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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;
CHRYSILIOS CHRYSILIOU, an Individual;
and DOES 1 TO 50,

Defendants.

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

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

Complaint Filed: March 1, 2022

FAC Filed: March 14, 2022

SAC Filed: May 31, 2022

Trial Date: None Set

Preliminary Approval Granted:
July 12, 2023

Hearing Date: November 22, 2023

Hearing Time: 8:20 a.m.

Department: 41

Judge: Hon. Ronda J. McKaig

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

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

3 **PLEASE TAKE NOTICE** that that on November 22, 2023, at 8:20 a.m., or as soon thereafter
4 as the 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 (“Plaintiffs”), on behalf of themselves, the State of California, as a private attorneys general, and on
8 behalf of all others similarly situated, will and hereby do move this court for an order:

9 1. Finally certifying the settlement class, as defined in the *Class Action and PAGA*
10 *Settlement Agreement and Class Notice* (the “Settlement Agreement”) between Plaintiffs and
11 Defendants Tastes & Tales, LLC, Waterside, LLC, Ventura Harbor Restaurant Associates, Inc.,
12 Water’s Edge Restaurant and Bar, Chrysilios Chrysiliou, and Orestis Simos (“Defendants”)
13 (collectively, the “Parties”), for the purpose of settlement pursuant to California Code of Civil
14 Procedure section 382 and California Rules of Court, rule 3.769;

15 2. Finally appointing the named plaintiffs, Joseph D. Aguilar and Christian Beller, as class
16 representatives for purposes of settlement;

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

19 4. Finally appointing Jonathan Melmed, Kyle Smith, and Joanne Kim of Melmed Law
20 Group P.C. as class counsel for purposes of settlement;

21 5. Finding that the notice of the settlement was properly provided to the class members in
22 accordance with the Court’s order granting preliminary approval of the Settlement Agreement on July
23 12, 2023;

24 6. Finally approving the settlement as fair, adequate, and reasonable, based on the terms
25 set forth in the Settlement Agreement, including the payment by Defendants of the non-reversionary
26 gross settlement amount of \$350,000.00 (“Gross Settlement Amount”), plus the employer’s portion of
27 applicable payroll taxes;
28

1 7. Finally approving the allocation for attorneys' fees of one-third of the Gross Settlement
2 Amount (i.e., \$116,666.67), plus necessary litigation costs of \$13,383.14;

3 8. Finally approving Phoenix Settlement Administrators (the "Settlement Administrator")
4 as the settlement administrator and approving distribution of \$8,500.00 from the Gross Settlement
5 Amount to cover the settlement administrator's expenses in administering the settlement;

6 9. Finally approving a class representative service payments to each of the named plaintiffs
7 in an amount of \$10,000.00 (totaling \$20,000.00) from the Gross Settlement Amount to compensate
8 them for the burdens, responsibilities, time, effort, and risks involved in coming forward on behalf of
9 the class;

10 10. Finally approving the allocation of \$50,000.00 for penalties pursuant to the California
11 Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$37,500.00) shall be paid to
12 the California Labor and Workforce Development Agency ("LWDA") from the Gross Settlement
13 Amount, with the remaining 25% (i.e., \$12,500.00) payable to the aggrieved employees;

14 11. Binding all participating class members to the terms of the Settlement Agreement,
15 including the release specified therein;

16 12. Retaining jurisdiction to enforce the Settlement Agreement; and

17 13. Granting Plaintiffs leave to file the overlength brief included with this motion due to the
18 complex nature of this motion.

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

23 Dated: October 30, 2023

MELMED LAW GROUP P.C.



KYLE D. SMITH

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

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND.....	4
A.	The Parties	4
B.	Procedural Summary	5
C.	The Claims and Defenses	7
D.	Summary of the Settlement Agreement	8
III.	THE NOTICE PROCESS WAS DILIGENTLY CARRIED OUT	10
A.	The Class Was Given the Best Possible Notice of the Settlement	11
B.	The Class Members Overwhelmingly Approve of the Settlement, Which is Fair and Reasonable	12
IV.	THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT	13
A.	Class Action Settlements Are Subject to Judicial Review and Approval under the California Rules of Court	13
B.	The Settlement Is Entitled to a Presumption of Fairness	14
C.	Final Approval of the Settlement Is Warranted	15
1.	<i>The Settlement Is the Result of Serious, Informed, and Non-Collusive Negotiations.....</i>	<i>15</i>
2.	<i>The Extent of the Discovery and Investigation Was More Than Sufficient to Permit Final Approval of the Settlement Agreement.....</i>	<i>16</i>
3.	<i>The Settlement Agreement is a Reasonable Compromise of Claims</i>	<i>17</i>
4.	<i>The Risks Inherent in Continued Litigation are Great</i>	<i>17</i>
5.	<i>Plaintiffs' Counsel are Experienced in Similar Wage-and-Hour Litigation....</i>	<i>18</i>
V.	THE CLASS REPRESENTATIVES' SERVICE AWARDS ARE FAIR, REASONABLE, AND APPROPRIATE	18
VI.	THE PROPOSED ATTORNEYS' FEE ALLOCATION IS FAIR, REASONABLE, AND APPROPRIATE.....	20
A.	Plaintiffs' Counsel Are Entitled to a Fee from the Common Fund Created	20

1	B.	Courts Routinely Award Attorneys’ Fees at or above Those Requested Here.....	22
2	C.	The High Quality of Work and Excellent Result Obtained Support the Award..	23
3	D.	The Contingent Nature of Plaintiffs’ Counsel’s Representation of Plaintiffs and	
4		the Class Members Further Supports the Fee Award at One-Third of the	
5		Maximum Common Fund	24
6	E.	Public Policy Considerations Require the Award of Adequate Fees So Competent	
7		and Experienced Counsel Will Undertake Such Representations	25
8	F.	The Lodestar Multiplier Approach Confirms the Reasonableness of the Fee	
9		Request	27
10	VII.	PLAINTIFFS’ COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES ...	29
11	VIII.	SETTLEMENT ADMINISTRATION COSTS	30
12	IX.	SUBMISSION TO THE LWDA	30
13	X.	CONCLUSION	30

TABLE OF AUTHORITIES

CASES

<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	18
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	21
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal., June 30, 2011, No. 1:09-CV-1662 OWW MJS) 2011 WL 2648879	19
<i>Boyd v. Bank of America Corp.</i> (C.D. Cal., Nov. 18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804	23
<i>Bush v. Superior Court</i> (1992) 10 Cal.App.4th 1374.....	13
<i>Cho v. Seagate Technology Holdings, Inc.</i> (2009) 177 Cal.App.4th 734	13
<i>Class Plaintiffs v. Jaffe & Schlesinger, P.A.</i> (9th Cir. 1994) 19 F.3d 1306	21
<i>Crommie v. State of Cal., Public Utilities Com’n</i> (N.D. Cal. 1994) 840 F.Supp. 719.....	25
<i>Cziraki v. Thunder Cats, Inc.</i> (2003) 111 Cal.App.4th 552	21
<i>D’Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1	21
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	13, 14, 17, 28
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	18
<i>Garner v. State Farm Mut. Auto. Ins. Co.</i> (N.D. Cal., Apr. 22, 2010, No. CV 08 1365 CW EMC) 2010 WL 1687832	19
<i>Glass v. UBS Financial Services, Inc.</i> (N.D. Cal., Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862	19
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553	27
<i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16	29
<i>Hernandez v. Restoration Hardware, Inc.</i> (2018) 4 Cal.5th 260	28
<i>In re Heritage Bond Litigation</i> (C.D. Cal., June 10, 2005, No. 02-ML-1475 DT) 2005 WL 1594403	25
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706.....	14
<i>In re Omnivision Technologies, Inc.</i> (N.D. Cal. 2008) 559 F.Supp.2d 1036	12
<i>In re Stauffer’s Estate</i> (1959) 53 Cal.2d 124.....	21, 26

1	<i>Juris v. Inamed Corp.</i> (11th Cir. 2012) 685 F.3d 1294	11
2	<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	24, 27
3	<i>Kraus v. Trinity Management Services, Inc.</i> (2000) 23 Cal.4th 116	26
4	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	18
5	<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480	20, 21, 22
6	<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	21, 26, 27
7	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> (1980) 103 Cal.App.3d 573.....	13
8	<i>Mallick v. Superior Court</i> (1979) 89 Cal.App.3d 434.....	13
9	<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW)	
10	2008 WL 5478576	22, 23
11	<i>McCrary v. Elations Company, LLC</i> (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016	
12	WL 769703	23
13	<i>Melendres v. City of Los Angeles</i> (1975) 45 Cal.App.3d 267	29
14	<i>Monterrubio v. Best Buy Stores, L.P.</i> (E.D. Cal., Nov. 20, 2013, No. 2:11-CV-03270-MCE-AC) 2013	
15	WL 12432761	23
16	<i>Moore v. PetSmart, Inc.</i> (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000	12
17	<i>National Rural Telecommunications Cooperative v. DIRECTV, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523	
18		12
19	<i>Officers for Justice v. Civil Service Com’n of City and County of San Francisco</i> (9th Cir. 1982) 688	
20	F.2d 615	13, 14
21	<i>Pearce v. Superior Court</i> (1983) 149 Cal.App.3d 1058.....	26
22	<i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797	11
23	<i>PLCM Group v. Drexler</i> (2000) 22 Cal.4th 1084	27
24	<i>Press v. Lucky Stores, Inc.</i> (1983) 34 Cal.3d 311.....	27
25	<i>Quinn v. State of California</i> (1975) 15 Cal.3d 162	21
26	<i>Rider v. County of San Diego</i> (1992) 11 Cal.App.4th 1410.....	29
27	<i>Rodriguez v. West Publishing Corp.</i> (9th Cir. 2009) 563 F.3d 948	18
28		

1	<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL	
2	3492841	22, 23
3	<i>Ross v. U.S. Bank Nat. Ass'n</i> (N.D. Cal., Sept. 29, 2010, No. C07-02951SI) 2010 WL 3833922	19
4	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319	26
5	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	21, 27, 29
6	<i>Silber v. Mabon</i> (9th Cir. 1994) 18 F.3d 1449	11
7	<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL	
8	2196104	22, 23
9	<i>Staton v. Boeing Co.</i> (9th Cir. 2003) 327 F.3d 938	18
10	<i>Steiner v. American Broadcasting Co., Inc.</i> (9th Cir. 2007) 248 Fed.Appx. 780	28
11	<i>Sternwest Corp. v. Ash</i> (1986) 183 Cal.App.3d 74	29
12	<i>Stuart v. Radioshack Corp.</i> (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645.....	23
13	<i>Syers Properties III, Inc. v. Rankin</i> (2014) 226 Cal.App.4th 691	28
14	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	29
15	<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 482	19, 22
16	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	25, 26
17	<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759.....	21
18	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	24, 29
19	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	13, 14, 28, 29
20	<i>West v. Circle K Stores, Inc.</i> (E.D. Cal., Oct. 20, 2006, No. CIVS040438WBSGGH) 2006 WL	
21	8458679	19
22	<i>Williams v. TriCap International LLC</i> (Final Approval Order, March 7, 2019) LASC No. BC644383	
23		22
24	STATUTES	
25	Bus. & Prof. Code, § 17200	5
26	Bus. & Prof. Code, § 17210	5
27	Lab. Code, § 1174	5
28	Lab. Code, § 1185	5

1	Lab. Code, § 1194	5, 26
2	Lab. Code, § 1194.2	5, 20
3	Lab. Code, § 1197	5, 6
4	Lab. Code, § 1197.1	5
5	Lab. Code, § 1198	5, 6
6	Lab. Code, § 1198.5	5
7	Lab. Code, § 1199	5
8	Lab. Code, § 201	5
9	Lab. Code, § 202	5
10	Lab. Code, § 203	5
11	Lab. Code, § 204	5
12	Lab. Code, § 210	5
13	Lab. Code, § 218.5	20
14	Lab. Code, § 226	5, 20
15	Lab. Code, § 226.3	5
16	Lab. Code, § 226.7	5
17	Lab. Code, § 256	5
18	Lab. Code, § 2698	1, 6
19	Lab. Code, § 2699	20, 30
20	Lab. Code, § 2699.6	1, 6
21	Lab. Code, § 510	5
22	Lab. Code, § 512	5
23	RULES	
24	Cal. Rules of Court, Rule 3.769	11, 13
25	REGULATIONS	
26	Cal. Code of Regs., tit. 8, § 11010	5
27	Cal. Code of Regs., tit. 8, § 11050	5
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks final approval of a wage-and-hour class action settlement between Plaintiffs
4 Joseph D. Aguilar and Christian Beller (“Plaintiffs”) and Defendants Tastes & Tales, LLC, Waterside,
5 LLC, Ventura Harbor Restaurant Associates, Inc., Water’s Edge Restaurant and Bar, Chrysilios
6 Chrysiliou, and Orestis Simos (“Defendants”) (collectively, the “Parties”) for \$350,000.00 (the “Gross
7 Settlement Amount”) to be distributed to 417 individuals defined as:

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

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

22 Plaintiffs also represent a group of 142 aggrieved employees on behalf of the State of California
23 as private attorneys general pursuant to the California Labor Code Private Attorneys General Act of
24 2004, Labor Code sections 2698 through 2699.6 (“PAGA”). The applicable “PAGA Period” is defined
25 as the period from March 1, 2021, through January 29, 2023. The “Aggrieved Employees,” for these
26 purposes, are defined as:

27 *All current and former non-exempt employees who were employed by Defendants in*
28 *California during the PAGA Period and who were paid wages by Defendants (or if any*

1 *such person is incompetent, deceased, or unavailable due to military service, the*
2 *person's legal representative or successor in interest evidenced by reasonable*
3 *verification).*

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

9 On July 12, 2023, this Court granted preliminary approval of the Settlement Agreement.
10 Pursuant to that order, on August 15, 2023, Phoenix Settlement Administrators (the "Settlement
11 Administrator") mailed the *Court Approved Notice of Class Action Settlement and Hearing Date for*
12 *Final Court Approval* (the "Class Notice")—in both English and Spanish—to all 417 Class Members
13 contained in the data provided by Defendants. (See Declaration of Yami Burns with Respect to Notice
14 and Settlement Administration ("Admin. Decl."), ¶ 5.) A copy of the Class Notice is attached to Admin.
15 Decl. as Exhibit A.

16 If the Court grants final approval, each participating Class Member will receive a share of
17 approximately **\$141,450.19** (the "Net Settlement Amount"), which is calculated as described below.
18 Plaintiffs also provide the following summary to assist the Court in its review:

Gross Settlement Amount	\$350,000.00
Attorneys' Fees:	(\$116,666.67)
Litigation Costs:	(\$13,383.14)
Settlement Administration Costs:	(\$8,500.00)
Service Awards to Plaintiffs:	(\$20,000.00)
PAGA Penalties:	(\$50,000.00)
Net Settlement Amount	\$141,450.19
<i>Employer Portion of Payroll Taxes Paid by Defendants in Addition to the Gross Settlement Amount</i>	

Class Participation	
Eligible Class Members:	417
Requests for Exclusion:	0
Objectors:	0
Participating Class Members:	417
Total Participation Rate:	100%

Relevant Supplemental Data	
Number of Aggrieved Employees:	142
Workweeks during the Class Period	14,426
Pay Periods during the PAGA Period	2,172
Highest Payment to Class Members	\$3,892.67
Average Payment to Class Members	\$339.21
Highest Payment to Aggrieved Employees	\$310.77
Average Payment to Aggrieved Employees	\$88.03
Class Counsel Fee Request	1/3 of the Gross Settlement Amount
Percent of Class Payments Attributable to Unpaid Wages (W-2 Income):	20%
Percent of Class Payments Attributable to Non-Wages (1099 Income):	80%
Uncashed Checks Paid to:	Unclaimed Property Fund

The Settlement Agreement is an excellent result for the Class, which is demonstrated by the extraordinarily high participation rate of **100%**. (Admin. Decl., ¶ 11.) To date, *zero* Class Members have requested exclusion or submitted objections to the Settlement Agreement. (Admin. Decl., ¶¶ 8, 9.) These numbers evidence an overwhelmingly positive response from the Class Members regarding the substance of the Settlement Agreement, confirming that the Settlement Agreement is in the Class's best interest. (Melmed FAM Decl., ¶ 5.) Further, these numbers raise a strong presumption that the Settlement Agreement is fair, reasonable, and adequate.

Because the Settlement Agreement is fair and reasonable; was negotiated at arm's length between counsel following extensive investigation and discovery; and was reached after participation in a full-day mediation, it should be finally approved. (Melmed FAM Decl., ¶ 5.) Based on the foregoing, Plaintiffs respectfully request that the Court issue an order **(1)** finally certifying the Class; **(2)** finally appointing Plaintiffs as the class representatives; **(3)** finally appointing Plaintiffs' attorneys

1 as class counsel; (4) finding that notice of the settlement was properly provided to the Class Members;
2 (5) finally approving the Settlement Agreement as fair, adequate, and reasonable; (6) finally approving
3 the allocation for attorneys’ fees of one-third of the Gross Settlement Amount (i.e., \$116,666.67), plus
4 necessarily-incurred litigation costs in the amount of \$13,383.14; (7) finally approving Phoenix
5 Settlement Administrators as the settlement administrator and approving distribution of \$8,500.00 from
6 the Gross Settlement Amount to cover the Settlement Administrator’s expenses in administering the
7 settlement; (8) finally approving the allocation of \$50,000.00 from the Gross Settlement Amount for
8 PAGA penalties; (9) finally approving a class representative service awards to Plaintiffs in the amount
9 of \$10,000.00 each (totaling \$20,000.00); (10) binding all participating class members to the terms of
10 the Settlement Agreement, including the release specified therein; and (11) retaining jurisdiction to
11 enforce the terms of the Settlement Agreement.

12 **II. BACKGROUND**

13 **A. THE PARTIES**

14 Plaintiffs are former restaurant employees at Defendants’ Water’s Edge Restaurant and Bar
15 location. Plaintiff Aguilar served as a food runner from September 2021 through February 2022.
16 (Declaration of Joseph D. Aguilar in Support of Plaintiffs’ Motion for *Preliminary* Approval of Class
17 Action Settlement (“Aguilar Decl.”), ¶ 3.) Plaintiff Beller served variously as a busser, a food runner,
18 and a server. (Declaration of Christian Beller in Support of Plaintiffs’ Motion for *Preliminary* Approval
19 of Class Action Settlement (“Beller Decl.”), ¶ 3.) Plaintiff Beller’s employment ended in early July
20 2022. Both plaintiffs were paid at a rate of \$15.00 per hour, plus tips. (Melmed FAM Decl., ¶ 12;
21 Aguilar Decl., ¶ 3; Beller Decl., ¶ 3.)

22 Defendants operate several restaurants in the County of Ventura. The Class Members and
23 Aggrieved Employees were paid variously by Defendants Ventura Harbor Restaurant Associates Inc.
24 and Waterside, LLC. Plaintiffs alleged that Defendants’ employees—including Plaintiffs, the Class
25 Members, and the Aggrieved Employees (collectively, the “Employees”)—experienced various
26 violations of California’s wage-and-hour laws. (Melmed FAM Decl., ¶ 13.)
27
28

1 **B. PROCEDURAL SUMMARY**

2 On March 1, 2022, Plaintiff Aguilar submitted a letter to the California Labor and Workforce
3 Development Agency (“LWDA”) to notify the LWDA, pursuant to PAGA, of Plaintiff Aguilar’s intent
4 to seek civil penalties against Defendants for violations of Labor Code sections 201, 202, 203, 204,
5 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
6 and others that may be applicable; and California Industrial Welfare Commission (“IWC”) Wage
7 Orders 1-2001 and/or 5-2001 (the “Applicable Wage Orders”). (Cal. Code of Regs., tit. 8, §§ 11010,
8 11050; Melmed FAM Decl., ¶ 14.) The letter attached Plaintiff Aguilar’s original complaint, and
9 incorporated the original complaint by reference, and thus sought penalties for claims identical to those
10 alleged in the case.

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

25 On March 7, 2022, Plaintiffs filed a supplemental PAGA letter notifying the LWDA of their
26 intent to add Plaintiff Beller to the action and adding one cause of action for failure to pay all split shift
27 premiums in violation of Labor Code sections 1197 and 1198, and the Applicable Wage Orders.
28 (Melmed FAM Decl., ¶ 16.)

1 On March 14, 2022, Plaintiffs filed a first amended complaint adding Plaintiff Beller to the
2 action and adding one cause of action for failure to pay all split shift premiums in violation of Labor
3 Code sections 1197 and 1198, and the Applicable Wage Orders. (Melmed FAM Decl., ¶ 16.)

4 On May 31, 2022, Plaintiffs filed a second amended complaint alleging all causes of action
5 against Defendants for those described in the second amended complaint and adding one cause of action
6 for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The second
7 amended complaint is the operative complaint in the action (the “Operative Complaint”). (Melmed
8 FAM Decl., ¶ 18.)

9 Thereafter, the Parties agreed to attend a private mediation with David S. Phillips. Prior to the
10 mediation, Plaintiffs’ counsel conducted significant informal discovery. Discovery, investigation, and
11 prosecution has included, among other things, numerous telephonic conferences with Plaintiffs;
12 inspection and analysis of thousands of pages of documents, including Defendants’ relevant policies
13 and employee handbook, and other information produced by Plaintiffs and Defendants; analysis of
14 work-related data from a sample of Class Members and Aggrieved Employees; an analysis of the legal
15 positions taken by Defendants; investigation into the viability of class treatment of the claims asserted
16 in the action; analysis of potential class-wide damages, including information sufficient to understand
17 Defendants’ potential defenses to Plaintiffs’ claims; research of the applicable law with respect to the
18 claims asserted in the Operative Complaint and the potential defenses thereto; and assembling and
19 analyzing of data for calculating damages. (Melmed FAM Decl., ¶ 19.)

20 Among other key pieces of information, Plaintiffs’ counsel requested in its informal discovery
21 letter the wage statements and time records for a statistically significant sample size of Class Members
22 during the Class Period. The Parties agreed on, and Defendants produced, a 29% sampling of randomly-
23 selected employees, which Plaintiffs’ counsel determined would provide a statistically significant
24 sample size with a high-degree of confidence for Plaintiffs’ expert’s statistical analysis. This sampling
25 included payroll records and timesheets for the Class Members’ shifts during the Class Period. From
26 these records, Plaintiffs’ expert was able to carefully craft a damages model for each of the categories
27 of alleged claims for which the data would reflect violations. (Melmed FAM Decl., ¶ 20.)
28

1 On November 29, 2022, the Parties participated in a full-day mediation with David S. Phillips
2 who is a full-time mediator with extensive experience in California wage and hour class action lawsuits.
3 The mediation negotiations were contentious and the mediation was initially unsuccessful. The Parties,
4 however, continued their negotiations through the mediator. On January 3, 2023, the Parties accepted
5 a mediator's proposal concerning the broad terms of a settlement agreement between the Parties.
6 (Melmed FAM Decl., ¶ 21.)

7 Thereafter, the Parties spent several more months negotiating the details of a settlement
8 agreement embodying the Parties' agreement. On or about May 24, 2023, the Parties executed the
9 longform Settlement Agreement now before the Court for approval. (Melmed FAM Decl., ¶ 22.) The
10 Settlement Agreement generally follows the Los Angeles Superior Court's *[Model] Class Action and*
11 *PAGA Settlement Agreement* (LASC CIV 296), with changes reflecting the specific terms of the
12 Parties' agreement. (Melmed FAM Decl., ¶ 22.)

13 On July 12, 2023, Plaintiffs' *Motion for Preliminary Approval of Class Action Settlement*
14 ("Motion for Preliminary Approval") was granted. (See Minute Order (July 12, 2023) ("Preliminary
15 Approval Order" or "PAM Order").) Since that time, the Class has shown its strong approval of the
16 Settlement Agreement; as of the date of this filing, there have been ***no objections by the Class***
17 ***Members***. (Admin. Decl., ¶ 9.)

18 Plaintiffs now seeks final approval of the Settlement Agreement.

19 C. THE CLAIMS AND DEFENSES

20 Plaintiffs allege several categories of wage and hour violations on behalf of the Employees.
21 Plaintiffs' primary claims stem from Defendants' alleged unlawful practices concerning the
22 Employees' meal periods, rest periods, and overtime payments. These alleged errors would also trigger
23 derivative claims for wage statement penalties, waiting time penalties, and PAGA penalties. (Melmed
24 FAM Decl., ¶ 27.)

25 The details and settlement value of each of these claims, and their corresponding defenses, were
26 discussed extensively in the Plaintiffs' Motion for Preliminary Approval and its accompanying papers,
27 the discussion of which is incorporated by reference herein, and which, for the sake of brevity, Plaintiffs
28 will avoid belaboring in this motion. (See Motion for Preliminary Approval, ¶¶ 6–20.)

1 Defendants have persistently denied all liability of any kind associated with the claims and
2 allegations, and further deny that Plaintiffs, the Class Members, or the Aggrieved Employees are
3 entitled to any relief. Defendants also deny that these allegations are appropriate for class or
4 representative treatment for any purpose other than the settlement. Defendants maintain, among other
5 things, that they have complied with California laws in all respects. (Melmed FAM Decl., ¶ 29.)

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

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

10 The Gross Settlement Amount includes: **(1)** the fees and expenses of the settlement
11 administrator not to exceed \$8,500.00 (Settlement Agreement, at p. 7; Admin. Decl., ¶ 16);
12 **(2)** Plaintiffs' counsel's attorney fees of one-third of the Gross Settlement Amount, i.e., \$116,666.67
13 (Settlement Agreement, at p. 7); **(3)** litigation expenses and costs not to exceed \$15,000.00, but which
14 are currently estimated to be \$13,383.14 (Settlement Agreement, at p. 7; Melmed FAM Decl., ¶ 41);
15 **(4)** an incentive award to each named plaintiff in the amount of \$10,000.00, totaling \$20,000.00
16 (Settlement Agreement, at p. 5); and **(5)** PAGA penalties in the amount of \$50,000.00, of which 75%
17 (i.e., \$37,500.00) shall be paid to the LWDA, with the remaining 25% (i.e., \$12,500.00) payable to the
18 Aggrieved Employees (Settlement Agreement, at p. 4).

19 The remaining Net Settlement Amount, which consist of approximately \$141,450.19, will be
20 distributed to all Class Members who have not requested exclusion from the Settlement Agreement.
21 (Admin. Decl., ¶¶ 12–13; Settlement Agreement, at pp. 7–8.) Applicable employer-side payroll taxes
22 will be paid by Defendants outside and separate from the Gross Settlement Amount. (Settlement
23 Agreement, at pp. 6, 9.)

24 Individual payments to the Class Members from the class-portion of the settlement will be
25 calculated and apportioned based on the number of weeks worked as an eligible Class Member in
26 California by the participating Class Member during the Class Period (the "Individual Settlement
27 Payments"). (Settlement Agreement, at p. 7.) Specific calculations of Individual Settlement Payments
28 will be determined by: (a) dividing the Net Settlement Amount by the total number of workweeks

1 worked by all participating Class Members during the Class Period, and (b) multiplying the result by
2 each participating Class Member's workweeks. (Settlement Agreement, at p. 7.) If there are any timely
3 submitted requests for exclusion, the settlement administrator will proportionately increase the
4 Individual Settlement Payments for each participating Class Member so that the amount actually
5 distributed to participating Class Members equals 100% of the Net Settlement Amount. (Settlement
6 Agreement, at p. 8.)

7 If the amounts allocated to attorney's fees, litigation costs, service awards, or the Settlement
8 Administrator are approved at a lesser amount than provided in the Settlement Agreement, the
9 remaining funds will be returned to the Net Settlement Amount and distributed proportionately to the
10 participating Class Members based on their total workweeks worked. (Settlement Agreement, at pp. 6–
11 8.)

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

17 For tax purposes, the Settlement Agreement provides that 20% of each individual settlement
18 payment from the class-portion of the Settlement Agreement shall constitute wages (for which each
19 participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining
20 80% shall constitute interest, reimbursement, and penalties (for which each participating Class Member
21 will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p.
22 8.) With respect to the individual payments made under the PAGA-portion of the Settlement
23 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which
24 each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation).
25 (Settlement Agreement, at p. 8.)

26 Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at
27 p. 9.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator
28

1 shall distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund
2 in the name of the individual whose check was uncashed. (Settlement Agreement, at p. 10.)

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

4 Pursuant to this Court's Preliminary Approval Order, the Settlement Administrator has fully
5 completed distributing the Class Notice. (Admin. Decl., ¶¶ 3–10.) As of the date of this filing, the
6 response deadline has passed for all 417 Class Members. (Admin. Decl., ¶¶ 8–10.) No Class Member
7 has objected to the Settlement Agreement and no Class Member has requested exclusion from the
8 Settlement Agreement. (Admin. Decl., ¶¶ 8–9.)

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

15 On July 28, 2023, the Settlement Administrator received the class data list from Defendants'
16 counsel containing Class Member names, last known addresses, social security numbers, and
17 applicable employment information. (Admin. Decl., ¶ 3.) The class data list contained 417 putative
18 Class Members. (Admin. Decl., ¶ 3.) On August 3, 2023, the Settlement Administrator conducted a
19 National Change of Address search in an attempt to update the class list of addresses as accurately as
20 possible. (Admin. Decl., ¶ 4.) On August 15, 2023, Class Notices were mailed to all Class Members.
21 (Admin. Decl., ¶ 5.)

22 For any Class Notices that were returned, the Settlement Administrator conducted a
23 computerized skip trace to update the class list of addresses as accurately as possible, updating the
24 addresses of Class Members as applicable. (Admin. Decl., ¶ 6.) As a result of this skip trace, 46 updated
25 addresses were obtained and the Class Notices were promptly re-mailed to those Class Members.
26 (Admin. Decl., ¶ 6.) To date, only 11 of the 417 Class Notices remain undeliverable with no forwarding
27 address, where no new addresses could be found through skip trace or through a forwarding address
28 provided by the United States Postal Service. (Admin. Decl., ¶ 7.)

1 The deadline for the 417 Class Members in the class data list to submit an opt-out request,
2 objection, or dispute of workweeks was September 29, 2023. (Admin. Decl., ¶¶ 8–10.) The Settlement
3 Administrator has received **zero** objections and **zero** requests for exclusion. (Admin. Decl., ¶¶ 8–9.)
4 Thus, the Settlement Administrator is reporting a **100% participation rate**—an overwhelmingly
5 favorable response to a Settlement. (Admin. Decl., ¶ 11.)

6 **A. THE CLASS WAS GIVEN THE BEST POSSIBLE NOTICE OF THE**
7 **SETTLEMENT**

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

17 The notice procedure approved by the Court was and is the best notice practicable. As discussed
18 above, the Settlement Administrator duly mailed the Class Notices to all Class Members. (Admin.
19 Decl., ¶¶ 3–10.) When a Class Notice was returned undeliverable, the settlement administrator made
20 reasonable efforts to obtain a valid mailing address by performing a computerized skip trace or by
21 obtaining a forwarding address through the United States Postal Service. (Admin. Decl., ¶ 6.)

22 The terms of the Class Notice, which was approved by the Court, fully complied with the
23 requirements of California Rules of Court, rule 3.769, subdivision (f). (See generally PAM Order.) It
24 provided Class Members with all relevant information needed to make an informed decision as to
25 whether to opt-out, participate in, or object to the settlement. It provided an explanation of the litigation
26 and proposed settlement terms, and procedures on how to opt out, object and/or appear at the final
27 fairness hearing. The Class Notice also provided an explanation of the case, the exclusion date and
28 procedure for exclusion, the proposed attorneys’ fees, litigation costs, administration costs, service

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

4 Moreover, the Court diligently reviewed and approved the Class Notice as to form and content.
5 (See generally PAM Order.) Therefore, the Court may determine the fairness and adequacy of the
6 settlement and order its approval, secure in the knowledge that all Class Members have been given the
7 opportunity to participate fully in the notice process and have been fully apprised of their rights and
8 options, including their rights to object to the Settlement Agreement. To date, no one has chosen to do
9 so. (Admin. Decl., ¶ 9.)

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

12 The Class Members have overwhelmingly accepted the Settlement Agreement and 417 Class
13 Members, 142 Aggrieved Employees, and the State of California all stand to benefit from the settlement
14 on entry of final approval. (Admin. Decl., ¶¶ 11, 14.) “[T]he absence of a large number of objections
15 to a proposed class action settlement raises a strong presumption that the terms of a proposed class
16 settlement action are favorable to the class members.” (*In re Omnivision Technologies, Inc.* (N.D. Cal.
17 2008) 559 F.Supp.2d 1036, 1043, quoting *National Rural Telecommunications Cooperative v.*
18 *DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529; *Moore v. PetSmart, Inc.* (N.D. Cal., Aug. 4,
19 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000, at *7 [finding that where “less than one percent
20 either opted out or objected, the reaction of the putative class has been very positive. Therefore, this
21 factor strongly favors settlement.”].)

22 Here, **zero** members of the eligible Class Members have submitted objections to any of the
23 terms of the proposed settlement, including Plaintiffs’ requested service award or Plaintiffs’ counsel’s
24 proposed attorneys’ fees and costs. (Admin. Decl., ¶ 9.) Moreover, **zero** Class Members have requested
25 exclusion out of 398 eligible Class Members—evidencing that all Class Members desire to receive the
26 benefits of this Settlement Agreement. (Admin. Decl., ¶ 8.) This response evidences the Class
27 Members’ clear and overwhelmingly support the Settlement Agreement.
28

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

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

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

16 The trial court enjoys broad discretion to determine whether a proposed class action settlement
17 is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The decision to approve or reject a
18 proposed settlement lies within the Court's sound discretion. (*Wershba v. Apple Computer, Inc.* (2001)
19 91 Cal.App.4th 224, 234–235.) In deciding whether to grant final approval, the Court's ultimate duty
20 is to determine whether the settlement is fair, adequate, and reasonable. (See *Dunk v. Ford Motor Co.*
21 (1996) 48 Cal.App.4th 1794, 1801 [setting forth the “fair, adequate, and reasonable” standard], citing
22 *Officers for Justice v. Civil Service Com'n of City and County of San Francisco, supra*, 688 F.2d 615,
23 625; see also *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742–743 [a trial
24 court must approve a class action settlement agreement, but only after determining that it is ““fair,
25 adequate and reasonable,”” considering factors such as the ““risk, expense, [and] complexity”” of
26 continued litigation], citations omitted.) The Court should consider several factors including, but not
27 limited to:
28

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

7
8 The above factors are not exclusive, “the court is free to engage in a balancing and weighing of
9 factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91
10 Cal.App.4th 224, 245.) In doing so, the Court must give due “regard to what is otherwise a private
11 consensual agreement between the parties.” (*Ibid.*; see also *In re Microsoft I-V Cases* (2006) 135
12 Cal.App.4th 706, 723.) The inquiry is limited “to the extent necessary to reach a reasoned judgment
13 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
14 parties” (*Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, *supra*,
15 688 F.2d 615, 625.)

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

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

20 A presumption of fairness exists where, as here: “(1) the settlement is reached through arm’s-
21 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
22 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
23 small.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th 1794, 1802; *In re Microsoft I-V Cases*, *supra*,
24 135 Cal.App.4th 706, 723 [“The trial court operates under a presumption of fairness when the
25 settlement is the result of arm’s-length negotiation, investigation and discovery that are sufficient to
26 permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the
27 percentage of objectors is small.”].)

28 Here, the Settlement Agreement was negotiated at arm’s length between counsel using a
professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 32.) Counsel for all parties

1 were thoroughly familiar with the complex legal and factual questions at issue in this litigation.
2 (Melmed FAM Decl., ¶ 32.) The Settlement Agreement is a product of intensive negotiations,
3 supported by investigation and direct exchanges of information through informal discovery, during
4 settlement negotiations, including a full-day mediation, and significant post-mediation negotiations.
5 (Melmed FAM Decl., ¶ 32.) Though cordial and professional, the settlement negotiations were
6 adversarial and non-collusive in nature. (Melmed FAM Decl., ¶ 32.)

7 The parties thoroughly investigated and evaluated the factual and legal strengths and
8 weaknesses of this case before reaching the settlement. (Melmed FAM Decl., ¶ 33.) As described
9 above, the Settlement Agreement was reached after extensive informal discovery, investigation,
10 research, thorough calculations, risk evaluation, substantial exchanges of documents, and an exchange
11 of other information required to evaluate the claims at issue. (Melmed FAM Decl., ¶ 33.) The settlement
12 came only after the case was thoroughly investigated by Plaintiffs' counsel. (Melmed FAM Decl., ¶
13 33.)

14 The settlement reached is the product of substantial effort by the parties and their counsel.
15 (Melmed FAM Decl., ¶ 33.) Plaintiffs and Plaintiffs' counsel agree that the Settlement Agreement
16 represents a fair, adequate, and reasonable resolution of the claims. (PAM Order ¶ 3; Melmed FAM
17 Decl., ¶ 34.) Moreover, Plaintiffs' Counsel are experienced in similar class actions. (Melmed FAM
18 Decl., ¶¶ 6–11.) Additionally, the percentage of objectors is not only small, *but zero*. (Admin. Decl., ¶
19 9.) The presumption of fairness of this settlement applies with full force.

20 C. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED

21 1. The Settlement Is the Result of Serious, Informed, and Non-Collusive 22 Negotiations

23 As explained above, the Settlement Agreement was negotiated at arm's length between counsel
24 using a professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 32.) Counsel for
25 all parties were thoroughly familiar with the complex legal and factual questions at issue in this
26 litigation. (Melmed FAM Decl., ¶ 32.) The Settlement Agreement is a product of intensive negotiations,
27 supported by investigation and direct exchanges of information through informal discovery, during the
28 course of settlement negotiations, including a full-day mediation. (Melmed FAM Decl., ¶ 32.) Although

1 Plaintiffs and Plaintiffs' counsel believed the class claims had merit and there was a possibility of
2 certifying the class and claims, they recognized the potential risk, expense, and complexity posed by
3 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on
4 the damages awarded, and/or on an appeal that can take several more years to litigate. (Melmed FAM
5 Decl., ¶ 35.)

6 The resulting Settlement Agreement was based on calculations, risk assessment, and non-
7 collusive negotiation. It takes the risks identified above and others into account in arriving at the non-
8 reversionary settlement. (Melmed FAM Decl., ¶ 33.)

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

11 Counsel for the Parties spent months prior to the mediation developing the factual record for
12 this case, engaging in informal discovery and exchanges of documents and information, drafting
13 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and
14 weaknesses of their respective positions at the mediation and during subsequent settlement
15 negotiations. (Melmed FAM Decl., ¶ 30.) The Parties and their counsel attended a full-day mediation
16 session before an experienced and well-respected mediator which resulted in the resolution of the case
17 on a class and representative basis. (Melmed FAM Decl., ¶ 30.) David S. Phillips is a well-respected
18 and widely-recognized mediator of complex class actions and employment matters.

19 In addition, the parties are represented by skilled and experienced counsel with extensive
20 backgrounds in complex litigation and experience litigating similar wage and hour class actions.
21 (Melmed FAM Decl., ¶¶ 6–11.) The Settlement Agreement was reached after extensive investigation
22 and research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiffs'
23 counsel thorough factual investigation, sufficient to evaluate Defendants' defenses. (Melmed FAM
24 Decl., ¶ 31.) The Settlement Agreement came only after the case was thoroughly investigated by
25 Plaintiffs' counsel. (Melmed FAM Decl., ¶ 31.) Plaintiffs' counsel agree that this settlement is fair,
26 adequate, and reasonable, and in the best interests of Class Members, the State of California, and the
27 Aggrieved Employees. (Melmed FAM Decl., ¶ 31.)
28

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

2 Although Plaintiffs and Plaintiffs’ counsel believed the class claims had merit and that there
3 was a possibility of certifying the class and claims, they recognized the potential risk, expense, and
4 complexity posed by litigation, such as unfavorable decisions on class certification, summary
5 judgment, adverse outcomes at trial or on the damages awarded, and the potential for appeal that can
6 take several more years to litigate. (Melmed FAM Decl., ¶ 35.) The resulting Settlement Agreement
7 was based on calculations, risk assessment, and non-collusive negotiation. (Melmed FAM Decl., ¶ 33.)
8 It takes the risks identified above and others into account in arriving at the non-reversionary Gross
9 Settlement Amount of \$350,000.00. (Melmed FAM Decl., ¶ 33.)

10 The Settlement Agreement represents a fair compromise given the risks and uncertainties
11 presented by continued litigation. Defendants asserted and would have continued to assert legal and
12 factual grounds to defend against this action, including factual and legal defenses on the merits.
13 Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the
14 Settlement Agreement ensures timely relief and substantial recovery of the Defendants’ realistic
15 exposure. (Melmed FAM Decl., ¶ 36.)

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

17 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
18 should consider “[t]he strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of
19 further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.*, *supra*,
20 48 Cal.App.4th 1794, 1801.) As described in the Preliminary Approval Motion and its accompanying
21 papers, Defendants had viable defenses to Plaintiffs’ claims, which create a real possibility that the
22 claims might not be certified or may fail on the merits. (Melmed FAM Decl., ¶ 35.) Proceeding with
23 litigation would impose significant risk of no recovery as well as ongoing, substantial additional
24 expenditures of time and resources. (Melmed FAM Decl., ¶ 35.) If settlement were not achieved,
25 continued litigation of the claims would take substantial time and possibly confer little to no benefit on
26 Class Members, the State of California, or the Aggrieved Employees. By contrast, the settlement will
27 yield a prompt, certain, and substantial recovery, and benefits the Parties, the Court, the Class
28 Members, the State of California, and the Aggrieved Employees. (Melmed FAM Decl., ¶ 35.)

1 **5. Plaintiffs’ Counsel are Experienced in Similar Wage-and-Hour Litigation**

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

11 **V. THE CLASS REPRESENTATIVES’ SERVICE AWARDS ARE FAIR,**
12 **REASONABLE, AND APPROPRIATE**

13 The Settlement Agreement provides for a service award payment of \$10,000.00 to each of the
14 named plaintiffs in addition to whatever payment they are otherwise entitled to receive as a Class
15 Member and Aggrieved Employee. (Settlement Agreement, at pp. 6–7.) The proposed service award
16 is intended to recognize the time, effort, and risk Plaintiffs undertook in bringing this case and helping
17 to secure the relief obtained for the Class Members, the State of California, and the Aggrieved
18 Employees. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding “service
19 payment” to named plaintiff for his efforts in bringing class case]; *Rodriguez v. West Publishing Corp.*
20 (9th Cir. 2009) 563 F.3d 948, 958–959 [stating that incentive awards are “intended to compensate class
21 representatives for work done on behalf of the class, to make up for financial or reputational risk
22 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
23 attorney general.”].) To determine the propriety of a service award, courts consider the actions
24 protecting class interests, the benefit provided to the class based on those actions, and the amount of
25 time and effort expended by the plaintiffs. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 976–
26 977.)

27 Plaintiffs’ requested service awards serve to recognize Plaintiffs’ time and efforts on behalf of
28 the Class Members, including time spent in meetings with the attorneys and the acceptance of the

1 financial risk in pursuing this litigation. (Melmed FAM Decl., ¶ 39.) The service award requested by
2 each plaintiff represents only 2.86% of the Gross Settlement Amount in this case ($\$10,000 \div \$350,000$
3 $\times 100 = 2.86\%$), or 5.71% combined. Plaintiffs provided invaluable assistance to Plaintiffs' counsel,
4 the Class Members, the State of California, and the Aggrieved Employees in this case, including
5 providing factual background for mediation and the operative complaint, reviewing the relevant
6 documents, participating in numerous phone calls with Plaintiffs' counsel, gathering highly relevant
7 documents, and reviewing the settlement documents. (Melmed FAM Decl., ¶ 39; Aguilar Decl., ¶¶ 5–
8 10; Beller Decl., ¶¶ 5–10.) Plaintiffs agreed to participate in this case with no guarantee of personal
9 benefit. (Melmed FAM Decl., ¶ 39; Aguilar Decl., ¶ 9; Beller Decl., ¶ 9.) Further, Plaintiffs agreed to
10 undertake the financial risk of serving as class representatives and exposed themselves to the risk of
11 negative publicity by anyone who opposed this case. (Melmed FAM Decl., ¶ 39; Aguilar Decl., ¶ 10;
12 Beller Decl., ¶ 10.)

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

1 enter into a general release of all claims against Defendants, whereas the Class Members only released the
2 claims alleged. (Settlement Agreement, at pp. 10–11.) The requested service award is modest, fair, and
3 reasonable.

4 **VI. THE PROPOSED ATTORNEYS’ FEE ALLOCATION IS FAIR, REASONABLE,**
5 **AND APPROPRIATE**

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

12 Specifically, Plaintiffs’ counsel requests attorneys’ fees of \$116,666.67 (i.e., one-third of the
13 Gross Settlement Amount), as provided in the Settlement Agreement. (Settlement Agreement, at p. 7.)
14 As will be explained, this request is reasonable and appropriate under the common fund theory and is
15 supported by: (1) case law, (2) the high-quality of work performed by Plaintiffs’ counsel, (3) the
16 excellent results achieved for the Class Members, (4) the risks inherent in the contingent nature of
17 Plaintiffs’ counsel’s representation in this case, and (5) public policy considerations.

18 **A. PLAINTIFFS’ COUNSEL ARE ENTITLED TO A FEE FROM THE**
19 **COMMON FUND CREATED**

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

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

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

22 In *Laffitte v. Robert Half Internat., Inc., supra*, 1 Cal.5th 480, the California Supreme Court
23 unequivocally held “that when class action litigation established a monetary fund for the benefit of the
24 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
25 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
26 fund created” without considering the amount of hours expended on the case. (*Id.* at p. 503.) The court
27 further held that “[t]he recognized advantages of the percentage method—including relative ease of
28 calculation, alignment of incentives between counsel and the class, a better approximation of market

1 conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement
2 and avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a
3 valuable tool that should not be denied our trial courts.” (*Ibid.*)

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

12 **B. COURTS ROUTINELY AWARD ATTORNEYS’ FEES AT OR ABOVE**
13 **THOSE REQUESTED HERE**

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

1 WL 3155645, at *6 [noting that a fee award of one-third of the settlement was “well within the range
2 of percentages which courts have upheld as reasonable in other class action lawsuits”]; *McCrory v.*
3 *Elations Company, LLC* (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL 769703, at
4 *10 [noting that most fee awards are 33%]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov. 18, 2014,
5 No. SACV 13-0561-DOC) 2014 WL 6473804, at *12 [finally approving a 33.34% fee award on a
6 \$5,800,000 settlement].)

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

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

23 In addition to the fact that a benefit was created with a significant common fund, the fairness
24 of the requested fee award of one-third of that common fund is supported by the high quality of work
25 performed by Plaintiffs’ counsel and the favorable result obtained for the Class Members and
26 Aggrieved Employees given the significant challenges faced by Plaintiffs in this action.

27 Plaintiffs’ counsel diligently, efficiently, and creatively pursued this case and promptly reached
28 a successful settlement for the benefit of the Class Members. Despite the numerous risks and obstacles

1 afflicting Plaintiffs' claims as detailed in the Preliminary Approval Motion and its accompanying
2 papers, Plaintiffs' counsel crafted and negotiated a fair and reasonable Settlement Agreement for the
3 benefit of the Class Members. The fact that the settlement was embraced and supported by the Class
4 Members, as evidenced by the complete lack of any objections, clearly demonstrates that the Class
5 Members support the Settlement Agreement and results achieved by Plaintiffs' counsel through the
6 litigation of this matter. (Admin. Decl., ¶ 9.)

7 As a result of this litigation, the Class Members, the State of California, and the Aggrieved
8 Employees all stand to receive a significant Net Settlement Amount of **\$141,450.19**.

9 **D. THE CONTINGENT NATURE OF PLAINTIFFS' COUNSEL'S**
10 **REPRESENTATION OF PLAINTIFFS AND THE CLASS MEMBERS**
11 **FURTHER SUPPORTS THE FEE AWARD AT ONE-THIRD OF THE**
12 **MAXIMUM COMMON FUND**

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

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

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

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

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

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

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

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

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

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

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

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

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

26
27 Conversely, a reduction in attorneys’ fees due to the size of the settlement in this case would
28 create perverse incentives for class action attorneys—effectively penalizing them for obtaining more
favorable results on behalf of the class. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th

1 19, 52 [“counsel should be rewarded, not punished, for helping to achieve that goal”].) Public policy
2 would be best served by encouraging class action attorneys to recover the greatest amount reasonably
3 possible on behalf of the injured class members. (*Id.* at p. 53 [“[Fee] awards that are too small can also
4 be problematic, as they chill the private enforcement essential to the vindication of many legal rights
5 and obstruct the representative actions that often relieve the courts of the need to separately adjudicate
6 numerous claims.”].) The award of attorneys’ fees as requested by Plaintiffs’ counsel would properly
7 reward Plaintiffs’ counsel’s efforts in advancing a clear public policy and would encourage additional
8 such efforts.

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

10 **F. THE LODESTAR MULTIPLIER APPROACH CONFIRMS THE**
11 **REASONABLENESS OF THE FEE REQUEST**

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

23 When a court adopts the “lodestar multiplier” method, after initially calculating the combined
24 total lodestar, the court may then adjust the lodestar based on several factors in order to “fix a fee at
25 the fair market value for the particular action.” (*Id.* at p. 1132; *Graham v. DaimlerChrysler Corp.*
26 (2004) 34 Cal.4th 553, 574.) As noted, these additional factors include the contingent risk of the
27 litigation, the novelty and complexity of the issues, and exceptional results obtained. (*Ketchum v.*
28 *Moses, supra*, 24 Cal.4th at p. 1132; *Serrano v. Priest, supra*, 20 Cal.3d at p. 48.)

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

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

20 To date, Plaintiffs’ counsel’s lodestar to date is \$70,179.20 after collectively expending 96.8
21 hours on this matter. (Melmed FAM Decl., ¶ 54.) Thus, the fees sought here reflect a lodestar multiplier
22 of only 1.66 (i.e., \$116,666.67 ÷ \$70,179.20). Moreover, it is anticipated that Plaintiffs’ counsel will
23 expend time which cannot yet be accounted for in the hours in Plaintiffs’ counsel’s declaration.
24 (Melmed FAM Decl., ¶ 54.) Therefore, the unadjusted lodestar will increase and the multiplier will
25 decrease by the conclusion of this matter.

26 Historically, courts in California have commonly approved multipliers between two and four.
27 (See, e.g., *Steiner v. American Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed.Appx. 780, 783
28 [multiplier of 6.85 “falls well within the range of multipliers that courts have allowed”]; *Sternwest*

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

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

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

20 Accordingly, Plaintiffs’ counsel further request that, in addition to awarding them reasonable
21 attorneys’ fees, the Court grant their application for reimbursement of the reasonable out-of-pocket
22 expenses advanced, incurred and expected to be incurred by counsel representing Plaintiffs in
23 connection with the prosecution of this litigation in the amount of \$13,383.14, which is less than the
24 \$15,000.00 maximum cost allocation stipulated by the parties in the Settlement Agreement and which
25 was not objected to by any Class Member. (Settlement Agreement, at p. 7; Melmed FAM Decl., ¶ 41,
26 Exh. 2; Admin. Decl., ¶ 9.) Plaintiffs’ counsel has documented and verified these costs and expenses
27 for which counsel seeks reimbursement. (Melmed FAM Decl., ¶ 41, Exh. 2.) All these costs were
28 necessarily incurred in the course of this hard-fought litigation and would have been charged to a fee-

1 paying client. No Class member objected to an award of costs to Plaintiffs' counsel. (Admin. Decl., ¶
2 9.) Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses advanced
3 and/or incurred is appropriate and justified as part of the overall Settlement Agreement and should be
4 awarded by the Court.

5 **VIII. SETTLEMENT ADMINISTRATION COSTS**

6 The parties agreed that the Settlement Administrator, Phoenix Settlement Administrators,
7 would be compensated for services performed. (Settlement Agreement, at p. 7.) The Settlement
8 Administrator's requested fee is \$8,500.00. (Admin. Decl., ¶ 16.)

9 **IX. SUBMISSION TO THE LWDA**

10 The Settlement Agreement and this motion have been concurrently submitted to the LWDA
11 pursuant to Labor Code section 2699, subdivision (1)(2). (Melmed FAM Decl., ¶ 64.)

12 **X. CONCLUSION**

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

15 Dated: October 30, 2023

MELMED LAW GROUP P.C.

16
17 

18 **KYLE D. SMITH**

19 Attorney for Plaintiffs, the Preliminarily-Approved
20 Class, and the Aggrieved Employees
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