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

FELIPE ESCALERA, an individual, on behalf of
himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

HASENIN ENTERPRISES, LLC, a California
Limited Liability Company; and DOES 1 TO 50,

Defendants.

Case Number: 37-2023-00008497-CU-OE-CTL

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

Action Filed: February 28, 2023

Trial Date: None Set

Preliminary Approval Granted:
August 30, 2024

Hearing Date: January 31, 2025

Hearing Time: 10:30 a.m.

Dept.: C-64

Judge: Hon. Loren G. Freestone

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

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

3 **PLEASE TAKE NOTICE** that on January 31, 2025, at 10:30 a.m., or as soon thereafter as the
4 matter may be heard, in Department C-64 of the San Diego County Superior Court for the State of
5 California, located at the Hall of Justice, 330 West Broadway, San Diego, California 92101, before the
6 Honorable Loren G. Freestone, Plaintiff Felipe Escalera (“Plaintiff”), on behalf of himself, the State of
7 California, as a private attorney general, and on behalf of all others similarly situated, will and hereby
8 does move this Court for entry of an order:

9 1. Finally certifying the class, as defined in the *Class Action and PAGA Settlement*
10 *Agreement and Class Notice* (the “Settlement Agreement”) between Plaintiff and Defendant Hasenin
11 Enterprises, LLC (“Defendant”) (collectively, the “Parties”), for the purpose of settlement pursuant to
12 California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

13 2. Finally appointing the named plaintiff, Felipe Escalera, as class representative for
14 purposes of settlement;

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

17 4. Finding that the notice of the settlement was properly provided to the class members in
18 accordance with the Court’s *Order Granting Preliminary Approval of Class Action and PAGA*
19 *Settlement* on August 30, 2024;

20 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms
21 set forth in the Settlement Agreement, including payment by Defendant of the non-reversionary gross
22 settlement amount of \$300,000.00 (“Gross Settlement Amount”);

23 6. Finally approving the allocation of attorneys’ fees from the Gross Settlement Amount
24 in the amount of one-third of the Gross Settlement Amount (i.e., \$100,000.00), plus necessary litigation
25 costs in the amount of \$14,653.66;

26 7. Finally approving ILYM Group, Inc. (the “Settlement Administrator”) as the settlement
27 administrator and approving distribution of \$8,000.00 from the Gross Settlement Amount to cover the
28 Settlement Administrator’s expenses in administering the settlement;

1 8. Finally approving a class representative service payment in an amount of \$10,000.00
2 for Felipe Escalera from the Gross Settlement Amount to compensate him for the responsibilities, time,
3 effort, and risks involved in coming forward on behalf of the proposed class as well as his general
4 release which is broader than the release of the proposed class;

5 9. Finally approving the allocation of \$20,000.00 for penalties pursuant to the California
6 Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$15,000.00) shall be paid to
7 the California Labor and Workforce Development Agency (“LWDA”) from the Gross Settlement
8 Amount, with the remaining 25% (i.e., \$5,000.00) payable to the aggrieved employees;

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

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

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

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

18 Dated: January 8, 2025

MELMED LAW GROUP P.C.

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KYLE D. SMITH

Attorneys for Plaintiff, the Putative Class, and the
Aggrieved Employees

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND.....	3
A.	The Parties	3
B.	Procedural Summary	3
C.	The Claims and Defenses	5
D.	Summary of the Settlement Agreement	6
III.	NOTICE TO THE CLASS MEMBERS.....	7
IV.	THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT..	8
A.	Class Action Settlements Are Subject to Judicial Review and Approval under the California Rules of Court.	8
B.	The Settlement Is Entitled to a Presumption of Fairness	10
C.	Final Approval of the Settlement Is Warranted	11
V.	PLAINTIFF’S SERVICE AWARD IS FAIR, REASONABLE, AND APPROPRIATE	11
VI.	THE PROPOSED ATTORNEYS’ FEE ALLOCATION IS FAIR, REASONABLE, AND APPROPRIATE.....	12
A.	Plaintiff’s Counsel Are Entitled to a Fee from the Common Fund Created	13
B.	Courts Routinely Award Attorneys’ Fees at or above Those Requested Here.....	15
C.	The High Quality of Work and Excellent Result Obtained Support the Award..	16
D.	The Contingent Nature of Plaintiff’s Counsel’s Representation of Plaintiff and the Class Further Supports the Fee Award at One-Third of the Maximum Common Fund	17
E.	Public Policy Considerations Require the Award of Adequate Fees So Competent and Experienced Counsel Will Undertake Such Representations	18
F.	The Lodestar Multiplier Approach Confirms the Reasonableness of the Fee Request	19
VII.	PLAINTIFF’S COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES ...	21
VIII.	SETTLEMENT ADMINISTRATION COSTS.....	22

1 **IX. SUBMISSION TO THE LWDA 22**

2 **X. CONCLUSION 22**

TABLE OF AUTHORITIES

CASES

<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	11
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	14
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879	12
<i>Boyd v. Bank of America Corp.</i> (C.D. Cal., Nov. 18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804	15
<i>Bush v. Superior Court</i> (1992) 10 Cal.App.4th 1374.....	8
<i>Cho v. Seagate Technology Holdings, Inc.</i> (2009) 177 Cal.App.4th 734	9
<i>Class Plaintiffs v. Jaffe & Schlesinger, P.A.</i> (9th Cir. 1994) 19 F.3d 1306	14
<i>Crommie v. State of Cal., Public Utilities Com’n</i> (N.D. Cal. 1994) 840 F.Supp. 719.....	17
<i>Cziraki v. Thunder Cats, Inc.</i> (2003) 111 Cal.App.4th 552	14
<i>D’Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1	13
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	9, 10, 11, 20
<i>Ferguson v. Lieff, Cabraser, Heimann & Bernstein</i> (2003) 30 Cal.4th 1037	8
<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.....	12
<i>Glass v. UBS Fin. Servs., Inc.</i> (N.D. Cal. Jan. 26, 2007 No. C-06-4068 MMC) 2007 WL 221862	12
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553	20
<i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16	22
<i>Hernandez v. Restoration Hardware, Inc.</i> (2018) 4 Cal.5th 260	20
<i>In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation</i> (3d Cir. 1995) 55 F.3d 768.....	8
<i>In re Heritage Bond Litigation</i> (C.D. Cal., June 10, 2005,] No. 02-ML-1475 DT) 2005 WL 1594403	18
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706.....	9, 10
<i>In re Omnivision Technologies, Inc.</i> (N.D. Cal. 2008) 559 F.Supp.2d 1036	8

1	<i>In re Stauffer’s Estate</i> (1959) 53 Cal.2d 124.....	14, 19
2	<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	17, 20
3	<i>Kraus v. Trinity Management Services, Inc.</i> (2000) 23 Cal.4th 116	18
4	<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480	13, 14
5	<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	14
6	<i>Louie v. Kaiser Found. Health Plan, Inc.</i> (S.D. Cal. Oct. 6, 2008, No. 08CV0795 IEG RBB) 2008	
7	WL 4473183	12
8	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> (1980) 103 Cal.App.3d 573.....	8
9	<i>Mallick v. Superior Court</i> (1979) 89 Cal.App.3d 434.....	9
10	<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW)	
11	2008 WL 5478576.....	15, 16
12	<i>McCrary v. Elations Company, LLC</i> (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016	
13	WL 769703	15
14	<i>Melendres v. City of Los Angeles</i> (1975) 45 Cal.App.3d 267	21
15	<i>Monterrubio v. Best Buy Stores, L.P.</i> (E.D. Cal., Nov. 20, 2013, No. 2:11-CV-03270-MCE-AC) 2013	
16	WL 12432761	16
17	<i>Moore v. PetSmart, Inc.</i> (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000	8
18	<i>National Rural Telecommunications Cooperative v. DIRECTV, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523	
19		8
20	<i>Officers for Justice v. Civil Service Com’n of City and County of San Francisco</i> (9th Cir. 1982) 688	
21	F.2d 615	8, 9
22	<i>Pearce v. Superior Court</i> (1983) 149 Cal.App.3d 1058.....	18
23	<i>PLCM Group v. Drexler</i> (2000) 22 Cal.4th 1084	19
24	<i>Press v. Lucky Stores, Inc.</i> (1983) 34 Cal.3d 311.....	19
25	<i>Quinn v. State of California</i> (1975) 15 Cal.3d 162	14
26	<i>Rider v. County of San Diego</i> (1992) 11 Cal.App.4th 1410.....	21
27	<i>Rodriguez v. West Publishing Corp.</i> (9th Cir. 2009) 563 F.3d 948	11
28		

1	<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL	
2	3492841	15, 16
3	<i>Ross v. US Bank National Association</i> (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL	
4	3833922	12
5	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319	18, 19
6	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	13, 20, 21
7	<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL	
8	2196104	15, 16
9	<i>Staton v. Boeing Co.</i> (9th Cir. 2003) 327 F.3d 938	11
10	<i>Steiner v. American Broadcasting Co., Inc.</i> (9th Cir. 2007) 248 Fed.Appx. 780	21
11	<i>Sternwest Corp. v. Ash</i> (1986) 183 Cal.App.3d 74	21
12	<i>Stuart v. Radioshack Corp.</i> (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645	15, 16
13	<i>Syers Properties III, Inc. v. Rankin</i> (2014) 226 Cal.App.4th 691	20
14	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	21
15	<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 482	12, 15
16	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	18
17	<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759.....	14
18	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	17, 21
19	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	9, 20, 21
20	<i>West v. Circle K Stores, Inc.</i> (E.D. Cal. Oct. 19, 2006 No. CIVS040438WBSGGH) 2006 WL	
21	8458679	12
22	STATUTES	
23	Bus. & Prof. Code, § 17200	4
24	Lab. Code, § 1174	4
25	Lab. Code, § 1194	4, 13
26	Lab. Code, § 1194.2	4
27	Lab. Code, § 1197	4
28	Lab. Code, § 1198	4

1	Lab. Code, § 201	4
2	Lab. Code, § 202	4
3	Lab. Code, § 203	4
4	Lab. Code, § 204	4
5	Lab. Code, § 210	4
6	Lab. Code, § 226	4, 13
7	Lab. Code, § 226.3	4
8	Lab. Code, § 226.7	4
9	Lab. Code, § 2698	1, 4
10	Lab. Code, § 2699.6	1
11	Lab. Code, § 2802	4
12	Lab. Code, § 2804	4
13	Lab. Code, § 510	4
14	Lab. Code, § 512	4
15	RULES	
16	Cal. Rules of Court, Rule 3.769	8
17		
18		
19		
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21		
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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 and PAGA settlement
4 between Plaintiff Felipe Escalera (“Plaintiff”) and Defendant Hasenin Enterprises, LLC (“Defendant”)
5 (collectively, the “Parties”) for \$300,000.00 (the “Gross Settlement Amount”) to be distributed to 296
6 individuals defined as: “All individuals who are or were employed by Defendant as non-exempt
7 employees in California during the Class Period.” These employees are referred to individually as the
8 “Class Members” or collectively as the “Class.” The “Class Period” for these purposes is defined as
9 the period from February 28, 2019, through April 26, 2024. A true and correct copy of the *Class Action*
10 *and Paga Settlement Agreement and Class Notice* (the “Settlement Agreement”) is attached as
11 **Exhibit 1** to the concurrently-filed *Declaration of Jonathan Melmed in Support of Plaintiff’s Motion*
12 *for Final Approval of Class Action Settlement* (“Melmed FAM Decl.” or “Declaration of Jonathan
13 Melmed”). The Settlement Agreement, in its entirety, is incorporated herein by reference.

14 Plaintiff also represents a group of 188 aggrieved employees on behalf of the State of California
15 as private attorneys general pursuant to the California Labor Code Private Attorneys General Act of
16 2004, former Labor Code sections 2698 through 2699.6 (“PAGA”). The “Aggrieved Employees,” for
17 these purposes, share an identical definition with the Class except that the applicable “PAGA Period”
18 is defined as the period from February 28, 2022, to April 26, 2024. (Settlement Agreement, at p. 3.)

19 On August 30, 2024, this Court granted preliminary approval of the Settlement Agreement.
20 Pursuant to that order, on September 27, 2024, ILYM Group (the “Settlement Administrator”) mailed
21 the *Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval* (the
22 “Class Notice”) in both English and Spanish to all 296 putative Class Members contained in the data
23 provided by Defendant.¹ (See Admin. Decl., ¶ 3.) A copy of the Class Notice is attached to Admin.
24 Decl. as Exhibit A.

25 If the Court grants final approval, each participating Class Member will receive a share of
26

27 ¹ The Declaration of Makenna Snow of ILYM Group, Inc. Regarding Notice and Settlement
28 Administration (hereafter “Admin. Decl.”) is attached as **Exhibit 2** to the Declaration of Jonathan
Melmed being filed concurrently with this motion.

approximately **\$147,346.34** (the “Net Settlement Amount”), which is calculated as described below.

Plaintiff also provides the following summary to assist the Court in its review:

Gross Settlement Amount:	\$300,000.00
Attorneys’ Fees:	(\$100,000.00)
Litigation Costs:	(\$14,653.66)
Settlement Administration Costs:	(\$8,000.00)
Service Awards to Plaintiff:	(\$10,000.00)
PAGA Penalties:	(\$20,000.00)
Net Settlement Amount:	\$147,346.34

Class Participation	
Eligible Class Members:	296
Requests for Exclusion:	0
Objectors:	0
Participating Class Members:	296
Total Participation Rate:	100%

Relevant Supplemental Data	
Number of Aggrieved Employees:	188
Workweeks during the Class Period:	12,338
Pay Periods during the PAGA Period:	3,096
Highest Payment to Class Members:	\$3,176.70
Average Payment to Class Members:	\$497.79
Highest Payment to Aggrieved Employees:	\$83.98
Average Payment to Aggrieved Employees:	\$26.60

Class Counsel Fee Request:	⅓ of the Gross Settlement Amount
Percent of Class Payments Attributable to Unpaid Wages (W-2 Income):	20%
Percent of Class Payments Attributable to Non-Wages (1099 Income):	80%
Uncashed Checks Paid to:	Unclaimed Property Fund

The Settlement Agreement is an excellent result for the Class, which is demonstrated by the extraordinarily high participation rate of **100%**. (Admin. Decl., ¶ 14.) To date, *zero* Class Members have submitted objections to the Settlement Agreement and *zero* Class Members have requested exclusion. (Admin. Decl., ¶¶ 11–14.) 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., ¶ 36.) Further, these numbers raise a strong presumption that the Settlement Agreement is fair, reasonable, and adequate.

As part of Plaintiff’s motion for final approval, Plaintiff’s counsel are seeking final approval of attorneys’ fees in the amount of one-third of the Gross Settlement Amount, which is a reasonable fee for a wage and hour class action as a percentage of the common fund and within the normal range of attorneys’ fee awards in similar class actions in California courts, as demonstrated below, and considering the benefit obtained for the class in this case.

Based on the foregoing, Plaintiff respectfully requests that the Court grant final approval of the Settlement Agreement.

II. BACKGROUND

A. THE PARTIES

Defendant is a flooring company in San Diego, California. Defendant employed non-exempt workers during the Class Period and PAGA Period. (Melmed Decl., ¶ 12.) Plaintiff was employed by Defendant doing carpet cleaning in San Diego, California. Plaintiff was employed beginning in approximately April of 2022. (Melmed Decl., ¶ 13.)

B. PROCEDURAL SUMMARY

On February 28, 2023, Plaintiff commenced this action by filing a Class Action Complaint alleging causes of action against Defendant for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204 and 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; and **(10)** and unfair, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200, *et seq.*). (Melmed Decl., ¶ 16.) On the same day, Plaintiff submitted a letter to the California Labor and Workforce Development Agency to notify it, pursuant to PAGA, of Plaintiff’s intent to seek civil penalties against Defendant for the same violations. (Melmed FAM Decl., ¶ 15.)

On May 4, 2023, Plaintiff filed a First Amended Class and Representative Action Complaint alleging causes of action against Defendant for those described in the original Complaint and adding one cause of action for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698, *et seq.*) The First Amended Class and Representative Action Complaint is the operative complaint in the Action (the “Operative Complaint”). (Melmed Decl., ¶ 17.)

Thereafter, the Parties agreed to attend a private mediation with Lisa Klerman, Esq. (Melmed Decl., ¶ 18.) Prior to the mediation, Plaintiff’s counsel conducted significant informal discovery. (Melmed Decl., ¶ 18.) Discovery, investigation, and prosecution has included, among other things, **(a)** numerous telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds of pages of documents, **(c)** including Defendant’s relevant policies and employee handbook, and other information produced by Plaintiff and Defendant; **(d)** analysis of work-related data from a sample of

1 Class Members and Aggrieved Employees; **(e)** an analysis of the legal positions taken by Defendant;
2 **(f)** investigation into the viability of class treatment of the claims asserted in the Action; **(g)** analysis
3 of potential class-wide damages, including information sufficient to understand Defendant’s potential
4 defenses to Plaintiff’s claims; **(h)** research of the applicable law with respect to the claims asserted in
5 the Operative Complaint and the potential defenses thereto; and **(i)** assembling and analyzing of data
6 for calculating damages. (Melmed Decl., ¶ 18.)

7 On January 29, 2024, the Parties participated in a full-day mediation with Lisa Klerman who is
8 a full-time mediator with extensive experience in California wage and hour class action lawsuits.
9 Although the mediation negotiations were again contentious, the Parties were eventually able to reach
10 the broad terms of an agreement, which was memorialized in a memorandum of understanding. After
11 further negotiation, the Parties executed the longform Settlement Agreement. (Melmed Decl., ¶ 19.)

12 On August 30, 2024, Plaintiff’s Motion for Preliminary Approval of Class Action Settlement
13 (“Motion for Preliminary Approval”) was granted. (See Order Granting Preliminary Approval of Class
14 Action and PAGA Settlement (“Preliminary Approval Order” or “PAM Order”), ¶ 2.) In granting
15 preliminary approval, this Court determined that the Settlement Agreement appeared to be “fair,
16 adequate, and reasonable to the Class” (PAM Order, ¶ 2.) This Court further found that the
17 Settlement Agreement falls “within the range of reasonableness and is presumptively valid, subject
18 only to any objections that may be raised at the final fairness hearing and final approval by this Court.”
19 (PAM Order, ¶ 3.)

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

21 **C. THE CLAIMS AND DEFENSES**

22 Plaintiff alleged several categories of wage-and-hour violations on behalf of the Class and
23 Aggrieved Employees. The details and settlement value of each of these claims, and their
24 corresponding defenses, were discussed extensively in the Plaintiff’s Motion for Preliminary Approval
25 and its accompanying papers, the discussion of which is incorporated by reference herein, and which,
26 for the sake of brevity, Plaintiff will avoid belaboring in this motion. (See Motion for Preliminary
27 Approval, at p. 5–14.)

28 Defendant has persistently denied all liability of any kind associated with the claims and

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

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

6 Under the terms of the Settlement Agreement, Defendant will be released of all claims asserted
7 in the Complaint in exchange for Defendant's agreement to pay a non-reversionary Gross Settlement
8 Amount of \$300,000.00. (See generally, Settlement Agreement.)

9 The amount to be paid by Defendant includes: **(1)** the fees and expenses of the Settlement
10 Administrator in the amount of \$8,000.00 (Settlement Agreement, at p. 7; Admin. Decl., ¶ 19);
11 **(2)** Plaintiff's counsel's attorney fees of one-third of the Gross Settlement Amount, i.e., \$100,000.00
12 (Settlement Agreement at p. 7); **(3)** litigation expenses and costs up to \$15,000.00, but which are
13 currently not expected to exceed \$14,653.66 (Settlement Agreement, at p. 7; Melmed Decl., ¶ 40); **(4)** a
14 service award of \$10,000.00 to the named Plaintiff (Settlement Agreement, at p. 6); **(5)** payment to the
15 LWDA of \$15,000.00 for its 75% share of the settlement for civil penalties pursuant to PAGA
16 (Settlement Agreement, at p. 8); and **(6)** payment to the Aggrieved Employees of \$5,000.00 for their
17 25% share of the settlement for civil penalties pursuant to PAGA (Settlement Agreement, at p. 8.) The
18 remaining Net Settlement Amount, which consists of approximately \$147,346.34, less applicable taxes,
19 will be distributed to the Class Members. (Admin. Decl., ¶ 15.)

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

28 For tax purposes, the Settlement Agreement provides that 20% of each individual settlement

1 payment from the class-portion of the Settlement Agreement shall constitute wages (for which each
2 participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining
3 80% shall constitute interest, reimbursement, and penalties (for which each participating Class Member
4 will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p.
5 7.) With respect to the individual payments made under the PAGA-portion of the Settlement
6 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which
7 each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation).
8 (Settlement Agreement, at p. 8.)

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

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

14 Pursuant to this Court's Preliminary Approval Order, the Settlement Administrator has fully
15 completed distributing the Class Notice, as the deadline to respond passed on November 26, 2024.
16 (Admin. Decl., ¶¶ 11–12.) The Settlement Administrator was tasked with, among other things:
17 (1) preparing, translating, printing and mailing the Class Members the court-approved Class Notice;
18 (2) receiving and processing requests for exclusion and written objections; (3) resolving Settlement
19 Class Members' disputes over the number of workweeks Defendant has record of them working during
20 the Class Period, which was pre-printed on their individualized Class Notice; and (4) calculating
21 individual settlement award amounts. (Admin. Decl., ¶ 3.)

22 On September 12, 2024, the Settlement Administrator received the class data list from
23 Defendant's counsel. (Admin. Decl., ¶ 5.) On September 27, 2024, the Settlement Administrator mailed
24 the Court-approved notice to all 296 Class Members contained in the data provided by Defendant.
25 (Admin. Decl., ¶ 7.) The deadline for the 296 Class Members in the class data list to submit an opt-out
26 request, objection, or dispute of workweeks was November 26, 2024. (Admin. Decl., ¶¶ 11–12.) The
27 Settlement Administrator has received **zero** objections from the Class Members and **zero** Class
28 Members have requested exclusion (Admin. Decl., ¶¶ 11–12.) Thus, the Settlement Administrator is

1 reporting a **100% participation rate**—an overwhelmingly favorable response to a Settlement.
2 (Admin. Decl., ¶ 14.) “[T]he absence of a large number of objections to a proposed class action
3 settlement raises a strong presumption that the terms of a proposed class settlement action are favorable
4 to the class members.” (*In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036,
5 1043, quoting *National Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D. Cal. 2004)
6 221 F.R.D. 523, 529; *Moore v. PetSmart, Inc.* (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD)
7 2015 WL 5439000, at *7, *aff’d* (9th Cir. 2018) 728 Fed. Appx. 671 [finding that where “less than one
8 percent either opted out or objected, the reaction of the putative class has been very positive. Therefore,
9 this factor strongly favors settlement.”].)

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

11 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW** 12 **AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT.**

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

1 The trial court enjoys broad discretion to determine whether a proposed class action settlement
2 is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The decision to approve or reject a
3 proposed settlement lies within the Court’s sound discretion. (*Wershba v. Apple Computer, Inc.* (2001)
4 91 Cal.App.4th 224, 234–235.) In deciding whether to grant final approval, the Court’s ultimate duty
5 is to determine whether the settlement is fair, adequate, and reasonable. (See *Dunk v. Ford Motor Co.*
6 (1996) 48 Cal.App.4th 1794, 1801 [setting forth the “fair, adequate, and reasonable” standard], citing
7 *Officers for Justice v. Civil Service Com’n of City and County of San Francisco, supra*, 688 F.2d 615,
8 625; see also *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742–743 [a trial
9 court must approve a class action settlement agreement, but only after determining that it is ““fair,
10 adequate and reasonable,”” considering factors such as the ““risk, expense, [and] complexity”” of
11 continued litigation], citations omitted.) The Court should consider several factors including, but not
12 limited to:

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

17 The above factors are not exclusive, “the court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91
19 Cal.App.4th 224, 245.) In doing so, the Court must give due “regard to what is otherwise a private
20 consensual agreement between the parties.” (*Ibid.*; see also *In re Microsoft I-V Cases* (2006) 135
21 Cal.App.4th 706, 723.) The inquiry is limited “to the extent necessary to reach a reasoned judgment
22 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
23 parties” (*Officers for Justice v. Civil Service Com’n of City and County of San Francisco, supra*,
24 688 F.2d 615, 625.)

25 As will be explained by applying the above factors, the proposed settlement embodies all key
26 features of a settlement that is fair, reasonable, adequate, and in the best interests of the members of
27 the class, and, as such, meets all the criteria necessary for final approval.
28

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

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

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

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

22 The settlement reached is the product of substantial effort by the parties and their counsel.
23 (Melmed FAM Decl., ¶ 33.) Plaintiff and Plaintiff’s counsel agree with the Court’s preliminary
24 approval order that the Settlement Agreement represents a fair, adequate, and reasonable resolution of
25 the class claims. (Melmed FAM Decl., ¶ 30; PAM Order, ¶¶ 2–3.)

26 Moreover, Plaintiff’s Counsel are experienced in similar class actions. (Melmed FAM Decl.,
27 ¶¶ 6–11.) Additionally, the percentage of valid objectors is not only small, *but zero*. (Admin. Decl., ¶
28 12.) The presumption of fairness of this settlement applies with full force.

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

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

14 The Settlement Agreement provides for a service award payment in the amount of \$10,000, in
15 addition to whatever payment he is otherwise entitled to receive as a Class Member and Aggrieved
16 Employee. (Settlement Agreement, at p. 6.) The proposed service award is intended to recognize the
17 time, effort, and risk that Plaintiff undertook in bringing this case and helping to secure the relief
18 obtained for the members of the Class. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th
19 715, 726 [upholding “service payment” to named plaintiff for his efforts in bringing class case];
20 *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959 [stating that service awards
21 are “intended to compensate class representatives for work done on behalf of the class, to make up for
22 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
23 willingness to act as a private attorney general.”].) To determine the propriety of a service award, courts
24 consider the actions protecting class interests, the benefit provided to the class based on those actions,
25 and the amount of time and effort expended by the plaintiff. (*Staton v. Boeing Co.* (9th Cir. 2003) 327
26 F.3d 938, 976–977.)

27 The proposed service award is reasonable compensation given the time and effort that Plaintiff
28 devoted to this case, the valuable assistance he provided to counsel, and the fact that he entered into a

1 general release of claims that is broader than the release of the Class. (Melmed FAM Decl., ¶ 37;
2 Settlement Agreement, at pp. 6, 10.) Plaintiff provided invaluable assistance to Plaintiff's counsel and
3 the Class Members in this case, including providing factual background for mediation and the
4 Operative Complaint, reviewing the relevant documents, participating in phone calls with Plaintiff's
5 counsel, gathering highly relevant documents, and reviewing the settlement documents. (Melmed FAM
6 Decl., ¶ 38.) Plaintiff agreed to participate in this case with no guarantee of personal benefit. (Melmed
7 FAM Decl., ¶ 38.) To the contrary, Plaintiff agreed to undertake the financial risk of serving as a class
8 representative and exposed himself to the risk of negative publicity by anyone who opposed this case.
9 (Melmed FAM Decl., ¶ 38.)

10 The service awards requested by Plaintiff represents only 3.33% of the Gross Settlement
11 Amount in this case. Moreover, the service award also falls well within the range of service payments
12 typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson*
13 *Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879
14 [approving service awards of **\$11,250.00**]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29,
15 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 [approving service award of **\$20,000.00**]; *Vasquez*
16 *v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards of
17 **\$10,000.00**]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006 No. CIVS040438WBSGGH) 2006
18 WL 8458679, at *8 [approving service awards of **\$15,000**]; *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal.
19 Jan. 26, 2007 No. C-06-4068 MMC) 2007 WL 221862, at *17, *aff'd* (9th Cir. 2009) 331 Fed.Appx.
20 452 [approving service awards of **\$25,000**]; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct.
21 6, 2008, No. 08CV0795 IEG RBB) 2008 WL 4473183, at *7 [approving service awards of **\$25,000**],
22 emphasis added; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365
23 CW EMC, 2010 WL 1687832, at *17 n.8 [noting that numerous courts have approved service awards
24 of **\$20,000** or more], emphasis added.) Finally, Plaintiff has agreed to enter into a general release of all
25 claims against Defendant, whereas the Class Members only released the claims alleged. (Settlement
26 Agreement, at pp. 10–11.) The requested service award is modest, fair, and reasonable.

27 **VI. THE PROPOSED ATTORNEYS' FEE ALLOCATION IS FAIR, REASONABLE,**
28 **AND APPROPRIATE**

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

7 Specifically, Plaintiff's counsel request attorneys' fees in the amount of one-third of the Gross
8 Settlement Amount (i.e., \$100,000.00), as provided in the Settlement Agreement. (Settlement
9 Agreement at p. 7.) As will be explained, this request is reasonable and appropriate under the common
10 fund theory and is supported by: (1) case law, (2) Plaintiff's counsel's high quality of work, (3) the
11 excellent results achieved for the Class Members, (4) the risks inherent in the contingent nature of
12 Plaintiff's counsel's representation in this case, and (5) public policy considerations.

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

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

24 It is well-established that, where a lawsuit results in the recovery of a fund or property benefiting
25 others, as well as the plaintiff—as in a class action—the court has inherent equitable power to order
26 the plaintiff's attorneys' fees to be paid out of the common fund or property. (See *Serrano v. Priest*
27 (1977) 20 Cal.3d 25, 35; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 25 ["when a
28 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or

1 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
2 plaintiffs may be awarded attorney’s fees out of the fund”]; *Quinn v. State of California* (1975) 15
3 Cal.3d 162, 168; *In re Stauffer’s Estate* (1959) 53 Cal.2d 124, 132.) This “fee spreading” is premised
4 on assuring that all those benefitted by the litigation pay their fair share of the costs for obtaining the
5 recovery. (See *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26; *Cziraki v. Thunder*
6 *Cats, Inc.* (2003) 111 Cal.App.4th 552, 558.)

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

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

27 Plaintiff’s counsel’s diligent litigation of this action resulted in the creation of an ascertainable
28 common fund that will substantially benefit the Class. Plaintiff’s counsel’s request for an award of one-

1 third of the Gross Settlement Amount is well within the range awarded to counsel under similar
2 circumstances in litigation of this type and is abundantly reasonable in light of the excellent results
3 achieved for the Class Members.

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

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

10 The negotiated and unopposed fee should also be approved because it is within the approved
11 range of appropriate awards of attorneys' fees in similar wage-and-hour class action cases in California.
12 (See, e.g., *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–492 [explaining
13 that “[t]he typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total
14 settlement value”]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG
15 (BLM)) 2010 WL 2196104, at *8 [approving attorney fee award of 33.33% of the common fund and
16 noting that award was similar to awards in three other wage-and-hour class action cases where fees
17 ranged from 30.3% to 50%]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008,
18 No. C 06-6883 VRW) 2008 WL 5478576, at *8 [meal break class action where the federal district court
19 approved attorneys’ fees of one-third of common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D.
20 Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [approving fees at one-third of
21 the common fund in a missed meal break class action and noting that fee awards in class actions average
22 around one-third of the recovery]; *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499
23 EMC) 2010 WL 3155645, at *6 [noting that a fee award of one-third of the settlement was “well within
24 the range of percentages which courts have upheld as reasonable in other class action lawsuits”];
25 *McCrary v. Elations Company, LLC* (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL
26 769703, at *10 [noting that most fee awards are 33%]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov.
27 18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804, at *12 [finally approving a one-third fee
28 award on a \$5,800,000 settlement].)

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

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

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

21 Plaintiff’s counsel diligently, efficiently, and creatively pursued this case and promptly reached
22 a successful settlement for the benefit of the Class Members. Despite the numerous risks and obstacles
23 afflicting Plaintiff’s claims as detailed in the Motion for Preliminary Approval and its accompanying
24 papers, Plaintiff’s counsel crafted and negotiated a fair and reasonable Settlement Agreement for the
25 benefit of the Class Members. The fact that the settlement was embraced and supported by the Class
26 Members, as evidenced by the complete lack of any objections or opt-outs, clearly demonstrates that
27 the Class Members support the Settlement Agreement and results achieved by Plaintiff’s counsel
28 through the litigation of this matter. (Admin. Decl., ¶¶ 11–12.)

1 As a result of this litigation, the Class Members stand to receive a significant Net Settlement
2 Amount of **\$147,346.34**.

3 **D. THE CONTINGENT NATURE OF PLAINTIFF’S COUNSEL’S**
4 **REPRESENTATION OF PLAINTIFF AND THE CLASS FURTHER**
5 **SUPPORTS THE FEE AWARD AT ONE-THIRD OF THE MAXIMUM**
6 **COMMON FUND**

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

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

27 Finally, the absence of any valid objections to the requested fee award, coupled with the 100%
28 Class Member participation rate, also supports the appropriateness and reasonableness of the requested

1 attorneys' fees. (Admin. Decl., ¶ 14; *In re Heritage Bond Litigation* (C.D. Cal., June 10, 2005,) No.
2 02-ML-1475 DT) 2005 WL 1594403, at *21 ["The absence of objections or disapproval by class
3 members to Class Counsel's fee request further supports finding the fee request reasonable."].)

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

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

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

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

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

1 “Considerations of sound public policy buttress our conclusion. Labor Code section
2 1194 confirms ‘a clear public policy . . . that is specifically directed at the enforcement
3 of California’s minimum wage and overtime laws for the benefit of workers.’ [Citation.]
4 As defendant’s own authority reminds us, California’s overtime laws are remedial and
5 are to be construed so as to promote employee protection. [Citation.] And, as we have
6 recognized, ‘this state has a public policy which encourages the use of the class action
7 device.’ [Citation.] “‘By establishing a technique whereby the claims of many
8 individuals can be resolved at the same time, the class suit both eliminates the possibility
9 of repetitious litigation and provides small claimants with a method of obtaining redress
10 for claims which would otherwise be too small to warrant individual litigation.’”
11 [Citation.]” (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th 319, 340.)

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

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

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

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

24 **F. THE LODESTAR MULTIPLIER APPROACH CONFIRMS THE**
25 **REASONABLENESS OF THE FEE REQUEST**

26 A lodestar cross-check further confirms that the percentage requested is patently reasonable.
27 The “lodestar-multiplier” is an alternative accepted approach of evaluating the reasonableness of
28 attorneys’ fees whereby the court computes the “lodestar” amount by multiplying the number of hours
reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances
this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty or difficulty
of the case, its contingent nature, and the degree of success achieved. (See *PLCM Group v. Drexler*
(2000) 22 Cal.4th 1084, 1095–1096; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Serrano v.*

1 *Priest, supra*, 20 Cal.3d 25, 48–49.) As noted, using the lodestar approach, the court first computes the
2 reasonable market value of the service rendered. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138, fn.
3 3.) The first step is to calculate the lodestar, which is determined by multiplying the time spent by the
4 attorneys and other timekeepers by their reasonable hourly rates. (*Id.* at p. 1132.)

5 When a court adopts the “lodestar multiplier” method, after initially calculating the combined
6 total lodestar, the court may then adjust the lodestar based on several factors in order to “fix a fee at
7 the fair market value for the particular action.” (*Id.* at p. 1132; *Graham v. DaimlerChrysler Corp.*
8 (2004) 34 Cal.4th 553, 574.) As noted, these additional factors include the contingent risk of the
9 litigation, the novelty and complexity of the issues, and exceptional results obtained. (*Ketchum v.*
10 *Moses, supra*, 24 Cal.4th at p. 1132; *Serrano v. Priest, supra*, 20 Cal.3d at p. 48.)

11 A lodestar calculation need not be supported by detailed time records. (*Wershba v. Apple*
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [“California case law permits fee awards in the absence
13 of detailed time sheets”], disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*
14 (2018) 4 Cal.5th 260.) Declarations by counsel as to time spent, even if only estimates, are enough.
15 (See *Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 254–255 [“Here plaintiff’s
16 attorneys submitted declarations evidencing the reasonable hourly rate for their services and
17 establishing the number of hours spent working on the case”]; see also *Dunk v. Ford Motor Co., supra*,
18 48 Cal.App.4th 1794, 1810 [stating that lodestar calculation could be based on counsel’s estimate of
19 time spent]; *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698 [“It is well established
20 that ‘California courts do not require detailed time records, and trial courts have discretion to award
21 fees based on declarations of counsel describing the work they have done and the court’s own view of
22 the number of hours reasonably spent. [Citations]’”].)

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

1 supplemental briefing), preparing papers and moving for final approval, amongst other things.

2 To date, Plaintiff's counsel's lodestar is **\$52,310.70** after expending **66.5 hours** on this matter.
3 (Melmed FAM Decl., ¶ 52.) Thus, the fees sought here reflect a lodestar multiplier of only **1.91** (i.e.,
4 $\$100,000 \div \$52,310.70$). Moreover, it is anticipated that Plaintiff's counsel will expend time which
5 cannot yet be accounted for in the hours in Plaintiff's counsel's declaration. (Melmed FAM Decl., ¶
6 56.) Therefore, the unadjusted lodestar will increase and the multiplier will decrease by the conclusion
7 of this matter.

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

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

21 Under the common fund method, the attorneys representing the class members are permitted to
22 recover their litigation costs and expenses from the common fund. (See *Serrano v. Priest* (1977) 20
23 Cal.3d 25, 35 [common fund doctrine permits recovery of fees and costs from the fund]; *Rider v.*
24 *County of San Diego* (1992) 11 Cal.App.4th 1410, 1424, fn. 6 [costs are recoverable from the common
25 fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery
26 of attorney fees by . . . [Plaintiffs'] attorneys"]; *Melendres v. City of Los Angeles* (1975) 45 Cal.App.3d
27 267, 277.) In fact, this is true for whatever method is chosen by the Court to calculate attorneys' fees:
28 Plaintiff's counsel is entitled to recover "those out-of-pocket expenses that would normally be charged

1 to a fee-paying client.” (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19, internal quotation and
2 citation omitted.)

3 Accordingly, Plaintiff’s counsel further request that, in addition to awarding them reasonable
4 attorneys’ fees, the Court grant their application for reimbursement of the reasonable out-of-pocket
5 expenses advanced, incurred and expected to be incurred by the law firm representing Plaintiff in
6 connection with the prosecution of this litigation, in the amount of \$14,653.66. (Melmed FAM Decl.,
7 ¶ 40.) Plaintiff’s counsel has documented and verified these costs and expenses for which counsel seeks
8 reimbursement. (Melmed FAM Decl., ¶ 40.)

9 **VIII. SETTLEMENT ADMINISTRATION COSTS**

10 The parties agreed that the Settlement Administrator, ILYM Group would be compensated for
11 services performed. The Administrator’s requested fee is \$8,000.00. (Admin. Decl., ¶ 19.) The fee was
12 previously provided in the Settlement Agreement, preliminarily approved by the Court, and noticed to
13 the Class Members.

14 **IX. SUBMISSION TO THE LWDA**

15 The Settlement Agreement has been submitted to the LWDA pursuant to Labor Code section
16 2699, subdivision (1)(2). (Melmed FAM Decl., ¶ 59.)

17 **X. CONCLUSION**

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

20 Dated: January 8, 2025

MELMED LAW GROUP P.C.



KYLE D. SMITH

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Aggrieved Employees