 4th 639, 654–655.) Thus, even if Plaintiffs succeeded in arguing that Defendants did not  
10 sufficiently provide the Employees with rest periods, the resulting inquiries were arguably entirely  
11 individual and would overwhelm any class-wide questions. (Melmed Decl., ¶ 35.) Separate mini-trials  
12 would have to determine both *liability* (i.e., whether Defendants prevented a particular employee from  
13 taking rest breaks they knew they were entitled to take) and *damages* (i.e., how often Defendants  
14 prevented a particular employee from taking a rest break). (Melmed Decl., ¶ 35.) Defendants further  
15 contended that the Employees worked with different supervisors who may have instructed the  
16 Employees differently regarding when and how they must take rest breaks, leading to serious  
17 challenges to certification and manageability as to this claim. (Melmed Decl., ¶ 35.)

18 From informal discovery, Plaintiffs' expert has identified 53,481 total shifts that exceeded 3.5  
19 hours in length, thus triggering a right to at least one rest period. Although the frequency of rest periods  
20 was not tracked in Defendants' data, Plaintiffs' counsel has applied an estimated 40% violation rate to  
21 this claim based on the facts understood about this claim, estimating that approximately 21,392 shifts  
22 experienced a rest period violation. With an average hourly rate of \$13.91, Plaintiffs estimate  
23 Defendants' maximum exposure for this claim to be \$297,562.72. Plaintiffs then ascribed a 50%  
24 discount based on the very real risks that this Court might agree with Defendants' arguments  
25 concerning class certification. Plaintiffs then ascribed an additional 60% discount based on the  
26 foreseeable difficulty Plaintiffs anticipated in their ability to prove the rest period allegations (for which  
27 there is no documentary evidence). Plaintiffs thus concluded that Defendants' realistic exposure for  
28 this claim was **\$59,512.54**. (Melmed Decl., ¶ 36.)

1           **C.     MEAL PERIOD ALLEGATIONS**

2           Employers are required to provide their nonexempt employees with a thirty-minute  
3 uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd.  
4 (a).) Additionally, an employee who works more than ten hours per day is entitled to receive a second  
5 thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a).) Labor Code  
6 section 226.7 provides that employers must pay their employees one additional hour of pay at the  
7 employee’s regular rate for each workday that a “meal or rest or recovery period is not provided.” (Lab.  
8 Code, § 226.7, subd. (c).)

9           Here, Plaintiffs argued that Defendants routinely denied the Employees legally compliant and  
10 timely off-duty meal periods. Based on the informal discovery, Plaintiffs alleged that approximately  
11 89.8% of all shifts longer than six hours included no first meal period. (Melmed Decl., ¶ 37.)

12           Defendants argued that the Employees were provided with compliant meal periods, insofar as  
13 they were permitted to take meal periods if they chose to do so. Defendants’ clear written policy, and  
14 the policy enforced by Defendants’ supervisors, was to provide the Employees with compliant off-duty  
15 meal periods free from Defendants’ control. Specifically, Defendants’ meal break policy expressly  
16 authorized and permitted Employees to take a 30-minute meal period in shifts longer than six hours in  
17 length. Defendants further argued that the Employees, during their onboarding process, had signed  
18 meal period waivers for shifts less than six hours. (Melmed Decl., ¶ 38.)

19           Defendants further argued that it did not promulgate an unlawful meal break policy. In fact,  
20 Defendants argued that their meal period policies were facially compliant with California law. (Melmed  
21 Decl., ¶ 39.) In *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, the California  
22 Supreme Court held an employer is required only to “provide” breaks, but is not required to (and, in  
23 this context, simply cannot as a practical matter) ensure that they are taken. Given that Defendants had  
24 a policy of offering the Employees compliant meal periods, any meal periods that might appear  
25 noncompliant were presumably voluntarily waived by the Employees. (Melmed Decl., ¶ 39.)

26           Defendants further argued that any late or missed meal periods would require inquiries that are  
27 entirely individual and would overwhelm any class-wide questions. (Melmed Decl., ¶ 40.) To  
28 determine whether Defendants violated the law, the Court will require an individualized assessment of

1 the various factors pertaining to meal periods and the nature of the work at each separate location.  
2 Defendants argued this individualized nature of the claim would defeat Plaintiffs' requirement of  
3 demonstrating typicality. (Melmed Decl., ¶ 40.)

4 In terms of Defendants' exposure for this claim, Plaintiffs determined through informal  
5 discovery that approximately 29,138 meal-period-eligible shifts were worked by the Employees during  
6 the Class Period. Plaintiffs' expert also determined that approximately 26,160 shifts contained a  
7 potential meal break violation. Plaintiffs further determined that the average rate of pay for this claim  
8 was approximately \$13.91 per hour. Plaintiffs thus estimated that Defendants' maximum exposure for  
9 this claim was approximately \$363,885.60. Plaintiffs, however, recognized that if the Court found that  
10 Defendants' practices were lawful, and that Defendants did in fact authorize and permit the Employees  
11 to take Labor Code compliant meal periods, then Plaintiffs' entire meal period claim could potentially  
12 be wiped out. Plaintiffs also considered the possibility that certification could be denied, in part due to  
13 the fact individualized inquiries might have to be made into whether particular meal periods were  
14 voluntarily waived by the Employees. For those reasons, Plaintiffs applied an 75% discount to the meal  
15 period claims in this case based on the very real risks that a factfinder or the Court might agree with  
16 Defendants' defenses on the claim. Thus, Plaintiffs determined the realistic settlement value of this  
17 claim to be approximately **\$90,971.40**. (Melmed Decl., ¶ 41.)

#### 18 **D. MINIMUM WAGE ALLEGATIONS**

19 Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by  
20 the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section  
21 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a civil action  
22 the unpaid balance of the full amount of this minimum wage." (See also Lab. Code, §§ 1185 [giving  
23 the Applicable Wage Orders the force of law], 1198 [same].) Labor Code sections 1194, subdivision  
24 (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal  
25 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as  
26 liquidated damages in an amount equal to the wages due and interest thereon. (See also Lab. Code, §§  
27 1197.1, 1199.) Liquidated damages under this provision, however, may not be applicable where the  
28 employer acted in good faith and "had reasonable grounds for believing that the act or omission was

1 not a violation of any provision of the Labor Code relating to minimum wage, or an order of the  
2 commission.” (Lab. Code, § 1194.2, subd. (b).)

3 The California Supreme Court has held that meal and rest break premium payments are a form  
4 of “wages” and not “penalties.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094,  
5 1102.) Accordingly, Plaintiffs argued that Defendants’ alleged failure to pay applicable meal and rest  
6 period premiums, as described above, resulted in the Employees “receiving less than the legal minimum  
7 wage” required by Labor Code sections 226.7 and 1194. In other words, Plaintiffs alleged that  
8 Defendants’ failure to pay applicable meal and rest period premiums was effectively a violation of the  
9 minimum wage. (Melmed Decl., ¶ 42.)

10 Because Plaintiffs’ minimum wage allegations were largely derivative of the meal and rest  
11 period allegations, Defendants’ defenses to this claim were the same as those described above.  
12 Defendants argued, among other things, that the Employees were fully compensated and that such  
13 violations were rare and nominal in value, if they occurred at all. (Melmed Decl., ¶ 43.) Additionally,  
14 there is a lack of case law definitively establishing that a failure to pay a meal or rest break premium  
15 under Labor Code section 226.7 is a standalone minimum wage violation.

16 In terms of Defendants’ exposure for this claim, the recoverable amount under Labor Code  
17 sections 1194 and 1194.2 is the “balance of the full amount of this minimum wage” plus liquidated  
18 damages in an amount equal to the wages due and interest thereon. The first portion of this amount—  
19 the unpaid balance of the minimum wage—is already accounted for in the damages analysis in the meal  
20 and rest period sections above and therefore does not increase Defendants’ maximum exposure.  
21 (Melmed Decl., ¶ 44.)

22 The second portion under Labor Code sections 1194 and 1194.2—the liquidated damages and  
23 interest—would be identical to Defendants’ combined maximum exposure for Plaintiffs’ meal and rest  
24 period allegations, plus interest (i.e., \$363,885.60 for the meal period claims, plus \$297,562.72 for the  
25 rest period claims, or \$661,448.32 plus interest). (Melmed Decl., ¶ 45.) The liquidated damages portion  
26 of this amount, however, is subject to elimination based on the good faith exception in Labor Code  
27 section 1194.2, subdivision (b).  
28

1 Here, Plaintiffs determined that there was a strong possibility that a Court would find that the  
2 good faith exception applied because, among other reasons, Defendants did in fact pay an hourly rate  
3 well-above minimum wage for all hours that were paid to the Employees. Rather, the alleged violation  
4 arose derivatively as a result of unpaid meal and rest period premiums. Plaintiffs therefore discounted  
5 the liquidated damages portion of this claim in their analysis of Defendants’ realistic exposure.  
6 (Melmed Decl., ¶ 46.)

#### 7 **E. SPLIT SHIFT ALLEGATIONS**

8 Under the Applicable Wage Orders, a “split shift” is defined as “a work schedule, which is  
9 interrupted by non-paid non-working periods established by the employer, other than bona fide rest or  
10 meal periods.” When an employer requires an employee to work a split shift, the employee is entitled  
11 to a split shift premium, which is equal to the difference between what the employee earned for the  
12 shift and what they would have earned had they been paid the minimum wage for their entire shift plus  
13 an extra hour. (Cal. Code of Regs., tit. 8, §§ 11010, 11050, subds. 4(C); *Aleman v. AirTouch Cellular*  
14 (2012) 209 Cal.App.4th 556, 575–576.) The Applicable Wage Orders treat split shift violations as a  
15 minimum wage violation. Labor Code sections 1197 and 1198 make the minimum wages set by the  
16 IWC enforceable and recoverable in a civil action.

17 Here, Plaintiffs alleged that the Employees’ shifts were periodically interrupted by non-paid,  
18 non-working periods of several hours. Through informal discovery, however, Plaintiffs’ expert  
19 determined that split shifts occurred in approximately 0.68% of all recorded shifts—many of which did  
20 not trigger a right to additional split shift pay. Accordingly, Plaintiffs determined that Defendants’  
21 exposure on this claim was likely nominal in value and did not meaningfully contribute to Defendants’  
22 overall exposure. Accordingly, Plaintiffs discounted the damages attributable to unpaid split shift  
23 premiums in their analysis of Defendants’ realistic exposure. (Melmed Decl., ¶ 47.)

#### 24 **F. DERIVATIVE RECORDKEEPING ALLEGATIONS**

25 Labor Code section 226, subdivision (a), requires employers to keep an accurate record of,  
26 among other things, all hours worked by employees, their gross wages earned, and all applicable hourly  
27 rates in effect during the pay period. Labor Code section 226.3 provides that “in addition to any other  
28 penalty provided by law” employers who fail to keep the records required by Labor Code section 226,

1 subdivision (a), are subject to a civil penalty of \$250 per employee per violation in an “initial citation”  
2 and \$1,000 per employee for each violation “in a subsequent citation.” (Lab. Code, § 226.3.) Likewise,  
3 Labor Code sections 1174 and 1174.5 require employers to keep “accurate and complete” payroll  
4 records or else be subject to a civil penalty in the amount of \$500.

5 The California Supreme Court has held that meal and rest break premium payments are a form  
6 of “wages” and not “penalties.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094,  
7 1102.) Accordingly, Plaintiffs argued that Defendants’ alleged failure to pay applicable meal and rest  
8 period premiums, as described above, resulted in the Employees receiving wage statements that did not  
9 show the gross wages earned by the Employees, and thus failed to accurately keep the records required  
10 by Labor Code sections 226, subdivision (a), 226.3, 1174, and 1174.5. (Melmed Decl., ¶ 48.)

11 As with Plaintiffs’ other claims, Defendants argued that the Employees were fully compensated  
12 and that such violations were rare and nominal in value, if they occurred at all. Defendants thus  
13 concluded that Plaintiffs could not claim recordkeeping penalties because the wage statements  
14 accurately reflected all wages earned by the Employees. (Melmed Decl., ¶ 49.)

15 Of note, unlike other claims, the civil penalty required by Labor Code section 1174.5 is not  
16 calculated on a per employee, per violation, or per pay period basis. Rather, the statutory language  
17 could be read to impose a single civil penalty of \$500 for all violations combined. Moreover, the  
18 penalties provided by Labor Code section 226.3 may be disregarded “for a first violation when that  
19 violation was due to a clerical error or inadvertent mistake.”

20 As explained above, Defendants maintained an arguably compliant meal and rest period policy.  
21 (Melmed Decl., ¶ 51.) Moreover, Defendants have not yet received “in an initial citation” as required  
22 by Labor Code section 226.3. Defendants therefore had a strong claim that the penalties under Labor  
23 Code section 226.3 were altogether inapplicable as mere inadvertent mistakes, or, at best, were subject  
24 only to the lower \$250 penalty per employee. (Melmed Decl., ¶ 51.) With approximately 125 Class  
25 Members having worked during the applicable statutory period, Plaintiffs calculated Defendants’  
26 maximum exposure for this claim as being \$31,750 (\$500 for the penalty under Labor Code section  
27 1174.5 and \$250 for each of the 125 employees under Labor Code section 226.3). (Melmed Decl., ¶  
28 51.)

1 In ascertaining Defendants’ realistic exposure, however, Plaintiffs discounted the amounts  
2 attributable to penalties under Labor Code section 1174 because of the very real risk that Defendants  
3 would successfully argue that its payroll records were, in fact, accurate and complete, as they reflected  
4 the true amount of payroll wages issued to the Employees. (Melmed Decl., ¶ 52.) Plaintiffs further  
5 discounted the amounts attributable to penalties under Labor Code section 226.3 based on the very real  
6 risks that Defendants’ good faith argument would prevail and that Courts have opted to impose the  
7 base PAGA penalties (accounted for in the “PAGA Penalties” section below) in lieu of the heightened  
8 penalties under 226.3. (See, e.g., *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 356;  
9 Melmed Decl., ¶ 52.)

#### 10 **G. DERIVATIVE UNTIMELY WAGES ALLEGATIONS**

11 Labor Code section 204 expressly requires employers who pay employees on a weekly,  
12 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the  
13 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate  
14 Labor Code section 204 subject to a penalty of \$100 for each initial violation, and \$200 for each  
15 subsequent violation, plus 25% of the amount unlawfully withheld. (Lab. Code, § 210, subd. (a).) The  
16 penalty provided by Labor Code section 210 is “[i]n addition to, and entirely independent and apart  
17 from, any other penalty provided in this article . . . .” (Lab. Code, § 210, subd. (a).)

18 The California Supreme Court has held that meal and rest break premium payments are a form  
19 of “wages” and not “penalties.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094,  
20 1102.) Accordingly, Plaintiffs argued that Defendants’ alleged failure to pay applicable meal and rest  
21 period premiums, as described above, resulted in a portion of the wages earned by the Employees not  
22 being paid with seven calendar days following the close of the payroll period as required by Labor  
23 Code section 204, and thus triggering a right to penalties under Labor Code section 210. (Melmed  
24 Decl., ¶ 53.)

25 As with Plaintiffs’ other claims, Defendants argued that the Employees were fully compensated  
26 and that such violations were rare and nominal in value, if they occurred at all. Defendants thus  
27 concluded that Plaintiffs could not claim untimely wage penalties. (Melmed Decl., ¶ 54.) Defendants  
28 could also argue that Labor Code sections 204 and 210 are statutes aimed at the improper *scheduling*

1 of wages. Because Defendants' wage payment schedule was correct, and because the wages Defendants  
2 believed were owed were in fact paid on time, no penalty under Labor Code section 210 should  
3 therefore be imposed.

4 In terms of Defendants' exposure for this claim, Plaintiffs calculated that approximately 125  
5 Class Members worked a total of approximately 2,011 pay periods during the applicable statutory  
6 period for this claim. Applying the maximum penalties (i.e., \$100 per employee, per pay period for the  
7 initial violation and \$200 per employee, per pay period for each subsequent violation) would yield a  
8 maximum exposure for Defendants of \$389,700. Plaintiffs then ascribed a 90% discount based on the  
9 very real risks that a factfinder might agree with Defendants' defenses on the claim. Plaintiffs thus  
10 concluded that Defendants' realistic exposure for this claim was **\$38,970**. (Melmed Decl., ¶ 55.)

#### 11 **H. DERIVATIVE WAITING TIME PENALTY ALLEGATIONS**

12 Labor Code section 203 provides that if an employer willfully fails to pay compensation  
13 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the  
14 employer is liable for penalties in the form of continued compensation up to thirty workdays. (See  
15 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

16 Plaintiffs alleged that, because of the violations described above, those employees whose  
17 employment with Defendants had terminated were entitled to waiting time penalties. As with Plaintiffs'  
18 other claims, Defendants argued that the Employees were fully compensated and that such violations  
19 were rare and nominal in value, if they occurred at all. Defendants thus concluded that the Employees  
20 could not claim waiting time penalties because the Employees had been fully and timely compensated  
21 upon discharge. (Melmed Decl., ¶ 56.)

22 Defendants further argued that waiting time penalties under Labor Code section 203 are only  
23 triggered if the violation is determined to be willful. Defendants argued that they were acting in good  
24 faith in their calculations of the Employees' wages. (See *Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 832  
25 F.Supp.2d 1122, 1133 ["a good faith dispute that any wages are due will preclude imposition of waiting  
26 time penalties"].) Thus, even if any underpayments had occurred, Defendants argued that they were  
27 inadvertent, made in good faith, and could not result in waiting time penalties. (Melmed Decl., ¶ 57.)  
28

1 In terms of Defendants' exposure for this claim, Plaintiffs alleged that approximately 266 of  
2 the Class Members were former employees. (Melmed Decl., ¶ 58.) From the informal discovery  
3 produced by Defendants, the average number of hours per shift was approximately 6.1 and the average  
4 base hourly rate was \$13.91. Thus, the maximum value of the waiting time penalty claim was therefore  
5 derived from the following formula: 266 employees × 30 days × 6.1 hours average per day × average  
6 rate of pay of \$13.91 per hour (or \$677,110.98). (Melmed Decl., ¶ 58.) However, after ascribing a 90%  
7 discount due to the very real risks that this court would agree with Defendants' good faith defense and  
8 because the claim is derivative of the underlying claims which may also fail to be certified or win on  
9 the merits, Plaintiffs estimated Defendants' realistic exposure for this claim to be approximately  
10 **\$67,711.10**. (Melmed Decl., ¶ 58.)

#### 11 **I. DERIVATIVE WAGE STATEMENT ALLEGATIONS**

12 Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of  
13 each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail  
14 to provide their employees with accurate, itemized wage statements may be subject to penalties under  
15 Labor Code section 226, subdivision (e). Plaintiffs alleged that, by virtue of the allegations that  
16 Defendants failed to properly pay the Employees their wages as described above, Defendants had  
17 likewise failed to provide the Employees with compliant wage statements reflecting their gross wages  
18 earned and their net wages earned. (Melmed Decl., ¶ 59.)

19 As with Plaintiffs' other claims, Defendants argued that the Employees were fully compensated  
20 and that such violations were rare and nominal in value, if they occurred at all. Defendants thus  
21 concluded that Plaintiffs could not claim wage statement penalties because there were no wage  
22 statement violations. (Melmed Decl., ¶ 60.)

23 Defendants further argued that purely derivative wage statement claims could not support a  
24 cause of action for wage statement penalties. In *Maldonado v. Epsilon Plastics, Inc.* (2018) 22  
25 Cal.App.5th 1308, 1334–1337, the appellate court held that inaccurate wage statements alone based on  
26 derivative Labor Code violations do not justify penalties. Rather, the plaintiff must establish injury  
27 from the inaccuracy and independent inaccuracies different from underpayments or derivative claims.  
28

1 Defendants further argued that Plaintiffs would be unable to prove “injury” for purposes of recovering  
2 penalties under Labor Code section 226, subdivision (e). (Melmed Decl., ¶ 61.)

3 In terms of Defendants’ exposure for this claim, Plaintiffs’ expert determined that Defendants’  
4 maximum exposure for this claim was approximately \$298,200. Plaintiffs then ascribed a 75% discount  
5 based on the very real risks that: (1) this Court might find that Defendants’ alleged wage statement  
6 errors were not made knowingly and intentionally such that the penalties would not be triggered,  
7 (2) this Court might find that Defendants’ alleged wage statement errors caused little or no injury to  
8 the Class Members, or (3) that this court might find that there were no errors made on the wage  
9 statements. Plaintiffs calculated that Defendants’ realistic exposure for this claim was **\$74,550.00**.  
10 (Melmed Decl., ¶ 62.)

#### 11 **J. UNFAIR COMPETITION ALLEGATIONS**

12 California’s Unfair Competition Law (“UCL”) proscribes unlawful business practices, which  
13 is defined broadly to include “any unlawful, unfair or fraudulent business act or practice.” (Bus. &  
14 Prof. Code, § 17200.) Violations of California’s Labor Code are actionable under the UCL. (*Sullivan*  
15 *v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1206; *Hodge v. Superior Court* (2006) 145 Cal.App.4th 278,  
16 283.) Under the UCL, damages cannot be recovered, and plaintiffs are generally limited to restitution  
17 and injunctive relief. (Bus. & Prof. Code, § 17203.) Claims for “payment of wages unlawfully withheld  
18 from an employee are . . . a restitutionary remedy authorized by section 17203.” (*Cortez v. Purolator*  
19 *Air Filtration Products Co.* (2000) 23 Cal.4th 163, 177.)

20 Here, Plaintiffs alleged that, by virtue of the allegations that Defendants failed to properly pay  
21 the Employees their wages as described above, Defendants were liable for restitution in the same  
22 amount of the unlawfully withheld wages described above. Because the relief sought under Plaintiffs’  
23 UCL claims—namely, in the form of restitution for unpaid wages—was coterminous with Plaintiffs’  
24 other claims, Plaintiffs’ UCL allegations did not materially change Plaintiffs’ analysis of Defendants’  
25 exposure. (Melmed Decl., ¶ 63.)

#### 26 **K. PAGA ALLEGATIONS**

27 Under Labor Code section 2699, subdivision (f)(2), and section 2699.5, employers that violate  
28 certain provisions of the Labor Code are subject to penalties according to the following formula:

- 1           1.       \$100.00 for the initial violation per employee per pay period; and
- 2           2.       \$200.00 for each subsequent violation per employee per pay period.

3           These penalties must be allocated seventy-five percent (75%) to the LWDA and twenty-five  
4 percent (25%) to the affected employees. (Lab. Code, § 2699, subd. (i).) Plaintiffs alleged that, because  
5 of the violations described above, Defendants were liable for these penalties for each applicable pay  
6 period during the applicable PAGA Period. (Melmed Decl., ¶ 64.)

7           In ascertaining Defendants’ exposure for this claim, Plaintiffs considered several important  
8 cases. First, courts to consider the issue have refused to “stack” PAGA penalties, severely limiting the  
9 recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529  
10 [approving PAGA penalty reduction to \$5 per pay period]; accord *Atempa v. Pedrazzani* (2018) 27  
11 Cal.App.5th 809.)

12           Second, Defendants argued that Plaintiffs are not entitled to recover PAGA penalties at the  
13 subsequent violation rate of \$200 per pay period. (Melmed Decl., ¶ 65.) California’s appellate courts  
14 have held that “[u]ntil the employer has been notified that it is violating a Labor Code provision  
15 (whether or not the commissioner or court chooses to impose penalties), the employer cannot be  
16 presumed to be aware [of the violation]” and therefore, until a Court or the Commissioner issues a  
17 finding of a violation, the initial \$100 violation rate applies for each pay period in which the alleged  
18 violation occurred. (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.) Thus,  
19 Defendants argued that even if Plaintiffs were able to establish any violation of the Labor Code, the  
20 PAGA penalties assessed for these violations will be computed at the \$100 rate, as opposed to the \$100  
21 per pay period rate at maximum. (Melmed Decl., ¶ 65.)

22           Defendants further argued that, given the nature of the allegations and Defendants’ efforts at  
23 good faith compliance with the Labor code, there is a likelihood that a further reduction of the penalty  
24 to \$5 per pay period as approved in *Carrington* would apply. (Melmed Decl., ¶ 66; *Carrington v.*  
25 *Starbucks Corp., supra*, 30 Cal.App.5th at p. 529.) Defendants further argued that even if Plaintiffs  
26 were able to recover some PAGA penalties on behalf of other aggrieved employees, courts frequently  
27 use their discretion under Labor Code section 2699, subdivision (e)(2), to significantly reduce PAGA  
28 penalties where such penalties would be unjust, arbitrary, and improper.

Here, there were approximately 2,011 pay periods within the applicable PAGA Period worked by approximately 125 Aggrieved Employees. (Melmed Decl., ¶ 67.) Applying PAGA’s maximum penalties (i.e., “one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation” (Lab. Code, § 2699, subd. (f)(2)) would yield a maximum exposure for Defendants of \$389,700. (Melmed Decl., ¶ 67.) However, considering Defendants’ defenses to the PAGA claim, Plaintiffs ascribed the very real risk of a court reducing the amount of awarded PAGA penalties, especially considering that the PAGA penalties themselves rival the amount of wages actually owed. For that reason, Plaintiffs followed a slightly-higher approach than was adopted in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 and ascribed a settlement value of \$30.00 per pay period for a total realistic exposure of **\$60,330**. (Melmed Decl., ¶ 67.)

#### **IV. SUMMARY OF THE PROPOSED SETTLEMENT**

Under the terms of the Settlement Agreement, Defendants will be released of all claims asserted in the Complaint in exchange for Defendants’ agreement to pay a non-reversionary settlement Gross Settlement Amount of \$350,000.00. (See generally, Settlement Agreement.)

##### **A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT**

Plaintiffs have applied appropriate discounts on the maximum settlement value as calculated above to come to Defendants’ realistic exposure of \$458,979.96. (Melmed Decl., ¶ 68.) As explained above, the issues in this case were hotly contested—both legally and factually. (*Ibid.*) While Plaintiffs continue to believe in the merits of the case, Defendants argued that they fully complied with California’s wage and hour laws, and thus faced minimal exposure, if any. (*Ibid.*) Therefore, the Gross Settlement Amount of \$350,000.00 is an excellent result and within the zone of reasonableness for all parties. (*Ibid.*) If preliminary approval is granted, Plaintiffs will have recovered **76.26%** of the estimated settlement value for the Class Members in this case—a fair compromise of the claims, by any measure. (*Ibid.*)

The Gross Settlement Amount in the Settlement Agreement was reached only after the case was thoroughly investigated by Plaintiffs’ counsel. (Melmed Decl., ¶ 78.) As explained above, Plaintiffs’ reviewed, among other key pieces of information, the records of a 29% sampling of

1 randomly-selected employees, which Plaintiffs' counsel determined would provide a statistically  
2 significant sample size with a high-degree of confidence for Plaintiffs' expert's statistical analysis.  
3 (Melmed Decl., ¶ 23.) This sampling included payroll records and timesheets for the Class Members'  
4 shifts during the Class Period. (Melmed Decl., ¶ 23.) Plaintiffs' counsel also conducted a detailed  
5 examination of Defendants' relevant policies to inform Plaintiffs' counsel's analysis of Defendants'  
6 potential exposure. (Melmed Decl., ¶ 22.) From these records, Plaintiffs' expert was able to carefully  
7 craft a damages model for each of the categories of alleged claims for which the data would reflect  
8 violations. (Melmed Decl., ¶ 23.) In total, Plaintiffs' counsel and Plaintiffs' expert reviewed thousands  
9 of pages of documents prior to agreeing to settle the case. (Melmed Decl., ¶ 22.)

10 These documents, along with the other investigation and discovery described above, were  
11 sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining  
12 that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,  
13 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiffs' counsel have  
14 concluded that the Gross Settlement Amount represents an excellent result for the Class. (Melmed  
15 Decl., ¶ 68.)

#### 16 **B. SETTLEMENT CONSIDERATION AND ALLOCATION**

17 The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement  
18 Administrator, currently estimated to not exceed \$8,500.00; **(2)** Plaintiffs' counsel's attorney fees not  
19 to exceed one-third of the Gross Settlement Amount, i.e., \$116,666.67; **(3)** litigation expenses and costs  
20 not to exceed \$15,000.00; **(4)** a service award to the named Plaintiffs in a combined amount of up to  
21 \$20,000.00; and **(5)** payment to the LWDA of \$37,500.00 for its 75% share of the settlement for civil  
22 penalties pursuant to PAGA. (Settlement Agreement, at pp. 6–8.)

23 After all Court-approved deductions from the Gross Settlement Amount, the Net Settlement  
24 Amount, which consist of at least \$152,333.33, will be distributed to all Class Members who do not  
25 request exclusion from the settlement and the Aggrieved Employees. (Settlement Agreement, at pp. 6–  
26 8.) Applicable employer-side payroll taxes will be paid by Defendants outside and separate from the  
27 Gross Settlement Amount. (Settlement Agreement, at p. 6.)  
28

1           **C.       THE RELEASE**

2           Under the Settlement Agreement, the “Released Claims” are divided into two categories: **(1)** the  
3 released claims for the purposes of the class action portion of the Settlement Agreement, and **(2)** the  
4 released claims for the purposes of the PAGA portion of the Settlement Agreement. (Settlement  
5 Agreement, at pp. 11–12.) The Released Claims for the purposes of the class action portion of the  
6 settlement agreement include all claims arising out of or related to the allegations set forth in the  
7 operative complaint. (Settlement Agreement, at p. 11.) The Released Claims for the purposes of the  
8 PAGA portion of the settlement agreement include all claims for civil penalties pursuant to PAGA that  
9 Plaintiffs asserted in Plaintiffs’ PAGA notice to the LWDA and in the operative complaint. (Settlement  
10 Agreement, at p. 12.) These releases will become effective on the date when Defendants fully funds the  
11 entire Gross Settlement Amount and funds all employer payroll taxes. (Settlement Agreement, at p. 10.)

12           **D.       SETTLEMENT ALLOCATION FORMULA**

13           Individual payments to the Class Members from the class-portion of the settlement will be  
14 calculated and apportioned based on the number of weeks worked as an eligible Class Member in  
15 California by the participating Class Member during the Class Period (the “Individual Settlement  
16 Payments”). (Settlement Agreement, at p. 7.) Specific calculations of Individual Settlement Payments  
17 will be determined by: **(a)** dividing the Net Settlement Amount by the total number of workweeks  
18 worked by all participating Class Members during the Class Period, and **(b)** multiplying the result by  
19 each participating Class Member’s workweeks. (Settlement Agreement, at p. 7.) If there are any timely  
20 submitted requests for exclusion, the settlement administrator will proportionately increase the  
21 Individual Settlement Payments for each participating Class Member so that the amount actually  
22 distributed to participating Class Members equals 100% of the Net Settlement Amount. (Settlement  
23 Agreement, at p. 8.)

24           If the amounts allocated to attorney’s fees, litigation costs, service awards, or the Settlement  
25 Administrator are approved at a lesser amount than provided in the Settlement Agreement, the  
26 remaining funds will be returned to the Net Settlement Amount and distributed proportionately to the  
27 participating Class Members based on their total workweeks worked. (Settlement Agreement, at pp. 6–  
28 8.)

1 Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement  
2 (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number  
3 of pay periods worked by each Aggrieved Employee during the PAGA Period compared to the total  
4 number of pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement  
5 Agreement, at p. 8.)

6 **E. SELECTION OF THE SETTLEMENT ADMINISTRATOR**

7 Plaintiffs, through counsel, have obtained bids from several settlement administration  
8 companies for the settlement administration of this case. Of those, Phoenix Settlement Administrators  
9 presented the lowest qualified bid. Accordingly, the Parties propose to use Phoenix Settlement  
10 Administrators as the settlement administrator. (Melmed Decl., ¶ 92; Settlement Agreement, at p. 13.)  
11 The settlement administrator will be responsible for processing the settlement payments and providing  
12 notice to the Class Members as outlined in the Settlement Agreement. (Settlement Agreement, at pp.  
13 14–18.)

14 **F. NOTICE PROCEDURES**

15 Within 15 days of the Court granting preliminary approval of the Settlement Agreement,  
16 Defendants shall provide the Settlement Administrator with an updated list of Class Members and  
17 Aggrieved Employees containing names, number of Class Period workweeks, number of PAGA Period  
18 pay periods, addresses, and social security numbers (the “Class Data”). (Settlement Agreement, at pp.  
19 8–9.)

20 Within 14 days of receiving the Class Data, the Settlement Administrator shall send the Class  
21 Notice by bulk first class mail, forwarding requested, to the Class Members at the addresses identified  
22 through the process described above. (Settlement Agreement, at p. 14.) The Class Notice will be  
23 substantially the form as the one attached as **Exhibit A** to Settlement Agreement. The release language  
24 of the Class Notice matches the release language of the Settlement Agreement. (Compare Settlement  
25 Agreement, Exh. A, at pp. 7–9, with Settlement Agreement, at pp. 11–12.)

26 The Class Notice also informs Class Members that the location, date, and time of the final  
27 approval hearing may be changed. (Settlement Agreement, Exh. A, at p. 11.)  
28

1           Additionally, the Class Notice will inform each Class Member of his or her estimated share of  
2 the settlement, as well as an easily understood statement alerting the Class Members that, unless they  
3 elect to opt out of the Settlement Agreement, the Class Member is releasing and waiving all “Released  
4 Claims” (as that term is defined in the Settlement Agreement and explained in the Class Notice).  
5 (Settlement Agreement, Exh. A, at pp. 1–2.)

6           The Class Notice will also inform the Class Members of their right to object to the Settlement  
7 Agreement. (Settlement Agreement, at pp. 3, 10–11.) Any Class Member who wishes to object to the  
8 Class Settlement may submit a written objection to the Settlement Administrator no later than 45 days  
9 following the date on which the Settlement Administrator first mails the Class Notice to the Class  
10 Members (“Response Deadline”). (Settlement Agreement, at p. 16.) Alternatively, Class Members may  
11 also object to the Settlement Agreement by appearing at the final approval hearing, either on their own  
12 or through an attorney. (Settlement Agreement, at p. 16; Settlement Agreement, Exh. A, at pp. 10–11.)

13           Class Members who do not timely request exclusion from the Settlement Agreement will be  
14 deemed to be a participating Class Member without having to submit a claim form or take any other  
15 action. (Settlement Agreement, at p. 4.) To request exclusion from the Settlement Agreement, the Class  
16 Member must submit a written request for exclusion from the Settlement Agreement to the Settlement  
17 Administrator (“Request for Exclusion”), postmarked no later than the Response Deadline. (Settlement  
18 Agreement, at pp. 15–16.) The Settlement Agreement and Class Notice both permit Class Members to  
19 use any language of their choosing to request exclusion, so long as their intent to be excluded is made  
20 clear. (Settlement Agreement, at pp. 15–16; Settlement Agreement, Exh. A, at p. 10.)

21           Before mailing Class Notices, the Settlement Administrator will update Class Member  
22 addresses using the National Change of Address database. (Settlement Agreement, at p. 14.) If any  
23 Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal  
24 Service, the Settlement Administrator shall re-mail the Class Notice to the forwarding address affixed  
25 thereto, if one is provided. (Settlement Agreement, at p. 14.) If no forwarding address is provided, the  
26 Settlement Administrator will conduct an address search and re-mail the Class Notice to the most  
27 current address of that Class Member. (Settlement Agreement, at p. 14.)  
28

1 Class Members to whom the Class Notice is re-mailed are given an extension of up to 14  
2 calendar days for disputes, objections, or to request exclusion. (Settlement Agreement, at p. 14.)

3 **G. TIMING OF SETTLEMENT DISBURSEMENTS**

4 Defendants will deposit the Gross Settlement Amount in a lump sum payment, plus the  
5 employer-side payroll taxes, with the Settlement Administrator within 14 days of the “Effective Date,”  
6 as that term is defined in the Settlement Agreement. (Settlement Agreement, at p. 9.) At that time, the  
7 settlement will be fully funded. The Settlement Administrator will then distribute the Individual  
8 Settlement Payments within 14 days of the date the class settlement is funded. (Settlement Agreement,  
9 at p. 9.) The Settlement Agreement further provides that disbursement of Plaintiffs’ counsel’s  
10 attorneys’ fees, the litigation costs, and Plaintiffs’ service awards shall not precede disbursement of the  
11 Individual Settlement Payments. (Settlement Agreement, at p. 9.)

12 **H. *CY PRES* DISTRIBUTION**

13 Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at  
14 p. 9.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator  
15 shall distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund  
16 in the name of the individual whose check was uncashed. (Settlement Agreement, at p. 10.)

17 Because all funds and interest under the Settlement Agreement are to be completely distributed  
18 to the class participants, or to the Unclaimed Property Fund in the name of the individual whose check  
19 was uncashed, the Parties agree that this disposition results in no “unpaid residue” or “unclaimed or  
20 abandoned class member funds” under Code of Civil Procedure Section 384. (Settlement Agreement,  
21 at p. 10.) The Settlement Agreement therefore proactively complies with the Court’s Omnibus Trailer  
22 Bill of 2018 by eliminating the need for the Court to re-open the judgment following final distribution.  
23 (Settlement Agreement, at p. 10.)

24 **I. TAX TREATMENT**

25 The Settlement Agreement provides that 20% of each individual settlement payment from the  
26 class-portion of the Settlement Agreement shall constitute wages (for which each participating Class  
27 Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute  
28

1 interest, reimbursement, and penalties (for which each participating Class Member will be issued an  
2 IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 8.)

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

7 Defendants will separately and additionally pay their share of employer payroll taxes on the  
8 sum allocated to wages. (Settlement Agreement, at p. 6.)

9 **V. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED**

10 **A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**  
11 **CONSIDERATION IS APPROPRIATE**

12 California Rules of Court, rule 3.769, subdivision (d), provides that the Court may make an  
13 order approving certification of a provisional settlement class at the preliminary approval stage. It is  
14 well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety  
15 of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48  
16 Cal.App.4th 1794, 1807, fn. 19.) Since no trial is anticipated in a class-based settlement, the case  
17 management issues inherent in determining if the class should be certified need not be confronted, and  
18 the Court’s fairness review of the settlement focuses on protecting the interests of the non-  
19 representative class members. (*Ibid.*; see also *Officers for Justice v. Civil Service Com’n of City and*  
20 *County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997)  
21 521 U.S. 591, 620 [117 S.Ct. 2231, 2248] [“Confronted with a request for settlement-only class  
22 certification, a district court need not inquire whether the case, if tried, would present intractable  
23 management problems . . . for the proposal is that there be no trial.”].)

24 As discussed below, for settlement purposes only, the Parties ask this court to conditionally  
25 certify the Class, as defined above, under section 382 of the Code of Civil Procedure.

26 **B. THE PROPOSED CLASS IS NUMEROUS AND ASCERTAINABLE**

27 Numerosity is met if a proposed class is so large that joinder of all members would be  
28 impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class

1 members can be objectively identified and given notice of the litigation without unreasonable time or  
2 expense. (See *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendants  
3 have represented that the proposed Class consists of approximately 431 Class Members ascertained  
4 through Defendants’ records. As such, the numerosity requirement is met.

5 **C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED**  
6 **COMMUNITY OF INTEREST**

7 **1. Commonality**

8 To justify certification, the class proponent must show that questions of law or fact common to  
9 the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito*  
10 *Restaurants, Inc.* (2010) 183 Cal.App.4th 723 [citing *Washington Mutual Bank, FA v. Superior Court*  
11 (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal and  
12 factual questions exist, such as **(a)** whether individuals working for Defendants were subject to  
13 unlawful wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these  
14 violations triggered derivative claims for penalties; and **(c)** whether Defendants’ violations were  
15 knowing or willful.

16 **2. Typicality**

17 Typicality focuses on: **(1)** whether other members of the proposed class have the same or  
18 similar injury to the named plaintiff(s), **(2)** whether the action is based on conduct which is not unique  
19 to the named plaintiff(s), and **(3)** whether other class members have been injured by the same course  
20 of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe’s Crab*  
21 *Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiffs’ claims are typical of the Class  
22 Members because they were subject to Defendants’ policies and practices described above in Plaintiffs’  
23 analysis of the claims and defenses, which were consistently applied to class-wide to all Employees.  
24 (Declaration of Joseph D. Aguilar in Support of Plaintiffs’ Motion for Preliminary Approval of Class  
25 Action Settlement (“Aguilar Decl.”), ¶¶ 3–4; Declaration of Christian Beller in Support of Plaintiffs’  
26 Motion for Preliminary Approval of Class Action Settlement (“Beller Decl.”), ¶¶ 3–4.)

### 3. Adequacy of Representation

A proposed class representative must establish that they will adequately represent the proposed class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiffs are adequate as class representatives because they are members of the Class, experienced the same wage and hour practices as the rest of the Class, is committed to representing the interests of the Class, has no interests that are adverse to members of the Class, and understand and accept their duty to represent the best interests of the Class. Plaintiffs are committed to the Class and is adequate to represent the interests of the Class in this litigation. (Aguilar Decl., ¶ 5; Beller Decl., ¶ 5.)

Plaintiffs also provided counsel with information that was crucial to initiating the action and preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable information about the Class Members and their experiences working for Defendants. (Melmed Decl., ¶ 87; Aguilar Decl., ¶¶ 6–10; Beller Decl., ¶¶ 6–10.)

Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162.) Plaintiffs are represented by counsel experienced in the litigation of wage and hour class actions, who have no interests adverse to Plaintiffs or the Class, who vigorously prosecuted this action, and who have the financial resources to handle this case. (Melmed Decl., ¶¶ 8–14.)

### 4. Superiority

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also superior to litigation of numerous individual claims because most of the claims are too small to litigate individually.

### 5. Predominance

The common issues here, concerning the uniform deficiencies to Defendants' wage-and-hour policies and practices raise predominating factual and legal issues supporting certification of a settlement class.

1 **VI. PRELIMINARY APPROVAL SHOULD BE GRANTED**

2 **A. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, AND**  
3 **NON-COLLUSIVE NEGOTIATIONS**

4 The Settlement Agreement was negotiated at arm's length between counsel using a professional  
5 and well-respected third-party neutral. (Melmed Decl., ¶¶ 70–71.) Counsel for both parties were  
6 thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Melmed  
7 Decl., ¶ 71.) The Settlement Agreement is a product of intensive negotiations, supported by  
8 investigation and direct exchanges of information through informal discovery, during the course of  
9 settlement negotiations, including a full-day mediation. (Melmed Decl., ¶ 71.) Although Plaintiffs and  
10 their counsel believed the class claims had merit and there was a possibility of certifying the class and  
11 claims, they recognized the potential risk, expense, and complexity posed by litigation, such as  
12 unfavorable decisions on class certification, summary judgment, at trial and/or on the damages  
13 awarded, and/or on an appeal that can take several more years to litigate. (Melmed Decl., ¶ 71.) The  
14 resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive  
15 negotiation. (Melmed Decl., ¶ 77.) It takes the risks identified above and others into account in arriving  
16 at the non-reversionary Gross Settlement Amount. (Melmed Decl., ¶ 77.)

17 **B. THE DISCOVERY AND INVESTIGATIONS WERE EXTENSIVE**

18 Counsel for the Parties spent months prior to the mediation developing the factual record for  
19 this case, engaging in informal discovery and exchanges of documents and information, and drafting  
20 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and  
21 weaknesses of their respective positions at the mediation and during subsequent settlement  
22 negotiations. (Melmed Decl., ¶ 79.) The Parties and their counsel attended a full-day mediation session  
23 before an experienced and well-respected mediator which resulted in the resolution of the case on a  
24 class and representative basis. (Melmed Decl., ¶ 79.) David S. Phillips is a nationally recognized  
25 mediator of complex class actions and employment matters.

26 In addition, the Parties are represented by skilled and experienced counsel with extensive  
27 backgrounds in complex litigation and experience litigating similar wage and hour class actions.  
28 (Melmed Decl., ¶¶ 9–14.) The Settlement Agreement was reached after extensive investigation and

1 research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiffs’  
2 counsel’s thorough factual investigation, which were sufficient to evaluate Defendants’ defenses.  
3 (Melmed Decl., ¶ 80.) The Settlement Agreement came only after the case was thoroughly investigated  
4 by Plaintiffs’ counsel. Plaintiffs’ counsel all agree that this settlement is fair, adequate, and reasonable,  
5 and in the best interests of Class Members. (Melmed Decl., ¶ 80.)

6 **C. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT**

7 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court  
8 should also consider “[t]he strength of plaintiff’s case, the risk, expense, complexity and likely duration  
9 of further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.* (1996)  
10 48 Cal.App.4th 1794, 1801.) As described above, Defendants had strong defenses to Plaintiffs’ claims,  
11 which create a real possibility that the claims might not be certified or might fail on the merits. (Melmed  
12 Decl., ¶ 81.) Proceeding with litigation would impose a significant risk of no recovery as well as  
13 ongoing, substantial additional expenditures of time and resources. If settlement were not achieved,  
14 continued litigation of the claims would take a substantial amount time and possibly confer no benefit  
15 on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery  
16 for the Class Members, which also benefits the Parties and the Court. In considering these risks, the  
17 choice was overwhelmingly in favor of settlement. (Melmed Decl., ¶ 81.)

18 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

19 The Settlement Agreement represents a fair compromise given the risks and uncertainties  
20 presented by continued litigation. Defendants asserted and would have continued to assert legal and  
21 factual grounds to defend against this action, including factual and legal defenses on the merits.  
22 Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the  
23 Settlement Agreement ensures timely relief and substantial recovery of the Defendants’ realistic  
24 exposure. (Melmed Decl., ¶ 82.)

25 **E. PLAINTIFFS’ COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-  
26 HOUR LITIGATION**

27 Plaintiffs’ counsel are experienced in wage-and-hour class actions. (Melmed Decl., ¶¶ 9–14.)  
28 Numerous state and federal courts have certified Mr. Melmed as adequate and competent class counsel

1 in wage and hour class actions. (Melmed Decl., ¶¶ 9–14.) Mr. Melmed devotes the vast majority of his  
2 law practice to plaintiff-side class and representative employment-law cases. (Melmed Decl., ¶¶ 9–14.)

3 The Parties’ counsel agree that this settlement is fair, adequate, and reasonable in light of the  
4 nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of  
5 the law, and uncertainties of class certification and litigation. (Melmed Decl., ¶ 83.) Given the risks  
6 inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and  
7 in the best interests of Class Members and should be preliminarily approved. (Melmed Decl., ¶ 83.)  
8 The Settlement Agreement is also consistent with other settlements that received approval of the  
9 Courts. (Melmed Decl., ¶ 83.)

10 Experienced counsel, operating at arm’s length, have weighed the strengths and risks of the  
11 case, and endorse the proposed settlement. (Melmed Decl., ¶ 83.) The view of the attorneys actively  
12 conducting the litigation is entitled to significant weight in deciding whether to approve the settlement.  
13 (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d  
14 939 “[T]he fact that experienced counsel involved in the case approved the settlement after hard-  
15 fought negotiations is entitled to considerable weight.”); *Kullar v. Foot Locker Retail, Inc.* (2008) 168  
16 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

17 **F. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE**  
18 **STATUTES AND RULES**

19 The proposed Class Notice—which the parties have already agreed to—should be approved, as  
20 it fully informs the Class Members of the nature of the lawsuit and each Class Member’s rights under  
21 the terms of the Settlement Agreement and applicable law. (Settlement Agreement, Exh. A.) The way  
22 the Class Notice is to be disseminated, as outlined above, will ensure that all of the Class Members will  
23 be properly notified of the proposed settlement.

24 The Court has wide discretion in approving the means of providing notice, so long as the class  
25 representative “provide(s) meaningful notice in a form that should have a reasonable chance of reaching  
26 a substantial percentage of class members.” (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860,  
27 quotation marks omitted.) Here, the Parties’ notice plan is that notice of the Settlement Agreement will  
28 be disseminated directly to the class members by first class mail by the settlement administrator within

1 14 days of the date on which the Settlement Administrator receives the Class Data from Defendants.  
2 (Settlement Agreement, at p. 14.)

3 The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California  
4 Rules of Court and afford the Class Members with all due process protections required by the United  
5 States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766,  
6 subdivision (d), of the California Rules of Court, because the Class Notice includes, among other  
7 things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties;  
8 **(2)** a statement that the court will exclude the member from the class if the member so requests by a  
9 specified date; **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a  
10 statement that the judgment, whether favorable or not, will bind all members who do not request  
11 exclusion; and **(5)** a statement that any member who does not request exclusion may, if the member so  
12 desires, enter an appearance through counsel. (Settlement Agreement, Exh. A.) The 45-day deadline  
13 for Class Members to exclude themselves or challenge the number of workweeks worked during the  
14 Class Period is reasonable, as it provides Class Members with sufficient time to do so and, if they so  
15 choose, to seek independent legal advice in the interim. (Settlement Agreement, at p. 5.)

16 **VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT**  
17 **AGREEMENT IS FAIR**

18 In addition, at the time of final approval, Plaintiffs' counsel will request attorneys' fees of up  
19 to one-third of the Gross Settlement Amount, (i.e., \$116,666.67), plus reimbursement of litigation  
20 expenses and costs of up to \$15,000.00. (Settlement Agreement, at p. 7.) As the California Supreme  
21 Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to  
22 award as attorneys' fees in a class action where a common fund was generated as a result of the case.  
23 (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion  
24 where trial court approved a fee request of one-third of the common fund].) The California Supreme  
25 Court further clarified that trial courts "have discretion to conduct a lodestar cross check on a  
26 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and  
27 use other means to evaluate the reasonableness of a requested percentage fee." (*Ibid.*)  
28

1 The requested fee of one-third of the Gross Settlement Amount is also consistent with awards  
2 obtained in similar wage and hour class action cases approved by various courts in California. (See  
3 *Stuart v. RadioShack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645  
4 [approving fee award of one-third of the total maximum settlement amount of \$4.5 million and noting  
5 that the fee award of one-third of the total settlement was “well within the range of percentages which  
6 courts have upheld as reasonable in other class action lawsuits”]; *Singer v. Becton Dickinson and Co.*  
7 (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at \* 8 [approving fee award  
8 of 33.33% of the common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007,  
9 No. 1:05CV0484 DLB) 2007 WL 3492841, at \*4 [awarding fees of one-third of common fund in a  
10 wage and hour class action, noting: “[f]ee awards in class actions average around one-third of the  
11 recovery.”]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883  
12 VRW) 2008 WL 5478576, at \*8 [approving attorneys’ fees of one-third of common fund].)

13 As part of the final approval motion, Plaintiffs’ counsel will request approval of the attorneys’  
14 fees and costs described in this motion and in the Settlement Agreement, which will be heard at the  
15 final approval hearing. Accordingly, the Court need not decide the fees and costs at this time, but only  
16 authorize the Class Notice to inform class members that counsel will seek fees and costs up to one third  
17 of the Gross Settlement Amount in fees, plus actual litigation costs.

18 **VIII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE**

19 Plaintiffs will request payment of a service award from the Gross Settlement Amount in the  
20 amount of up to \$10,000.00 each (for a combined amount of up to \$20,000.00) in addition to whatever  
21 payment they are otherwise entitled to receive as Class Members. (Melmed Decl., ¶ 86; Settlement  
22 Agreement, at p. 6.) The proposed service awards are reasonable compensation given the time and  
23 effort that Plaintiffs devoted to this case, the valuable assistance they provided to counsel, and the fact  
24 that they entered into a general release of claims that is broader than the release of the Class. (Settlement  
25 Agreement, at pp. 10–11; Melmed Decl., ¶ 86; Aguilar Decl., ¶¶ 5–10; Beller Decl., ¶¶ 5–10.)

26 Plaintiffs provided invaluable assistance to Plaintiffs’ counsel and the Class Members in this  
27 case, including providing factual background for mediation and the operative complaint, reviewing the  
28 relevant documents, participating in phone calls with Plaintiffs’ counsel, gathering highly relevant

1 documents, and reviewing the settlement documents. (Melmed Decl., ¶ 87.) Plaintiffs agreed to  
2 participate in this case with no guarantee of personal benefit. (*Ibid.*) Further, Plaintiffs agreed to  
3 undertake the financial risk of serving as class representatives and exposed themselves to the risk of  
4 negative publicity by anyone who opposed this case. (*Ibid.*)

5 Moreover, the requested service award for Plaintiffs falls within the range of service payments  
6 typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson*  
7 *Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879  
8 [approving **\$11,250.00** service award to each of the two Class Representative in a meal break class  
9 action]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010  
10 WL 3833922, at \*2 [approving **\$20,000.00** enhancement award to the class representative in a  
11 California wage-and-hour class action settlement]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal.  
12 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **\$10,000.00** each from a  
13 \$300,000.00 settlement fund in a wage/hour class action]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct.  
14 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at \*28 [“the court finds  
15 Plaintiff’s enhancement payments of **\$15,000.00** each to be reasonable.”], emphasis added; *Glass v.*  
16 *UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at \*52  
17 [finding “requested payment of **\$25,000** to each of the named Plaintiff is appropriate” in wage and hour  
18 settlement], emphasis added; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) No.  
19 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at \*18 [approving “**\$25,000** incentive award for  
20 each Class Representative” in wage an hour settlement], emphasis added; *Garner v. State Farm Mut.*  
21 *Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at \*17 n.8  
22 [“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **\$20,000** or  
23 more where, as here, the class representative has demonstrated a strong commitment to the class”],  
24 emphasis added.)

## 25 **IX. SUBMISSION TO THE LWDA**

26 The Settlement Agreement and this motion are concurrently being submitted to the LWDA in  
27 accordance with Labor Code section 2699, subdivision (l)(2). (Melmed Decl., ¶ 91.) The proof of  
28 electronic submission is attached as **Exhibit 3** to the Declaration of Jonathan Melmed.

1 **X. DISMISSAL OF DEFENDANTS ORESTIS SIMOS AND WATER'S EDGE**  
2 **RESTAURANT AND BAR**

3 As part of this motion, and contingent on this motion's approval, Plaintiffs respectfully request  
4 the dismissal of Defendants Orestis Simos and Water's Edge Restaurant and Bar ("The Waters Edge"),  
5 for the following reasons:

6 1. Through informal discovery, Plaintiffs' counsel have learned that Defendant Orestis  
7 Simos is a senior employee of the other named Defendants, and may not himself be appropriately  
8 treated as an "employer" of the Class Members or Aggrieved Employees, for the purposes of the Labor  
9 Code violations alleged in this action. The Parties therefore agree that he should not, at this time, be  
10 named as a defendant in the action. (Melmed Decl., ¶ 88.A.)

11 2. Defendants' counsel has produced to Plaintiffs' counsel a fictitious business name  
12 statement demonstrating that The Waters Edge is a fictitious business name of Defendant Ventura  
13 Harbor Restaurant Associates, Inc., and is therefore not a properly named defendant. (Melmed Decl.,  
14 ¶ 88.B.)

15 The dismissal of these defendants without prejudice is merely a housekeeping matter and will  
16 contribute to more accurate pleadings and allegations in the action. No consideration for the dismissal  
17 of these two defendants, other than what is described in the Settlement Agreement, has been provided  
18 for the dismissal of Defendants Orestis Simos or The Waters Edge. (Melmed Decl., ¶ 89.)

19 No notices have yet been mailed to the Class Members or Aggrieved Employees nor has there  
20 been any form of advertising disseminated. (Melmed Decl., ¶ 90.) No person not named in this lawsuit  
21 is bound by this dismissal. Accordingly, the dismissal will not prejudice the Class Members, the State  
22 of California, or the Aggrieved Employees. Further, dismissal without prejudice does not constitute  
23 adjudication of the underlying claims and will not affect the underlying rights of any potential  
24 employees.

25 **XI. CONCLUSION**

26 For these reasons, Plaintiffs' motion for preliminary approval of the parties' class action  
27 settlement should be granted.  
28

1 Dated: June 20, 2023

**MELMED LAW GROUP P.C.**

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4 **KYLE D. SMITH**

5 Attorney for Plaintiffs, the Putative Class, and the  
6 Aggrieved Employees  
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