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

PRISCILLA MARTINEZ, VERONICA

FIGUEROA BERNAL, JOSEFINA

MERCEDES HERRERA, and GUILLERMO

LEMAITRE, individuals on behalf of

themselves, the State of California, as private

attorneys general, and on behalf of all others

similarly situated,

Plaintiffs,

v.

THRIFTY PROPERTY MANAGEMENT &

INVESTMENTS, an Unknown Entity; HENRY

BAGHDADY, an Individual; MARY E.

BAGHDADY, an Individual; AMANDA

BAGHDADY, an Individual; EMILY STOLAN,

an Individual; and DOES 1 TO 50,

Defendants.

Case Number: CIVSB2215893

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

Date: September 6, 2023

Time: 10:00 a.m.

Dept.: S26

Judge: Hon. David S. Cohn

Complaint Filed: September 8, 2022

Trial Date: None Set

Preliminary Approval Granted:
April 20, 2023

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

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

3 **NOTICE IS HEREBY GIVEN** that on September 6, 2023, at 10:00 a.m., or as soon thereafter as
4 the matter may be heard, in Department S26 of the San Bernadino Superior Court for the State of California,
5 located at the San Bernadino Justice Center, 247 West Third Street, San Bernadino, California 92415,
6 before the Honorable David S. Cohn, Plaintiffs Priscilla Martinez, Veronica Figueroa Bernal, Josefina
7 Mercedes Herrera, and Guillermo Lemaitre (collectively, “Plaintiffs”), on behalf of themselves, the State
8 of California, as private attorneys general, and on behalf of all others similarly situated, will and hereby do
9 move this Court for entry of an order:

10 1. Finally certifying the class, as defined in the *Settlement Agreement and Release of Class*
11 *Action* (the “Settlement Agreement”) between Plaintiffs and Defendants Thrifty Property Management
12 & Investments, Henry Baghdady, Mary E. Baghdady, Amanda Baghdady, and Emily Stolan
13 (“Defendants”), for the purpose of settlement pursuant to California Code of Civil Procedure section
14 382 and California Rules of Court, rule 3.769;

15 2. Finally appointing the named plaintiffs—Priscilla Martinez, Veronica Figueroa Bernal,
16 Josefina Mercedes Herrera, and Guillermo Lemaitre—as class representative for purposes of
17 settlement;

18 3. Finally appointing Jonathan Melmed, Kyle D. Smith, and Joanne Kim of Melmed Law
19 Group P.C. and Shoham J. Solouki and Grant Joseph Savoy of Solouki & Savoy, LLP as class counsel
20 for purposes of settlement;

21 4. Finding that the notice of the settlement was properly provided to the class members in
22 accordance with the Court’s April 20, 2023, *Order Granting Preliminary Approval of Class Action*
23 *Settlement*;

24 5. 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 revised gross settlement amount of \$3,085,351.69 (“Revised Gross Settlement Amount”)—as adjusted
27 after the increase to the Gross Settlement Amount after the triggering of the Settlement Agreement’s
28 escalator provision—plus the employer’s portion of applicable payroll taxes;

1 6. Finally approving the allocation for attorneys’ fees of one-third of the *original* gross
2 settlement amount (i.e., \$916,666.67)¹ plus necessary litigation costs of \$20,307.29;

3 7. Finally approving a class representative service payment to each named Plaintiff in an
4 amount of \$10,000.00 (totaling \$40,000.00) from the Revised Gross Settlement Amount to compensate
5 them for the burdens, responsibilities, time, effort, and risks involved in coming forward on behalf of
6 the proposed class as well as their general releases which are broader than the release of the Class;

7 8. Finally approving the allocation of \$200,000 for penalties pursuant to the California
8 Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$150,000.00) shall be paid to
9 the California Labor and Workforce Development Agency (“LWDA”) from the Revised Gross
10 Settlement Amount, with the remaining 25% (i.e., \$50,000.00) payable to the aggrieved employees;

11 9. Finally approving Phoenix Settlement Administrators (the “Settlement Administrator”)
12 as the settlement administrator and approving distribution of \$7,750.00 from the Revised Gross
13 Settlement Amount to cover the Settlement Administrator’s expenses in administering the settlement;

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

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

17 12. 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 declarations of Plaintiffs’ counsel; the declaration of the Settlement Administrator; the
21 Settlement Agreement; the declaration of Barry Goldstein; the other records, pleadings, and papers filed in
22 this action; and upon such other evidence or argument as may be presented to the court at the hearing of
23 this motion.

26 ¹ Although the Settlement Agreement provides for Plaintiffs’ counsel’s attorneys’ fees to remain one-
27 third *after* any upward adjustment required by the escalator clause is implemented, Plaintiffs’ counsel
28 has opted to forego an increase in attorneys’ fees in keeping with their commitment to the Class
Members—thus voluntarily waiving approximately \$111,783.90 in attorneys’ fees. (Settlement
Agreement, at pp. 4, 28.)

1 Dated: August 14, 2023

MELMED LAW GROUP P.C.
SOLOUKI | SAVOY, LLP

3
4 

KYLE D. SMITH

SHOHAM J. SOLOUKI

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
1.	The <i>Bernal</i> Action	5
2.	The <i>Herrera</i> Action	6
3.	The <i>Martinez</i> Action.....	7
4.	Venue of the Actions	7
5.	Mediation and Settlement.....	8
6.	Preliminary Approval and Initiation of the Class Notice Process	9
7.	Plaintiffs' <i>Ex Parte</i> Motion	10
C.	The Claims and Defenses	11
D.	Summary of the Settlement Agreement	12
E.	Triggering of the Escalator Provision.....	13
III.	NOTICE TO THE CLASS MEMBERS.....	14
A.	The Notice Process Was Diligently Carried Out	14
B.	The Class Was Given the Best Possible Notice of the Settlement	15
C.	The Class Members Overwhelmingly Approve of the Settlement, Which Is Fair and Reasonable	16
IV.	THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT	17
A.	Class Action Settlements Are Subject to Judicial Review and Approval under the California Rules of Court, and are Subject to a Presumption of Fairness.	17
B.	The Settlement Is Entitled to a Presumption of Fairness	18
C.	Final Approval of the Settlement Is Warranted	20
1.	The Settlement Is the Result of Serious, Informed, and Non-Collusive Negotiations.....	20

1	2.	The Extent of the Discovery and Investigation Was More Than Sufficient to	
2		Permit Final Approval of the Settlement Agreement	21
3	3.	The Settlement Agreement is a Reasonable Compromise of Claims	21
4	4.	The Risks Inherent in Continued Litigation are Great	22
5	5.	Plaintiffs' Counsel are Experienced in Similar Wage-and-Hour Litigation	22
6	V.	THE CLASS REPRESENTATIVES' SERVICE AWARD IS FAIR, REASONABLE,	
7		AND APPROPRIATE.....	23
8	VI.	THE PROPOSED ATTORNEYS' FEE ALLOCATION IS FAIR, REASONABLE,	
9		AND APPROPRIATE.....	25
10	A.	Independent Expert Analysis Shows the Reasonableness of the Attorneys' Fee	
11		Allocation in This Case	25
12	B.	Plaintiffs' Counsel Are Entitled to a Fee from the Common Fund Created	27
13	C.	Courts Routinely Award Attorneys' Fees at or above Those Requested Here.....	29
14	D.	The High Quality of Work and Excellent Result Obtained Support the Award..	30
15	E.	The Contingent Nature of Plaintiffs' Counsel's Representation of Plaintiffs and	
16		the Class Further Supports the Fee Award at One-Third of the Maximum	
17		Common Fund	30
18	F.	Public Policy Considerations Require the Award of Adequate Fees So Competent	
19		and Experienced Counsel Will Undertake Such Representations	32
20	G.	The Lodestar Multiplier Approach Confirms the Reasonableness of the Fee	
21		Request	34
22	VII.	PLAINTIFFS' COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES ...	36
23	VIII.	SETTLEMENT ADMINISTRATION COSTS	37
24	IX.	SUBMISSION TO THE LWDA	37
25	X.	CONCLUSION	37

TABLE OF AUTHORITIES

CASES

<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	23
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	27, 28
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879	24
<i>Boyd v. Bank of America Corp.</i> (C.D. Cal., Nov. 18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804	29
<i>Bush v. Superior Court</i> (1992) 10 Cal.App.4th 1374.....	17
<i>Cho v. Seagate Technology Holdings, Inc.</i> (2009) 177 Cal.App.4th 734	18
<i>Class Plaintiffs v. Jaffe & Schlesinger, P.A.</i> (9th Cir. 1994) 19 F.3d 1306	27
<i>Crommie v. State of Cal., Public Utilities Com’n</i> (N.D. Cal. 1994) 840 F.Supp. 719.....	31
<i>Cziraki v. Thunder Cats, Inc.</i> (2003) 111 Cal.App.4th 552	27
<i>D’Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1	27
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	18, 19, 20, 22, 34
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	22
<i>Ferguson v. Lieff, Cabraser, Heimann & Bernstein</i> (2003) 30 Cal.4th 1037	17
<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	24
<i>Glass v. UBS Fin. Servs., Inc.</i> (N.D. Cal. Jan. 26, 2007 No. C-06-4068 MMC) 2007 WL 221862	24
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553	34
<i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16	36
<i>Hernandez v. Restoration Hardware, Inc.</i> (2018) 4 Cal.5th 260	34
<i>In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation</i> (3d Cir. 1995) 55 F.3d 768	17
<i>In re Heritage Bond Litigation</i> (C.D. Cal., June 10, 2005,] No. 02-ML-1475 DT) 2005 WL 1594403	31
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706	18, 19

1	<i>In re Omnivision Technologies, Inc.</i> (N.D. Cal. 2008) 559 F.Supp.2d 1036	16
2	<i>In re Stauffer's Estate</i> (1959) 53 Cal.2d 124.....	27, 33
3	<i>Juris v. Inamed Corp.</i> (11th Cir. 2012) 685 F.3d 1294	15
4	<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	31, 34
5	<i>Kraus v. Trinity Management Services, Inc.</i> (2000) 23 Cal.4th 116	33
6	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	22
7	<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480	25, 27, 28
8	<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	27
9	<i>Louie v. Kaiser Found. Health Plan, Inc.</i> (S.D. Cal. Oct. 6, 2008, No. 08CV0795 IEG RBB) 2008	
10	WL 4473183	24
11	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> (1980) 103 Cal.App.3d 573.....	17
12	<i>Mallick v. Superior Court</i> (1979) 89 Cal.App.3d 434.....	17
13	<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW)	
14	2008 WL 5478576.....	29, 30
15	<i>McCrary v. Elations Company, LLC</i> (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016	
16	WL 769703	29
17	<i>Melendres v. City of Los Angeles</i> (1975) 45 Cal.App.3d 267	36
18	<i>Monterrubio v. Best Buy Stores, L.P.</i> (E.D. Cal., Nov. 20, 2013, No. 2:11-CV-03270-MCE-AC) 2013	
19	WL 12432761	30
20	<i>Moore v. PetSmart, Inc.</i> (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000	16
21	<i>National Rural Telecommunications Cooperative v. DIRECTV, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523	
22		16
23	<i>Officers for Justice v. Civil Service Com'n of City and County of San Francisco</i> (9th Cir. 1982) 688	
24	F.2d 615	17, 18
25	<i>Pearce v. Superior Court</i> (1983) 149 Cal.App.3d 1058.....	32
26	<i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797	15
27	<i>PLCM Group v. Drexler</i> (2000) 22 Cal.4th 1084	34
28	<i>Press v. Lucky Stores, Inc.</i> (1983) 34 Cal.3d 311.....	34

1	<i>Quinn v. State of California</i> (1975) 15 Cal.3d 162	27
2	<i>Rider v. County of San Diego</i> (1992) 11 Cal.App.4th 1410.....	36
3	<i>Rodriguez v. West Publishing Corp.</i> (9th Cir. 2009) 563 F.3d 948	23
4	<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL	
5	3492841	29, 30
6	<i>Ross v. US Bank National Association</i> (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL	
7	3833922	24
8	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319	32, 33
9	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	27, 34, 36
10	<i>Silber v. Mabon</i> (9th Cir. 1994) 18 F.3d 1449	15
11	<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL	
12	2196104	29, 30
13	<i>Staton v. Boeing Co.</i> (9th Cir. 2003) 327 F.3d 938	23
14	<i>Steiner v. American Broadcasting Co., Inc.</i> (9th Cir. 2007) 248 Fed.Appx. 780	35
15	<i>Sternwest Corp. v. Ash</i> (1986) 183 Cal.App.3d 74	35
16	<i>Stuart v. Radioshack Corp.</i> (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645.....	29
17	<i>Syers Properties III, Inc. v. Rankin</i> (2014) 226 Cal.App.4th 691	34
18	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	35
19	<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 482	24, 29
20	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	32
21	<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759.....	27
22	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	31, 35
23	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	17, 18, 34, 35
24	<i>West v. Circle K Stores, Inc.</i> (E.D. Cal. Oct. 19, 2006 No. CIVS040438WBSGGH) 2006 WL	
25	8458679	24
26	<i>Williams v. TriCap International LLC</i> (Final Approval Order, March 7, 2019) LASC No. BC644383	
27		29
28		

STATUTES

Bus. & Prof. Code, § 17200	6, 7
Bus. & Prof. Code, § 17210	6, 7
Lab. Code, § 1174	6, 7
Lab. Code, § 1185	6, 7
Lab. Code, § 1194	6, 7, 25, 33
Lab. Code, § 1194.2	6, 7
Lab. Code, § 1197	6, 7
Lab. Code, § 1197.1	6, 7
Lab. Code, § 1198	6, 7
Lab. Code, § 1198.5	6, 7
Lab. Code, § 1199	6, 7
Lab. Code, § 201	5, 7
Lab. Code, § 202	5, 7
Lab. Code, § 203	7
Lab. Code, § 204	6, 7
Lab. Code, § 210	6, 7
Lab. Code, § 218.5	25
Lab. Code, § 226	6, 7, 25
Lab. Code, § 226.3	6, 7
Lab. Code, § 226.7	6, 7
Lab. Code, § 227.3	6, 7
Lab. Code, § 256	7
Lab. Code, § 2698	1, 5, 6, 7
Lab. Code, § 2699	25, 37
Lab. Code, § 2699.6	1, 5, 6, 7
Lab. Code, § 2802	6, 7
Lab. Code, § 2804	6, 7

1	Lab. Code, § 510	6, 7
2	Lab. Code, § 512	6, 7
3	RULES	
4	Cal. Rules of Court, Rule 3.769	16, 17
5	REGULATIONS	
6	Cal. Code of Regs., tit. 8, § 11040	6
7	Cal. Code of Regs., tit. 8, § 11050	6
8	Cal. Code of Regs., tit. 8, § 11160	6
9		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks final approval of a wage-and-hour class action settlement between Plaintiffs
4 Priscilla Martinez, Veronica Figueroa Bernal, Josefina Mercedes Herrera, and Guillermo Lemaitre
5 (“Plaintiffs”) and Defendants Thrifty Property Management & Investments, Henry Baghdady, Mary E.
6 Baghdady, Amanda Baghdady, and Emily Stolan (“Defendants”) (collectively, the “Parties”) for
7 \$3,085,351.69 (the “Revised Gross Settlement Amount”) to be distributed to 178 individuals defined as:

8 *All individuals who are or were employed by Defendants as non-exempt employees in*
9 *California during the period from December 30, 2017, through September 18, 2022 (the*
10 *“Class Period”).*

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

17 Plaintiffs also represent a group of 132 aggrieved employees on behalf of the State of California as
18 private attorneys general pursuant to the California Labor Code Private Attorneys General Act of 2004,
19 Labor Code sections 2698 through 2699.6 (“PAGA”). The “Aggrieved Employees,” for these purposes,
20 share an identical definition with the Class except that the applicable “PAGA Period” is defined as the
21 period from December 30, 2020, through September 18, 2022. (Settlement Agreement, at p. 8.).

22 The Settlement Agreement is a non-reversionary settlement, meaning that none of the Revised
23 Gross Settlement Amount will revert to Defendants. (Settlement Agreement, at p. 7.) Class Members were
24 not required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 21.) The
25 applicable employer-side payroll taxes are to be paid by Defendants outside the Gross Settlement Amount.
26 (Settlement Agreement, at p. 6.)

27 On April 20, 2023, this Court granted preliminary approval of the Settlement Agreement. Pursuant
28 to that order, on May 18, 2023, Phoenix Settlement Administrators (the “Settlement Administrator”) mailed

the Court-approved *Notice of Proposed Class Action Settlement* (the “Class Notice”) to all 176 Class Members contained in the data provided by Defendants. (See Declaration of Jarrod Salinas on Behalf of Phoenix Settlement Administrators in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement (“Admin. Decl.”), ¶ 5). After this initial mailing, two individuals contacted the Settlement Administrator expressing their belief that they should have been included in the Class list. (Admin. Decl., ¶ 6.) After confirming with Defendants, the Settlement Administrator added these additional Class Members to the Class list, increasing the Class size to 178. (Admin. Decl., ¶ 6.) A copy of the Class Notice is attached to Admin. Decl. as Exhibit A.

If the Court grants final approval, each participating Class Member and Aggrieved Employee will receive a share of approximately **\$1,900,627.73** (the “Net Settlement Amount”), which is calculated as described below. Plaintiffs also provide the following summary to assist the Court in its review:

Original Gross Settlement Amount	\$2,750,000.00
Escalator Provision:	\$335,351.69
Revised Gross Settlement Amount	\$3,085,351.69
Attorneys’ Fees:	(\$916,666.67)
Litigation Costs:	(\$20,307.29)
Settlement Administration Costs:	(\$7,750.00)
Service Awards to Plaintiffs:	(\$40,000.00)
PAGA Penalties:	(\$200,000.00)
Net Settlement Amount	\$1,900,627.73
<i>Employer Portion of Payroll Taxes Paid by Defendant in Addition to the Revised Gross Settlement Amount</i>	

Class Participation	
Eligible Class Members:	178
Requests for Exclusion:	0
Objectors:	0
Participating Class Members:	178
Total Participation Rate:	100%

Relevant Supplemental Data	
Number of Aggrieved Employees:	132
Workweeks during the Class Period	25,919
Pay Periods during the PAGA Period	4,883
Highest Payment to Class Members	\$18,048.69
Average Payment to Class Members	\$10,677.68
Highest Payment to Aggrieved Employees	\$458.60
Average Payment to Aggrieved Employees	\$378.79
Class Counsel Fee Request	$\frac{1}{3}$ of the <i>Original</i> 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., ¶ 12.) To date, *zero* Class Members have requested exclusion or submitted objections to the Settlement Agreement. (Admin. Decl., ¶¶ 9, 10.) In fact, the Settlement Agreement is so desirable that two Class Members proactively reached out to the Settlement Administrator to ensure their participation in the settlement. (Admin. Decl., ¶ 6.) 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, 55.) 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.) The average payment of **\$10,677.68** to the Class Members is a fantastic result.

As part of Plaintiffs' motion for final approval, Plaintiffs' counsel is seeking final approval of attorneys' fees in an amount equal to approximately **29.71%** of the Revised Gross Settlement Amount. This percentage is significantly lower than that authorized under the Settlement Agreement because the Escalator Clause in section 9.2 was triggered and increased the total settlement amount. Although Plaintiffs' counsel

1 is entitled to a one-third attorney fee award *after* the upward adjustment called for by the Escalator Clause
2 (see Settlement Agreement, at pp. 4, 28), Plaintiffs' counsel has opted to forego an increase in attorneys'
3 fees in keeping with Plaintiffs' counsel's commitment to the Class Members. As will be explained below,
4 the amount requested by Plaintiffs' counsel is a reasonable fee for a wage-and-hour class action as a
5 percentage of the common fund because it is within the normal range of attorneys' fee awards in similar
6 class actions in California courts and because of the benefit obtained for the Class in this case.

7 Based on the foregoing, Plaintiffs respectfully request that the Court issue an order **(1)** finally
8 certifying the Class; **(2)** finally appointing Plaintiffs as class representatives; **(3)** finally appointing
9 Plaintiffs' attorneys as class counsel; **(4)** finding that notice of the settlement was properly provided to the
10 Class Members; **(5)** finally approving the Settlement Agreement as fair, adequate, and reasonable;
11 **(6)** finally approving the allocation for attorneys' fees of \$916,666.67 (approximately 29.71%) of the
12 Revised Gross Settlement Amount, plus necessary incurred litigation costs; **(7)** finally approving Phoenix
13 Settlement Administrators as the settlement administrator and approving distribution of \$7,750.00 from the
14 Revised Gross Settlement Amount to cover the Settlement Administrator's expenses in administering the
15 settlement; **(8)** finally approving the allocation of \$200,000.00 from the Revised Gross Settlement Amount
16 for PAGA penalties; **(9)** finally approving a class representative service award to each Plaintiff in the
17 amount of \$10,000.00; **(10)** binding all participating class members to the terms of the Settlement
18 Agreement, including the release specified therein; and **(11)** retaining jurisdiction to enforce the terms of
19 the Settlement Agreement.

20 **II. BACKGROUND**

21 **A. THE PARTIES**

22 Defendant Thrifty Property Management & Investments is an unincorporated real estate business
23 that operates dozens of multi-residential buildings and apartment complexes throughout California,
24 primarily in Los Angeles and San Bernardino Counties. (Melmed FAM Decl., ¶ 12.) Plaintiffs allege that,
25 although Defendant Henry Baghdady is the primary owner and operator of the business, and Defendants
26 Mary E. Baghdady, Amanda Baghdady, and Emily Stolan served as joint employers of Plaintiffs, the Class,
27 and the Aggrieved Employees. (Melmed FAM Decl., ¶ 12.)
28

1 Plaintiffs are citizens of California and, at the relevant times, worked for Defendants in California.
2 Plaintiffs Bernal, Herrera, and Lemaitre worked as resident property managers. (Melmed FAM Decl., ¶
3 13.)² Their duties included taking care of the property and assisting residents. (Bernal Decl., ¶ 3; Herrera
4 Decl., ¶ 3, Lemaitre Decl., ¶ 3.) Plaintiff Martinez worked as a receptionist.³ Her duties included receiving
5 and greeting visitors, answering phone calls, and providing administrative support. (Melmed FAM Decl., ¶
6 14; Martinez Decl., ¶ 3.) Plaintiffs allege that Defendants’ employees—including Plaintiffs, the Class
7 Members, and the Aggrieved Employees (collectively, the “Employees”)—experienced various violations
8 of California’s wage-and-hour laws. (Melmed FAM Decl., ¶ 15.)

9 **B. PROCEDURAL SUMMARY**

10 This case involves the claims and parties of three different actions, each of which involves nearly
11 identical wage-and-hour claims brought on a class and PAGA basis: **(1)** *Bernal v. Thrifty Property*
12 *Management & Investment, et al.* (Super. Ct. L.A. County, No. 21STCV47497) [the “*Bernal* Action”];
13 **(2)** *Herrera, et al. v. Baghdady, et al.* (Super. Ct. L.A. County, No. 22STCV04322) [the “*Herrera* Action”];
14 and **(3)** *Martinez v. Thrifty Property Management & Investments, et al.* (Super. Ct. San Bernardino County,
15 No. CIVSB2215893) [this case]. Together, these cases are referred to as the “Actions.” (Melmed FAM
16 Decl., ¶ 16.)

17 **1. The *Bernal* Action**

18 Plaintiff Bernal, then represented by Melmed Law Group P.C., was the first to initiate an action
19 against Defendants Thrifty Property Management & Investments and Henry Baghdady. On December 30,
20 2021, Plaintiff Bernal submitted a letter to the California Labor and Workforce Development Agency
21 (“LWDA”) to notify the LWDA, pursuant to the Private Attorneys General Act of 2004, Labor Code
22 sections 2698 through 2699.6 (“PAGA”), of her intent to seek civil penalties against Defendants Thrifty
23 Property Management & Investments and Henry Baghdady for violations of Labor Code sections 201, 202,
24

25 ² See also Declaration of Veronica Figueroa Bernal in Support of Plaintiffs’ Motion for *Preliminary*
26 Approval of Class Action Settlement [“Bernal Decl.”], ¶ 3; Declaration of Josefina Mercedes Herrera
27 in Support of Plaintiffs’ Motion for *Preliminary* Approval of Class Action Settlement [“Herrera
Decl.”], ¶ 3; Declaration of Guillermo Lemaitre in Support of Plaintiffs’ Motion for *Preliminary*
Approval of Class Action Settlement [“Lemaitre Decl.”], ¶ 3.

28 ³ See Declaration of Priscilla Martinez in Support of Plaintiffs’ Motion for *Preliminary* Approval of
Class Action Settlement [“Martinez Decl.”], ¶ 3.

204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2804; as well as California Industrial Welfare Commission (“IWC”) Wage Orders 4-2001, 5-2001, and/or 16-2001 (the “Applicable Wage Orders”). (Cal. Code of Regs., tit. 8, §§ 11040, 11050, 11160; Melmed FAM Decl., ¶ 17.)

On the same day, December 30, 2021, Plaintiff Bernal commenced the *Bernal* Action by filing a class action complaint in the Superior Court for the County of Los Angeles alleging causes of action against Defendants Thrifty Property Management & Investments and Henry Baghdady for: (1) failure to pay minimum wage for all hours worked; (2) failure to pay proper overtime wages; (3) failure to pay all accrued vacation time; (4) failure to provide compliant rest periods and pay missed rest break premiums; (5) failure to provide compliant meal periods and pay missed meal period premiums; (6) failure to maintain accurate employment records; (7) failure to pay timely wages during employment; (8) failure to reimburse business expenses; (9) failure to provide complete and accurate wage statements; and (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210). (Melmed FAM Decl., ¶ 18.)

On or about May 23, 2022, Plaintiff Bernal filed a first amended complaint in the *Bernal* Action alleging causes of action against Defendants for those described in her original complaint and adding one cause of action for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6). (Melmed FAM Decl., ¶ 19.)

On November 22, 2022, the Court in the *Bernal* Action ordered the case stayed pending the outcome in this case. (Melmed FAM Decl., ¶ 20.)

2. The *Herrera* Action

On February 3, 2022, Plaintiffs Herrera and Lemaitre, then represented by Solouki & Savoy, LLP, filed their PAGA letter with the LWDA, as well as a class action complaint in the Superior Court for the County of Los Angeles alleging causes of action against all named Defendants in the current action for: (1) failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wage; (5) failure to timely pay wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records; (8) failure to furnish accurate, itemized statements; (9) failure to indemnify employees for necessary expenditures

1 incurred in discharge of duties; and **(10)** unfair and unlawful business practices. (Melmed FAM Decl., ¶
2 21.)

3 On or about May 16, 2022, Plaintiffs Herrera and Lemaitre filed a first amended complaint in the
4 *Herrera* Action alleging causes of action against Defendants for those described in the original Complaint
5 and adding one cause of action for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§
6 2698–2699.6). (Melmed FAM Decl., ¶ 22.)

7 On November 22, 2022, the Court in the *Herrera* Action ordered the case stayed pending the
8 outcome in this case. (Melmed FAM Decl., ¶ 23.)

9 **3. The *Martinez* Action**

10 On July 20, 2022, Plaintiff Martinez, then represented by Melmed Law Group P.C., submitted her
11 letter to the LWDA to notify it, pursuant to PAGA, of her intent to seek civil penalties against Defendants
12 Thrifty Property Management & Investments and Henry Baghdady for violations of Labor Code sections
13 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1,
14 1198, 1198.5, 1199, 2802, and 2804, as well as the Applicable Wage Orders. (Melmed FAM Decl., ¶ 24.)

15 On July 21, 2022, Plaintiff Martinez initiated this case by filing a class action complaint against
16 Defendants Thrifty Property Management & Investments and Henry Baghdady for: **(1)** failure to pay
17 minimum wage for all hours worked; **(2)** failure to pay proper overtime wages; **(3)** failure to pay all accrued
18 vacation time; **(4)** failure to provide compliant rest periods and pay missed rest break premiums; **(5)** failure
19 to provide compliant meal periods and pay missed meal period premiums; **(6)** failure to maintain accurate
20 employment records; **(7)** failure to pay timely wages during employment; **(8)** failure to pay all wages due
21 and owing at separation; **(9)** failure to reimburse business expenses; **(10)** failure to provide complete and
22 accurate wage statements; and **(11)** deceptive, fraudulent, or otherwise unlawful business practices based
23 on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–
24 17210.) (Melmed FAM Decl., ¶ 25.)

25 **4. Venue of the Actions**

26 In early May 2022, the Parties in the *Bernal* Action and the *Herrera* Action initiated a *Belair-West*
27 notice process for the disclosure of the Class Members’ contact information to Plaintiffs’ counsel. The
28 notice process was completed on or about July 14, 2022. After a review of 200 Class Members’ records,

1 Plaintiffs’ counsel determined that an overwhelming number of class members reside in and/or were
2 employed in the County of San Bernardino. A small minority, approximately 12.56%, reside in the County
3 of Los Angeles—where the *Bernal* Action and the *Herrera* Action were filed. Accordingly, most alleged
4 violations in the Actions occurred in the County of San Bernardino. (Melmed FAM Decl., ¶ 26.)

5 After the mediation and settlement process described below, the Parties agreed that the most
6 appropriate venue for the litigation in the Actions is the County of San Bernardino. Accordingly, on
7 November 22, 2022, the Parties filed a *Joint Stipulation for Leave to File Plaintiffs’ First Amended*
8 *Complaint* to add all plaintiffs, defendants, and causes of action into the present case. On January 18, 2023,
9 this Court granted Plaintiffs leave to file their first amended complaint, which Plaintiffs did on January 27,
10 2023. The first amended complaint is the operative complaint in the action (the “Operative Complaint”).
11 (Melmed FAM Decl., ¶ 27.)

12 As explained above, on November 22, 2022, the Court in the *Bernal* Action and the *Herrera*
13 Action ordered those cases stayed pending the outcome in this case. (Melmed FAM Decl., ¶ 28.)
14 Accordingly, this case is the only presently active case.

15 5. Mediation and Settlement

16 On or about March 28, 2022, the Parties agreed to attend a private mediation. (Melmed FAM Decl.,
17 ¶ 29.) Prior to mediation, Plaintiffs’ counsel conducted significant informal discovery. (Melmed FAM
18 Decl., ¶ 29.) Discovery, investigation, and prosecution has included, among other things, numerous
19 telephonic conferences with Plaintiffs; inspection and analysis of thousands of pages of documents,
20 including Defendants’ relevant policies and employee handbook, and other information produced by
21 Plaintiffs and Defendants; the completion of the *Belaire-West* notice process; analysis of work-related data
22 from a sample of Class Members and Aggrieved Employees; an analysis of the legal positions taken by
23 Defendants; investigation into the viability of class treatment of the claims asserted in the action; analysis
24 of potential class-wide damages, including information sufficient to understand Defendants’ potential
25 defenses to Plaintiffs’ claims; research of the applicable law with respect to the claims asserted in the
26 Operative Complaint and the potential defenses thereto; and assembling and analyzing of data for
27 calculating damages. (Melmed FAM Decl., ¶ 29.)
28

1 Among other key pieces of information, Defendants produced the time records and payroll data for
2 a 25% sampling of randomly selected employees, which Plaintiffs’ counsel determined would provide a
3 statistically significant sample size with a high degree of confidence for Plaintiffs’ expert’s statistical
4 analysis. (Melmed FAM Decl., ¶ 30.) From these records, Plaintiffs’ expert was able to carefully craft a
5 damages model for each of the categories of alleged claims for which the data would reflect violations.
6 (Melmed FAM Decl., ¶ 30.)

7 On August 19, 2022, the Parties participated in a full-day mediation with Louis Marlin, who is a
8 full-time mediator with extensive experience in California wage-and-hour class action lawsuits. (Melmed
9 FAM Decl., ¶ 31.) The mediation negotiations were contentious, but the Parties were eventually able to
10 reach the broad terms of an agreement, which was memorialized in a Memorandum of Understanding.
11 (Melmed FAM Decl., ¶ 31.) After further negotiation, on October 11, 2022, the Parties executed the
12 longform Settlement Agreement now before the Court for approval. (Melmed FAM Decl., ¶ 31.)

13 **6. Preliminary Approval and Initiation of the Class Notice Process**

14 On April 20, 2023, this Court issued its *Order Granting Preliminary Approval of Class Action*
15 *Settlement* (“Preliminary Approval Order” or “PAM Order”). In granting preliminary approval, this Court
16 determined that the Settlement Agreement appeared to be “fair, adequate, and reasonable, and in the best
17 interests of the Class.” (PAM Order, ¶ 2.) This Court further found that the Settlement Agreement “falls
18 within the range of reasonableness and is presumptively valid, subject only to any objections that may be
19 raised at the final fairness hearing and final approval by this Court.” (PAM Order, ¶ 3.)

20 Pursuant to that Order, on May 18, 2023, the Settlement Administrator mailed the Court-approved
21 notice to all 176 Class Members contained in the data provided by Defendants. (Admin. Decl., ¶ 5.) After
22 this initial mailing, two individuals contacted the Settlement Administrator expressing their belief that they
23 should have been included in the Class list. (Admin. Decl., ¶ 6.) After confirming with Defendants, the
24 Settlement Administrator added these additional Class Members to the Class list, increasing the Class size
25 to 178. (Admin. Decl., ¶ 6.) Since that time, no Class Member has submitted objections or requests for
26 exclusion, demonstrating the Class’s strong approval of the Settlement Agreement. (Admin. Decl., ¶¶ 9,
27 10.)
28

1 **7. Plaintiffs’ *Ex Parte* Motion**

2 Following the Court’s Preliminary Approval Order, issued on April 20, 2023, Defendants initiated
3 a campaign soliciting Class Members’ opt-outs. (Melmed FAM Decl., ¶ 34.) Defendants’ efforts included,
4 among other strategies, distributing two memoranda to Class Members. (Melmed FAM Decl., ¶ 34.) The
5 first, sent on or about May 11, 2023, stated that Plaintiffs were “trying to destroy” Defendants’ company
6 and instructed the Class to “reject the settlement and raise [their] opinion.” (Melmed FAM Decl., ¶ 34.) In
7 Defendants’ second memoranda, sent on or about May 24, 2023, Defendants offered to pay Class Members
8 “the same exact amount of money stated in the settlement agreement if [Class Members] REJECT the
9 settlement,” and further stated “[w]e need to win this case and save our company against those bastards.”
10 (Melmed FAM Decl., ¶ 34.) Defendants included a pre-printed opt out form with this second memorandum.
11 (Melmed FAM Decl., ¶ 34.) Plaintiffs’ counsel was also informed that at least one Defendant, Henry
12 Baghdady, approached Class Members in person to pressure them into requesting exclusion from the
13 Settlement and to inform them that he was preparing a list of all employees who did not request exclusion.
14 (Melmed FAM Decl., ¶ 34.)

15 Upon learning of Defendants’ efforts, on May 26, 2023, Plaintiffs’ counsel quickly served three
16 written discovery requests on Defendant Henry Baghdady, seeking to uncover the nature and extent of his
17 opt out campaign. (Melmed FAM Decl., ¶ 35.) Plaintiffs’ counsel also expeditiously negotiated the content
18 of a memorandum to the Class Members retracting the content of the earlier two memoranda, which was
19 sent to the Class Members on or about June 1, 2023. (Melmed FAM Decl., ¶ 35.)

20 On June 2, 2023, Plaintiffs submitted an *ex parte* application for an order: **(1)** enjoining Defendants
21 from soliciting Class Member requests for exclusion from the Settlement Agreement; **(2)** shortening
22 Defendants’ time to respond to Plaintiffs’ discovery request; **(3)** striking Defendants’ right to void the
23 Settlement Agreement; and **(4)** setting expedited briefing on Plaintiffs’ forthcoming motion for: any relief
24 sought but not granted in the *ex parte* application, an order voiding requests for exclusion based on
25 Defendants’ unlawful conduct, and sanctions against Defendants for litigation abuse. In the *ex parte*
26 application, Plaintiffs alleged that Defendants’ actions violated the Settlement Agreement, the Court’s
27 Preliminary Approval Order, and numerous statutes prohibiting retaliation or implied threats of retaliation.
28 (Melmed FAM Decl., ¶ 36.)

1 The Court held a hearing on Plaintiffs’ *ex parte* application on June 5, 2023, and granted Plaintiffs’
2 unopposed request for an injunction prohibiting Defendants from “further soliciting opt outs, directly or
3 indirectly.” (Melmed FAM Decl., ¶ 37.) The Court also set an expedited schedule for Plaintiffs’
4 forthcoming motion for an order: (1) striking Defendants’ right to void the settlement agreement,
5 (2) voiding all requests for exclusion obtained as a result of Defendants’ unlawful conduct, and
6 (3) imposing sanctions against Defendants. (Melmed FAM Decl., ¶ 37.) Thereafter, however, the Parties
7 reached an agreement and, on June 6, 2023, filed a Joint Stipulation to Waive Defendants’ Right to Void
8 Settlement Agreement, striking Defendants’ right to void the Settlement Agreement if 10% or more of the
9 Class Members request exclusion. (Melmed FAM Decl., ¶ 37.) On June 12, 2023, the Court issued an order
10 granting this stipulation. (Melmed FAM Decl., ¶ 37.)

11 The remainder of the class notice process went unimpeded, and the matter is now before this Court
12 for final approval.

13 C. THE CLAIMS AND DEFENSES

14 Plaintiffs alleged several categories of wage-and-hour violations on behalf of the Employees.
15 Plaintiffs’ primary claims stemmed from time-tracking policies. Specifically, Plaintiffs alleged that
16 Defendants had a policy of requiring all hours on timesheets to reflect 40 hours per week or less, regardless
17 of hours actually worked. (Melmed FAM Decl., ¶ 45.) Due to this policy, Plaintiffs alleged that Defendants
18 routinely failed to compensate the Employees for their full hours worked, resulting in widespread
19 underpayments of overtime and regular wages. (Melmed FAM Decl., ¶ 45.) Plaintiffs further alleged that
20 Defendants violated applicable Labor Code provisions regarding meal periods, rest periods, vacation pay,
21 and reimbursement of business expenses. (Melmed FAM Decl., ¶ 45.) Plaintiffs alleged that these errors
22 would also trigger derivative claims for wage statement penalties, waiting time penalties, and PAGA
23 penalties. (Melmed FAM Decl., ¶ 45.)

24 The details and settlement value of each of these claims, and their corresponding defenses, were
25 discussed extensively in the Plaintiffs’ Motion for Preliminary Approval and its accompanying papers, the
26 discussion of which is incorporated by reference herein, and which, for the sake of brevity, Plaintiffs will
27 avoid belaboring in this motion. (See Motion for Preliminary Approval, ¶¶ 8–22.)
28

Defendants have persistently denied all liability of any kind associated with the claims and allegations, and further denied that the Employees are entitled to any relief. Defendants also denied that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. Defendants maintain, among other things, that they have complied with California laws in all respects. (Melmed FAM Decl., ¶ 47.)

D. SUMMARY OF THE SETTLEMENT AGREEMENT

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-revisionary settlement amount. Originally, that settlement amount was \$2,750,000.00. (Settlement Agreement, at p. 7.) Due to the escalator provision being triggered, however, the Revised Gross Settlement Amount is \$3,085,351.69. (Admin. Decl., ¶ 14)

The amount to be paid by Defendants includes: **(1)** the fees and expenses of the settlement administrator, estimated to be \$7,750.00 (Settlement Agreement, at pp. 4, 18–19, 20, 23; Admin. Decl., ¶ 18); **(2)** Plaintiffs' counsel's attorney fees of one-third of the *original* gross settlement amount, i.e., \$916,666.67 (Settlement Agreement at pp. 4, 18, 23); **(3)** litigation expenses and costs not to exceed \$30,000.00 (Settlement Agreement, at pp. 4, 18, 23), but which are currently calculated to be \$20,307.29 (notably less than provided in the Settlement Agreement, preliminarily approved by the Court, and noticed to the Class Members); **(4)** a service award of \$10,000.00 to each of the named Plaintiffs in a combined amount of up to \$40,000.00 (Settlement Agreement, at pp. 15, 23); **(5)** payment to the LWDA of \$150,000.00 for its 75% share of the settlement for civil penalties pursuant to PAGA; and **(6)** payment to the Aggrieved Employees of \$50,000.00 for their 25% share of the settlement for civil penalties pursuant to PAGA. (Settlement Agreement, at pp. 8, 16, 23, 24). The remaining Net Settlement Amount, which consists of approximately \$1,900,627.73, will be distributed to the Class Members. (Admin. Decl., ¶ 14; Settlement Agreement, at pp. 23–24.) Applicable employer-side payroll taxes will be paid by Defendants outside and separate from the Revised Gross Settlement Amount. (Settlement Agreement, at p. 6.)

Individual payments to Class Members from the class-portion of the Settlement Agreement will be calculated and apportioned from the Net Settlement Amount based on the number of weeks worked as an eligible Class Member in California by the participating Class Member during the Class Period (the

1 “Individual Settlement Payments”). (Settlement Agreement, at pp. 16, 23–24.) Specific calculations of
2 Individual Settlement Payments will be determined by: **(a)** dividing the Net Settlement Amount by the total
3 number of workweeks worked by all participating Class Members during the Class Period, and **(b)**
4 multiplying the result by each participating Class Member’s workweeks. (Settlement Agreement, at pp. 16,
5 23–24.)

6 Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement (i.e.,
7 the portion not being sent to the LWDA), will be calculated and apportioned based on the number of pay
8 periods worked by each Aggrieved Employee during the PAGA Period compared to the total number of
9 pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement, at pp.
10 16, 24–25.)

11 For tax purposes, the Settlement Agreement provides that 20% of each individual settlement
12 payment from the class-portion of the Settlement Agreement shall constitute wages (for which each
13 participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining 80%
14 shall constitute interest, reimbursement, and penalties (for which each participating Class Member will be
15 issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 16.)

16 With respect to the individual payments made under the PAGA-portion of the Settlement
17 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which each
18 Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement
19 Agreement, at p. 17.)

20 Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at p.
21 26.) If a Class Member fails to cash their check by the deadline, then the Settlement Administrator shall
22 distribute such funds to the California State Controller’s Office for deposit in the Unclaimed Property Fund
23 in the name of the Class Member. (Settlement Agreement, at p. 26.)

24 **E. TRIGGERING OF THE ESCALATOR PROVISION**

25 Pursuant to this Court’s Preliminary Approval Order, on May 6, 2023, Defendants’ counsel sent a
26 data file to the Settlement Administrator containing information about the Employees, such as their names,
27 last known addresses, social security numbers, and applicable employment information (“Class Data List”).
28 (Admin. Decl., ¶ 3; PAM Order, ¶ 13.) Based on the Class Data List, the Settlement Administrator’s

1 calculations show that the escalator provision of the Settlement Agreement (Section 9.2) had been triggered
2 due to the number of workweeks at issue, and Defendants are liable for an additional \$335,351.69, on top
3 of the original Gross Settlement Amount. (Admin. Decl., ¶ 13; Settlement Agreement, at p. 28.)

4 After adjustment, the Revised Gross Settlement Amount is now \$3,085,351.69. (Admin. Decl., ¶
5 14.) Accordingly, the Class Members are now set to receive a larger settlement sum than originally
6 anticipated, and larger than this Court found to be fair and reasonable at the time of preliminary approval.

7 **III. NOTICE TO THE CLASS MEMBERS**

8 **A. THE NOTICE PROCESS WAS DILIGENTLY CARRIED OUT**

9 Pursuant to this Court's Preliminary Approval Order, the Settlement Administrator has fully
10 completed distributing the Class Notice, as the deadline to respond passed on July 3, 2023. (Admin. Decl.,
11 ¶¶ 5–11.) The Settlement Administrator was tasked with, among other things: **(1)** preparing, translating,
12 printing and mailing the Class Members the court-approved Class Notice; **(2)** receiving and processing
13 requests for exclusion and written objections; **(3)** resolving Settlement Class Members' disputes over the
14 number of workweeks Defendants have record of them working during the Class Period, which was pre-
15 printed on their individualized Class Notice; **(4)** calculating individual settlement award amounts;
16 **(5)** processing and mailing settlement award checks; **(6)** handling tax withholdings as required by the
17 Settlement and the law; **(7)** preparing, issuing and filing tax returns and other applicable tax forms; and
18 **(8)** handling the distribution of any unclaimed funds pursuant to the terms of the Settlement (Admin. Decl.,
19 ¶ 2.)

20 On May 6, 2023, the Settlement Administrator received the Class Data List from Defendants'
21 counsel. (Admin. Decl., ¶ 3.) On May 18, 2023, the Settlement Administrator mailed the Court-approved
22 notice to all 176 Class Members contained in the data provided by Defendants. (Admin. Decl., ¶ 5.) After
23 this initial mailing, two individuals contacted the Settlement Administrator expressing their belief that they
24 should have been included in the Class Data List. (Admin. Decl., ¶ 6.) After confirming with Defendants,
25 the Settlement Administrator added these additional Class Members to the Class Data List, increasing the
26 Class size to 178. (Admin. Decl., ¶ 6.)

27 For any Class Notices that were returned, the Settlement Administrator conducted a computerized
28 skip trace to update the class list of addresses as accurately as possible, updating the address of Class

1 Members as applicable. (Admin. Decl., ¶ 7.) As a result of this skip trace, 26 updated addresses were
2 obtained, and the Class Notices were promptly re-mailed to those Class Members. (Admin. Decl., ¶ 7.) To
3 date, only 17 of the 178 Class Notices remain undeliverable with no forwarding address, where no new
4 addresses could be found through skip trace or through a forwarding address provided by the United States
5 Postal Service. (Admin. Decl., ¶ 8.)

6 The deadline for the 178 Class Members in the initial Class Data List to submit an opt-out request,
7 objection, or dispute of workweeks was July 3, 2023. (Admin. Decl., ¶¶ 9–11.) The Settlement
8 Administrator has received **zero** objections and **zero** requests for exclusion from the Class Members.
9 (Admin. Decl., ¶¶ 9, 10.) To the contrary, the Settlement Administrator received two requests for **inclusion**.
10 (Admin. Decl., ¶ 6.) Thus, the Settlement Administrator is reporting a **100% participation rate**—an
11 overwhelmingly favorable response to a Settlement. (Admin. Decl., ¶ 12.)

12 **B. THE CLASS WAS GIVEN THE BEST POSSIBLE NOTICE OF THE**
13 **SETTLEMENT**

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

23 The notice procedure approved by the Court was and is the best notice practicable. As discussed
24 above, the Settlement Administrator duly mailed the Class Notices to all Class Members. (Admin. Decl.,
25 ¶¶ 5–7.) When a Class Notice was returned undeliverable, the settlement administrator made reasonable
26 efforts to obtain a valid mailing address by performing advanced skip traces to locate new addresses.
27 (Admin. Decl., ¶ 7.)
28

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

10 Moreover, the Court diligently reviewed and approved the Class Notice as to form and content. In
11 the Court's Preliminary Approval Order of April 20, 2023, the Court found that the notice and
12 implementation schedule met "the requirements of due process and constitute the best notice practicable
13 under the circumstances and due and sufficient notice to all persons entitled thereto." (PAM Order, ¶ 7.)
14 Therefore, the Court may determine the fairness and adequacy of the settlement and order its approval,
15 secure in the knowledge that all Class Members have been given the opportunity to participate fully in the
16 notice process and have been fully apprised of their rights and options, including their rights to object to
17 the Settlement Agreement. To date, no one has chosen to do so. (Admin. Decl., ¶ 10.)

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

20 The Class Members have overwhelmingly accepted the Settlement Agreement and 178 Class
21 Members stand to benefit from the settlement on entry of final approval. (Admin. Decl., ¶ 12.) "[T]he
22 absence of a large number of objections to a proposed class action settlement raises a strong presumption
23 that the terms of a proposed class settlement action are favorable to the class members." (*In re Omnivision*
24 *Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043, quoting *National Rural*
25 *Telecommunications Cooperative v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529; *Moore v.*
26 *PetSmart, Inc.* (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000, at *7, *aff'd* (9th Cir.
27 2018) 728 Fed. Appx. 671 [finding that where "less than one percent either opted out or objected, the
28 reaction of the putative class has been very positive. Therefore, this factor strongly favors settlement."].)

Here, **zero** of the eligible Class Members have submitted objections to any of the terms of the proposed settlement, including Plaintiffs’ requested service award and Plaintiffs’ counsel’s proposed attorneys’ fees and costs. (Admin. Decl., ¶ 10.) Moreover, **zero** Class Members have requested exclusion. (Admin. Decl., ¶ 9.) This response reflects Class Members’ clear and overwhelming support of the Settlement Agreement.

IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT

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

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

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

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

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

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

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

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

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

1 (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk v. Ford*
2 *Motor Co.*, *supra*, 48 Cal.App.4th 1794, 1802; see also *In re Microsoft I-V Cases*, *supra*, 135 Cal.App.4th
3 706, 723.)

4 Here, the Settlement Agreement was negotiated at arm’s length between counsel using a
5 professional and well-respected third-party neutral. (Melmed FAM Decl., ¶ 50.) Counsel for all parties were
6 thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Melmed FAM
7 Decl., ¶ 50.) The Settlement Agreement is a product of intensive negotiations, supported by investigation
8 and direct exchanges of information through informal discovery, settlement negotiations that included a
9 full-day mediation, and significant post-mediation negotiations. (Melmed FAM Decl., ¶ 50.) Though
10 cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. (Melmed
11 FAM Decl., ¶ 50.)

12 The Parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses
13 of this case before reaching the settlement. (Melmed FAM Decl., ¶ 51.) As described above and in the
14 Motion for Preliminary Approval, the Settlement Agreement was reached after extensive informal
15 discovery, investigation, research, thorough calculations, risk evaluation, substantial exchanges of
16 documents, and an exchange of other information required to evaluate the claims at issue. (Melmed FAM
17 Decl., ¶ 51.) The settlement came only after the case was thoroughly investigated by Plaintiffs’ counsel.
18 (Melmed FAM Decl., ¶ 51.)

19 The settlement reached is the product of substantial effort by the parties and their counsel. (Melmed
20 FAM Decl., ¶ 52.) Plaintiffs and Plaintiffs’ counsel agree with the Court’s preliminary approval order that
21 the Settlement Agreement represents a fair and reasonable resolution of the class claims. (Melmed FAM
22 Decl., ¶ 52.)

23 Moreover, Plaintiffs’ Counsel are experienced in similar class actions. (Melmed FAM Decl., ¶¶ 6–
24 11; Declaration of Shoham Joseph Solouki, Esq. in Support of Plaintiffs’ Motion for Final Approval of
25 Class Action Settlement [“Solouki FAM Decl.”], ¶¶ 14–21.) Additionally, the percentage of valid objectors
26 is not only small, *but zero*. (Admin. Decl., ¶ 10) The presumption of fairness of this settlement applies with
27 full force.
28

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

2 This Court found that “[t]he Settlement Agreement falls within the range of reasonableness and is
3 presumptively valid, subject only to any objections that may be raised at the final fairness hearing and final
4 approval by this Court.” (PAM Order, ¶ 3.) The relevant analysis remains unchanged with one exception:
5 the Court now has adequate information to know “the reaction of the class members to the proposed
6 settlement.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) Because the reaction has been
7 overwhelmingly positive, with *zero* objections to the Settlement Agreement, the justifications for approving
8 the Settlement Agreement have only been bolstered since the time of this Court’s original analysis. (Admin.
9 Decl., ¶ 10.) This Court can thus proceed secure in the knowledge that the factors mentioned above,
10 including arm’s length bargaining, sufficient investigation and discovery, experienced counsel, and
11 percentage of objectors, weigh heavily in favor of granting final approval.

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

14 As explained above and in the papers associated with Plaintiffs’ Motion for Preliminary Approval,
15 the Settlement Agreement was negotiated at arm’s length between counsel utilizing a professional and well-
16 respected third-party neutral. (Melmed FAM Decl., ¶ 50.) Counsel for both parties were thoroughly familiar
17 with the complex legal and factual questions at issue in this litigation. (Melmed FAM Decl., ¶ 50.) The
18 Settlement Agreement is a product of intensive negotiations, supported by investigation and direct
19 exchanges of information through informal discovery and during settlement negotiations, including a full-
20 day mediation and significant continued negotiations. (Melmed FAM Decl., ¶ 50.) Although Plaintiffs and
21 Plaintiffs’ counsel believed the class claims had merit and there was a possibility of certifying the class and
22 claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
23 decisions on class certification, summary judgment at trial and/or on the damages awarded, and/or an appeal
24 that can take several more years to litigate. (Melmed FAM Decl., ¶ 53.)

25 The resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive
26 negotiation. It takes the risks identified above and others into account in arriving at the non-reversionary
27 settlement. (Melmed FAM Decl., ¶ 51.)
28

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

3 Counsel for the Parties spent months prior to the mediation developing the factual record for this
4 case, engaging in informal discovery and exchanges of documents and information, as well as drafting
5 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and
6 weaknesses of their respective positions at the mediation and during subsequent settlement negotiations.
7 (Melmed FAM Decl., ¶ 48.) The Parties and their counsel attended a full-day mediation session before an
8 experienced and well-respected mediator, which resulted in the resolution of the case on a class and
9 representative basis. (Melmed FAM Decl., ¶ 48.) Louis Marlin is a full-time mediator with extensive
10 experience in California wage-and-hour class action lawsuits. (Melmed FAM Decl., ¶ 48.)

11 In addition, the Parties are represented by skilled and experienced counsel with extensive
12 backgrounds in complex litigation and experience litigating similar wage-and-hour class actions. (Melmed
13 FAM Decl., ¶¶ 6–11; Solouki FAM Decl., ¶¶ 14–21.) The Settlement Agreement was reached after
14 extensive investigation and research, calculations and risk evaluation, substantial exchanges of documents,
15 and Plaintiffs’ counsel’s thorough factual investigation, sufficient to evaluate Defendants’ defenses.
16 (Melmed FAM Decl., ¶ 49.) The Settlement Agreement came only after the case was thoroughly
17 investigated by Plaintiffs’ counsel. (Melmed FAM Decl., ¶ 49.) Plaintiffs’ counsel agree that this settlement
18 is fair, adequate, and reasonable, and in the best interests of Class Members. (Melmed FAM Decl., ¶ 49.)

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

20 Although Plaintiffs and Plaintiffs’ counsel believed the class claims had merit and that there was a
21 possibility of certifying the class and claims, they recognized the potential risk, expense, and complexity
22 posed by litigation, such as unfavorable decisions on class certification, summary judgment, adverse
23 outcomes at trial or on the damages awarded, and the potential for appeal that can take several more years
24 to litigate. (Melmed FAM Decl., ¶ 53.) Proceeding with litigation will impose significant risk of no recovery
25 as well as ongoing, substantial additional expenditures of time and resources. (Melmed FAM Decl., ¶ 53.)
26 The resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive
27 negotiation. (Melmed FAM Decl., ¶ 51.) It takes the risks identified above and others into account in
28 arriving at the non-reversionary Revised Gross Settlement Amount. (Melmed FAM Decl., ¶ 51.)

1 The Settlement Agreement represents a fair compromise given the risks and uncertainties presented
2 by continued litigation. Defendants asserted and would have continued to assert legal and factual grounds
3 to defend against this action, including factual and legal defenses on the merits. Moreover, continued
4 litigation would be costly, time-consuming, and uncertain. By contrast, the Settlement Agreement ensures
5 timely relief and substantial recovery of the Defendants’ realistic exposure. (Melmed FAM Decl., ¶ 54.)

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

7 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
8 should consider “[t]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
9 further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.*, *supra*, 48
10 Cal.App.4th 1794, 1801.) As described in this motion and more extensively in the Motion for Preliminary
11 Approval and its accompanying papers, Defendants have viable defenses to Plaintiffs’ claims, which create
12 a real possibility that the claims might not be certified or may fail on the merits. (Melmed FAM Decl., ¶
13 53.) Proceeding with litigation would impose significant risk of no recovery as well as ongoing, substantial
14 additional expenditures of time and resources. (Melmed FAM Decl., ¶ 53.) If settlement were not achieved,
15 continued litigation of the claims would take substantial time and possibly confer little to no benefit on
16 Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery for Class
17 Members, and benefits the Parties and the Court. (Melmed FAM Decl., ¶ 53.)

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

19 The view of the attorneys actively conducting the litigation is entitled to significant weight in
20 deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
21 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
22 128 [court must take into account “the experience and view of counsel”], internal quotation and citation
23 omitted.) Plaintiffs’ counsel are experienced in wage-and-hour class actions. Numerous state and federal
24 courts have certified them as adequate and competent class counsel in similar wage-and-hour class actions
25 (Melmed FAM Decl., ¶¶ 6–11; Solouki FAM Decl., ¶¶ 14–21.) Plaintiffs’ counsel believe that this
26 settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be finally
27 approved. (Melmed FAM Decl., ¶ 5; Solouki FAM Decl., ¶¶ 9–13.)
28

1 **V. THE CLASS REPRESENTATIVES' SERVICE AWARD IS FAIR, REASONABLE,**
2 **AND APPROPRIATE**

3 The Settlement Agreement provides for service award payments in a combined amount of \$40,000
4 (i.e., \$10,000 for each named Plaintiff). (Settlement Agreement, at pp. 15, 23.) The proposed service awards
5 are intended to recognize the time, effort, and risk Plaintiffs undertook in bringing this case and helping to
6 secure the relief obtained for the members of the Class. (See *Bell v. Farmers Ins. Exchange* (2004) 115
7 Cal.App.4th 715, 726 [upholding “service payment” to named plaintiff for his efforts in bringing class
8 case]; *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959 [stating that service
9 awards are “intended to compensate class representatives for work done on behalf of the class, to make up
10 for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
11 willingness to act as a private attorney general.”].) To determine the propriety of a service award, courts
12 consider the actions protecting class interests, the benefit provided to the class based on those actions, and
13 the amount of time and effort expended by the plaintiffs. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d
14 938, 976–977.)

15 Plaintiffs’ requested service awards serve to recognize their time and efforts on behalf of the Class
16 Members, including time spent in meetings with their attorneys, and their acceptance of the financial risk
17 in pursuing this litigation. (Melmed FAM Decl., ¶ 57.) The service awards requested by the Plaintiffs
18 represents only 1.296% of the Revised Gross Settlement Amount in this case ($\$40,000 \div \$3,085,351.69 \times$
19 $100 = 1.296\%$). Plaintiffs provided invaluable assistance to Plaintiffs’ counsel and the Class Members in
20 this case, including providing factual background for mediation and the operative complaint, reviewing the
21 relevant documents, participating in phone calls with Plaintiffs’ counsel, gathering highly relevant
22 documents, and reviewing the settlement documents. (Melmed FAM Decl., ¶ 57.) Plaintiffs agreed to
23 participate in this case with no guarantee of personal benefit. (Melmed FAM Decl., ¶ 57.) To the contrary,
24 Plaintiffs agreed to undertake the financial risk of serving as class representatives and exposed themselves
25 to the risk of negative publicity by anyone who opposed this case. (Melmed FAM Decl., ¶ 57.)

26 Perhaps most importantly, Plaintiffs’ services to the Class did not end after the Settlement
27 Agreement was reached. Rather, Plaintiffs were instrumental in keeping Plaintiffs’ counsel informed about
28 the Class Notice process and Defendants’ related conduct. (Melmed FAM Decl., ¶ 58.) Due to Plaintiffs’

1 diligent efforts to keep their counsel informed of this process, Plaintiffs’ counsel was able to learn about
2 the memoranda issued by Defendants described above, and quickly address Defendants’ conduct through
3 an *ex parte* application (as well as the additional discovery requests and joint stipulation). (Melmed FAM
4 Decl., ¶ 58.) Plaintiffs’ service to the Class in this case was extraordinary and their requested service awards
5 are well-deserved.

6 Moreover, the service award also falls well within the range of service payments typically awarded
7 to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal.
8 June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 [approving \$11,250.00 service award to
9 each of the two Class Representative in a meal break class action]; *Ross v. US Bank National Association*
10 (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 [approving \$20,000.00
11 enhancement award to the class representative in a California wage-and-hour class action settlement];
12 *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards in
13 the amount of \$10,000.00 each from a \$300,000.00 settlement fund in a wage-and-hour class action]; *West*
14 *v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006 No. CIVS040438WBSGGH) 2006 WL 8458679, at *8
15 “[T]he court finds plaintiffs’ enhancement payments of \$15,000 each to be reasonable.”); *Glass v. UBS*
16 *Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007 No. C-06-4068 MMC) 2007 WL 221862, at *17, *aff’d* (9th Cir.
17 2009) 331 Fed.Appx. 452 [finding “requested payment of \$25,000 to each of the named plaintiffs is
18 appropriate” in a wage-and-hour settlement]; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6,
19 2008, No. 08CV0795 IEG RBB) 2008 WL 4473183, at *7 [approving “\$25,000 incentive award for each
20 Class Representative” in a wage an hour settlement], emphasis added; *Garner v. State Farm Mut. Auto. Ins.*
21 *Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW EMC, 2010 WL 1687832, at *17 n.8 [“Numerous
22 courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more where, as
23 here, the class representative has demonstrated a strong commitment to the class”], emphasis added.)
24 Finally, Plaintiffs have agreed to enter into a general release of all claims against Defendants, whereas the
25 Class Members only released the claims alleged. (Bernal Decl., ¶ 10; Herrera Decl., ¶ 10; Lemaitre Decl.,
26 ¶ 10; Martinez Decl., ¶ 10; Settlement Agreement, at pp. 30–31.) The requested service award is modest,
27 fair, and reasonable.
28

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

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

9 Specifically, Plaintiffs' Counsel requests attorneys' fees of \$916,666.67 (i.e., approximately
10 29.71% of the Revised Gross Settlement Amount), as provided in the Settlement Agreement. (Settlement
11 Agreement at pp. 4, 5, 18, 23.) As will be explained, this request is reasonable and appropriate under the
12 common fund theory and is supported by: (1) independent expert analysis, (2) case law, (3) Plaintiffs'
13 counsel's high quality of work, (4) the excellent results achieved for the Class Members, (5) the risks
14 inherent in the contingent nature of Plaintiffs' counsel's representation in this case, and (6) public policy
15 considerations.

16 **A. INDEPENDENT EXPERT ANALYSIS SHOWS THE REASONABLENESS OF**
17 **THE ATTORNEYS' FEE ALLOCATION IN THIS CASE**

18 To assist the Court in its review of the attorney fee allocation here, Plaintiffs' counsel sought an
19 independent third-party expert review of their performance in this case. Barry Goldstein is an attorney
20 licensed in California with more than four decades of experience as an employment law attorney.
21 (Declaration of Barry Goldstein in Support of Class Counsels' Request for Attorneys' Fees ("Goldstein
22 Decl."), ¶ 4.) Viewed by many as a pioneer in the civil rights and employment law field, Mr. Goldstein has
23 prosecuted countless employment class action cases with results well exceeding a billion dollars in
24 monetary relief. (Goldstein Decl., ¶¶ 9, 15.) His extensive body of work, perhaps unrivaled in the industry,
25 speaks to his deep understanding of class action litigation, including how to qualitatively assess attorney
26 work product, the results achieved in a case, the risks and costs faced by counsel retained on a contingency
27 basis, and the effort required in complex litigation. Several courts have relied on Mr. Goldstein's testimony
28 as an expert on attorneys' fees in employment cases. (Goldstein Decl., ¶¶ 4, 14–15.)

1 As explained in his declaration, Mr. Goldstein has conducted an analysis of the work performed
2 and results achieved in this case. (Goldstein Decl., ¶¶ 2, 3.) Mr. Goldstein’s conclusion is unequivocal:
3 “Class Counsel has provided exceptional representation to the putative class in an efficient and effective
4 manner and . . . the request for attorneys’ fees is reasonable and appropriate.” (Goldstein Decl., ¶ 5.) He
5 bases this conclusion on several facts, including that the reasons for using a lodestar analysis are
6 inapplicable in this case and thus the alternatively accepted method of percentage of the common fund is
7 appropriate. (Goldstein Decl., ¶¶ 22–25)

8 Mr. Goldstein’s analysis also examined the substantial risk factors faced by Plaintiffs’ counsel in
9 this case and Plaintiffs’ counsel’s efficacy in facing those challenges. Specifically, he notes that “Class
10 Counsel confronted substantial litigation risks with well-developed arguments and careful factual analysis.
11 It is noteworthy that class members will receive on average approximately \$7,000,⁴ which is a substantial
12 sum in a wage and hour case where the class members earned little more than the minimum wage. The
13 effective legal work performed by Class Counsel, which resulted in a significant benefit for class members,
14 justifies a fee award that is 30% of the common fund.” (Goldstein Decl., ¶ 24.)

15 Likewise, Mr. Goldstein noted that “Class Counsel describes that there was a significant risk that
16 the most significant claims, minimum wage and overtime, would involve such individualized issues for
17 determinations of both liability and damages that class certification would be unmanageable. [Citation].
18 Given that the Defendants had arguably lawful written policies and that the claims depended upon ‘off-the-
19 clock’ work that was unreported by class members, the evaluation of risk as assessed by Class Counsel,
20 was substantiated.” (Goldstein Decl., ¶ 17.)

21 Mr. Goldstein thus concluded that “Class Counsel conducted the litigation on behalf of the class in
22 a professional and efficient manner” and “the request for attorneys’ fees is reasonable an appropriate.”
23 (Goldstein Decl., ¶¶ 5, 24.) As will be explained, Mr. Goldstein’s expert conclusion is further confirmed by
24 Plaintiffs’ counsel’s legal analysis of the proposed attorneys’ fee award in this case.

25
26
27 ⁴ It is worth noting that Mr. Goldstein’s declaration was prepared prior to the Settlement
28 Administrator’s final calculations in support of this motion. The results achieved by Plaintiffs’
counsel are even more impressive than was originally calculated—the Class Members are expected to
received an average payment of \$10,677.68. (Admin. Decl., ¶ 15.)

1 **B. PLAINTIFFS’ COUNSEL ARE ENTITLED TO A FEE FROM THE**
2 **COMMON FUND CREATED**

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

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

22 As mentioned above, Plaintiffs’ counsel are seeking a fee award under the “common fund” doctrine.
23 The common fund doctrine provides that “a litigant or a lawyer who recovers a common fund for the benefit
24 of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”
25 (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; see also *Vincent v. Hughes Air West, Inc.* (9th Cir.
26 1977) 557 F.2d 759, 769; *Class Plaintiffs v. Jaffe & Schlesinger, P.A.* (9th Cir. 1994) 19 F.3d 1306, 1308.)
27 The doctrine is founded on the understanding that attorneys should normally be paid by their clients, and
28 that unless attorneys’ fees are paid out of the common fund where the attorneys’ unnamed class member

1 “clients” have no express retainer agreement, those who benefited from the fund without contributing to
2 those who created it would be unjustly enriched. (*Boeing Co. v. Van Gemert, supra*, 444 U.S. 472, 478.)

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

13 Plaintiffs’ counsel’s diligent litigation of this action resulted in the creation of an ascertainable
14 common fund that will substantially benefit the Class. Plaintiffs’ counsel’s request for an award of
15 approximately 29.71% of the Revised Gross Settlement Amount is well within the range awarded to counsel
16 under similar circumstances in litigation of this type and is abundantly reasonable in light of the excellent
17 results achieved for the Class Members.

18 The Settlement Agreement indicates that if the Escalator Clause is triggered, attorneys’ fees shall
19 increase proportionally such that the amount of attorneys’ fees remains one-third of the Gross Settlement
20 Amount. (Settlement Agreement, at p. 28.) Plaintiffs’ counsel is thus entitled to a one-third attorneys’ fee
21 award of the gross settlement amount *after* the upward adjustment called for by the Escalator Clause.
22 Plaintiffs’ counsel, however, has opted to forego an increase in attorneys’ fees in keeping with Plaintiffs’
23 counsel’s commitment to the Class Members.

24 These requested amounts are unopposed by Defendants and not objected to by any Class Member.
25 (Admin. Decl., ¶ 10.) As this Settlement Agreement will result in the recovery of a substantial fund
26 benefiting all participating Class Members, this Court has inherent equitable power to order Plaintiffs’
27 counsel’s fees and costs to be paid out of the Revised Gross Settlement Amount, pursuant to the common
28 fund theory.

1 **C. COURTS ROUTINELY AWARD ATTORNEYS' FEES AT OR ABOVE**
2 **THOSE REQUESTED HERE**

3 The negotiated and unopposed fee should also be approved because it is within the approved range
4 of appropriate awards of attorneys' fees in similar wage-and-hour class action cases in California. (See,
5 e.g., *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–492 [explaining that
6 “[t]he typical range of acceptable attorneys' fees in the Ninth Circuit is 20% to 33 1/3% of the total
7 settlement value”]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG
8 (BLM)) 2010 WL 2196104, at *8 [approving attorney fee award of 33.33% of the common fund and noting
9 that award was similar to awards in three other wage-and-hour class action cases where fees ranged from
10 30.3% to 50%]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883
11 VRW) 2008 WL 5478576, at *8 [meal break class action where the federal district court approved attorneys'
12 fees of one-third of common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No.
13 1:05CV0484 DLB) 2007 WL 3492841, at *4 [approving fees at one-third of the common fund in a missed
14 meal break class action and noting that fee awards in class actions average around one-third of the recovery];
15 *Williams v. TriCap International LLC* (Final Approval Order, March 7, 2019) LASC No. BC644383
16 [awarding one-third of gross settlement amount]; *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No.
17 C-07-4499 EMC) 2010 WL 3155645, at *6 [noting that a fee award of one-third of the settlement was “well
18 within the range of percentages which courts have upheld as reasonable in other class action lawsuits”];
19 *McCrary v. Elations Company, LLC* (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL
20 769703, at *10 [noting that most fee awards are 33%]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov. 18,
21 2014, No. SACV 13-0561-DOC) 2014 WL 6473804, at *12 [finally approving a one-third fee award on a
22 \$5,800,000 settlement].)

23 Thus, a fee in the amount of 29.71% of the common fund is fair and reasonable as it falls squarely
24 within the range of fee awards approved by courts in similar wage-and-hour matters. (See *Stuart v.*
25 *Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6 [approving fee
26 award of one-third of the total maximum settlement amount of \$4.5 million and noting that the fee award
27 of one-third of the total settlement was “well within the range of percentages which courts have upheld as
28 reasonable in other class action lawsuits”]; *Monterrubio v. Best Buy Stores, L.P.* (E.D. Cal., Nov. 20, 2013,

No. 2:11-CV-03270-MCE-AC) 2013 WL 12432761, at *12 [finally approving fee award of 30%]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving fee award of 33.33% of the common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [awarding fees of one-third of common fund in a wage-and-hour class action, noting: “[f]ee awards in class actions average around one-third of the recovery”]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [approving attorneys’ fees of one-third of common fund].)

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

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

Plaintiffs’ counsel diligently, efficiently, and creatively pursued this case and promptly reached a successful settlement for the benefit of the Class Members. Despite the numerous risks and obstacles afflicting Plaintiffs’ claims as detailed in the Motion for Preliminary Approval and its accompanying papers, Plaintiffs’ counsel crafted and negotiated a fair and reasonable Settlement Agreement for the benefit of the Class Members. The fact that the settlement was embraced and supported by the Class Members, as evidenced by the complete lack of any objections or one opt-outs, clearly demonstrates that the Class Members support the Settlement Agreement and results achieved by Plaintiffs’ counsel through the litigation of this matter. (Admin. Decl., ¶ 12.)

As a result of this litigation, the Class Members stand to receive a significant Net Settlement Amount of **\$1,900,627.73**.

**E. THE CONTINGENT NATURE OF PLAINTIFFS’ COUNSEL’S
REPRESENTATION OF PLAINTIFFS AND THE CLASS FURTHER**

1 **SUPPORTS THE FEE AWARD AT ONE-THIRD OF THE MAXIMUM**
2 **COMMON FUND**

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

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

23 Finally, the absence of any valid objections to the requested fee award, coupled with the 100% Class
24 Member participation rate, also supports the appropriateness and reasonableness of the requested attorneys’
25 fees. (Admin. Decl., ¶¶ 10, 12; *In re Heritage Bond Litigation* (C.D. Cal., June 10, 2005,) No. 02-ML-1475
26 DT) 2005 WL 1594403, at *21 [“The absence of objections or disapproval by class members to Class
27 Counsel’s fee request further supports finding the fee request reasonable.”].)
28

1 **F. PUBLIC POLICY CONSIDERATIONS REQUIRE THE AWARD OF**
2 **ADEQUATE FEES SO COMPETENT AND EXPERIENCED COUNSEL WILL**
3 **UNDERTAKE SUCH REPRESENTATIONS**

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

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

14 “Thirty years ago commentators, in urging the utility of the class suit to vindicate the
15 rights of stockholders, made this incisive observation: ‘Modern society seems
16 increasingly to expose men to . . . group injuries for which individually they are in a
17 poor position to seek legal redress, either because they do not know enough or because
18 such redress is disproportionately expensive. If each is left to assert his rights alone if
19 and when he can, there will at best be a random and fragmentary enforcement, if there
20 is any at all. This result is not only unfortunate in the particular case, but it will operate
21 seriously to impair the deterrent effect of the sanctions which underlie much
22 contemporary law. The problem of fashioning an effective and inclusive group remedy
23 is thus a major one.’ [Citation.]” (*Vasquez v. Superior Court, supra*, 4 Cal.3d 800, 807.)
24

25 The same rationale applies to this litigation. The express judicial policy of California is to favor the
26 maintenance of these types of representative actions. (See, e.g., *Sav-On Drug Stores, Inc. v. Superior Court*
27 (2004) 34 Cal.4th 319, 340; *Pearce v. Superior Court* (1983) 149 Cal.App.3d 1058, 1065; *Kraus v. Trinity*
28

1 *Management Services, Inc.* (2000) 23 Cal.4th 116, 126.) As recognized by the California Supreme Court in
2 *Sav-On Drug Stores, Inc.*:

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

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

16 “[E]ncouragement of the attorney for the successful litigant, who will be more willing
17 to undertake and diligently prosecute proper litigation for the protection or recovery of
18 the fund if he is assured that he will be promptly and directly compensated should his
19 efforts be successful.” (*In re Stauffer’s Estate* (1959) 53 Cal.2d 124, 132.)
20

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

27 These important public policy considerations support the Court’s approval of the fee requested.
28

1 **G. THE LODESTAR MULTIPLIER APPROACH CONFIRMS THE**
2 **REASONABLENESS OF THE FEE REQUEST**

3 A lodestar cross-check further confirms that the percentage requested is patently reasonable. The
4 “lodestar-multiplier” is an alternative accepted approach of evaluating the reasonableness of attorneys’ fees
5 whereby the court computes the “lodestar” amount by multiplying the number of hours reasonably
6 expended by each attorney or legal staff member by their hourly rates, and then enhances this lodestar figure
7 by a “multiplier” to account for a range of factors, such as the novelty or difficulty of the case, its contingent
8 nature, and the degree of success achieved. (See *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095–
9 1096; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Serrano v. Priest, supra*, 20 Cal.3d 25, 48–
10 49.) As noted, using the loadstar approach, the court first computes the reasonable market value of the
11 service rendered. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138, fn. 3.) The first step is to calculate the
12 lodestar, which is determined by multiplying the time spent by the attorneys and other timekeepers by their
13 reasonable hourly rates. (*Id.* at p. 1132.)

14 When a court adopts the “lodestar multiplier” method, after initially calculating the combined total
15 lodestar, the court may then adjust the lodestar based on several factors in order to “fix a fee at the fair
16 market value for the particular action.” (*Id.* at p. 1132; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th
17 553, 574.) As noted, these additional factors include the contingent risk of the litigation, the novelty and
18 complexity of the issues, and exceptional results obtained. (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1132;
19 *Serrano v. Priest, supra*, 20 Cal.3d at p. 48.)

20 A lodestar calculation need not be supported by detailed time records. (*Wershba v. Apple Computer,*
21 *Inc.* (2001) 91 Cal.App.4th 224, 255 [“California case law permits fee awards in the absence of detailed
22 time sheets”], disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
23 260.) Declarations by counsel as to time spent, even if only estimates, are enough. (See *Wershba v. Apple*
24 *Computer, Inc., supra*, 91 Cal.App.4th at pp. 254–255 [“Here plaintiff’s attorneys submitted declarations
25 evidencing the reasonable hourly rate for their services and establishing the number of hours spent working
26 on the case”]; see also *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th 1794, 1810 [stating that lodestar
27 calculation could be based on counsel’s estimate of time spent]; *Syers Properties III, Inc. v. Rankin* (2014)
28 226 Cal.App.4th 691, 698 [“It is well established that ‘California courts do not require detailed time records,

1 and trial courts have discretion to award fees based on declarations of counsel describing the work they
2 have done and the court's own view of the number of hours reasonably spent. [Citations]''').)

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

10 To date, Plaintiffs' counsel's lodestar is **\$315,963.00** after collectively expending **445.2 hours** on
11 this matter (\$175,113.00 as to Melmed Law Group P.C., and \$140,850.00 as to the Solouki & Savoy, LLP).
12 (Melmed FAM Decl., ¶ 73; Solouki FAM Decl., ¶¶ 32–33.) Thus, the fees sought here reflect a lodestar
13 multiplier of only **2.90** (i.e., \$916,666.67 ÷ \$315,963.00). Moreover, it is anticipated that Plaintiffs' counsel
14 will expend time which cannot yet be accounted for in the hours in Plaintiffs' counsel's declaration.
15 (Melmed FAM Decl., ¶ 77.) Therefore, the unadjusted lodestar will increase and the multiplier will decrease
16 by the conclusion of this matter.

17 Historically, courts in California have commonly approved multipliers between two and four. (See,
18 e.g., *Steiner v. American Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed.Appx. 780, 783 [multiplier of 6.85
19 “falls well within the range of multipliers that courts have allowed”]; *Sternwest Corp. v. Ash* (1986) 183
20 Cal.App.3d 74, 76 [directing the trial court “to enhance the lodestar award by such factor (two, three, four
21 or otherwise) that the court, in its discretion shall deem proper”]; *Van Vranken v. Atlantic Richfield Co.*
22 (N.D. Cal. 1995) 901 F.Supp. 294, 298 [“Multipliers in the 3–4 range are common in lodestar awards for
23 lengthy and complex class action litigation.”]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
24 1052 [appendix listing numerous cases with multipliers exceeding the multiplier at issue here, and even up
25 to a multiplier of 19.6]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [“Multipliers can
26 range from 2 to 4 or even higher.”].) The fact that Plaintiffs' counsel's lodestar multiplier falls in the lower
27 range of those approved by Courts further confirms the reasonableness of the fee request.
28

1 **VII. PLAINTIFFS' COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES**

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

11 Accordingly, Plaintiffs’ counsel further request that, in addition to awarding them reasonable
12 attorneys’ fees, the Court grant their application for reimbursement of the reasonable out-of-pocket
13 expenses advanced, incurred and expected to be incurred by the law firm representing Plaintiff in
14 connection with the prosecution of this litigation, in the amount of \$20,307.29 (\$11,180.66 to Melmed Law
15 Group P.C., and \$9,126.63 to Solouki & Savoy, LLP), which is significantly less than the \$30,000.00
16 maximum cost allocation stipulated by the parties in the Settlement Agreement. (Settlement Agreement, at
17 pp. 4, 18, 23; Melmed FAM Decl., ¶ 60; Solouki FAM Decl., ¶¶ 36–37.) Plaintiffs’ counsel has documented
18 and verified these costs and expenses for which counsel seeks reimbursement. (Melmed FAM Decl., ¶ 60;
19 Solouki FAM Decl., ¶¶ 36–37.)

20 All costs were necessarily incurred in the course of this hard-fought litigation and would have been
21 charged to a fee-paying client. No Class Member objected to an award of costs to Plaintiffs’ counsel of up
22 to \$30,000.00, and Plaintiffs’ counsel now seeks a lesser amount, with the remainder to be distributed
23 amongst the Class Members. (Melmed FAM Decl., ¶ 60; Solouki FAM Decl., ¶¶ 36–37; Admin. Decl., ¶
24 10, see also Admin. Decl., Exh. A.) Accordingly, the requested reimbursement of the reasonable out-of-
25 pocket expenses incurred is appropriate and justified as part of the overall Settlement Agreement and should
26 be awarded by the Court.

1 **VIII. SETTLEMENT ADMINISTRATION COSTS**

2 The parties agreed that the Settlement Administrator, Phoenix Settlement Administrators would be
3 compensated for services performed. The Administrator's requested fee is \$7,750.00. (Admin. Decl., ¶ 18)
4 The fee of \$7,750.00 was previously provided in the Settlement Agreement, preliminarily approved by the
5 Court, and noticed to the Class Members.

6 **IX. SUBMISSION TO THE LWDA**

7 The Settlement Agreement has been submitted to the LWDA pursuant to Labor Code section 2699,
8 subdivision (1)(2). (Melmed FAM Decl., ¶ 84.)

9 **X. CONCLUSION**

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

12 Dated: August 14, 2023

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