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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

RONALDO VELASQUEZ, 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.

SIP MANUFACTURING, LLC, an Ohio  
Limited Liability Company; and DOES 1 TO 50,

Defendants.

Case Number: 23STCV06826

**Plaintiff's Notice of Motion and Motion for  
Preliminary Approval of Class Action and  
Private Attorney General Act 2004 Settlement**

Date: October 2, 2024

Time: 10:30 a.m.

Dept.: 1

Judge: Hon. Stuart M. Rice

**NOTICE OF MOTION AND MOTION**

To all parties and their attorneys of record:

**PLEASE TAKE NOTICE** that on October 2, 2024, at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department 1 of the Los Angeles County Superior Court for the State of California, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, before the Honorable Stuart M. Rice, Plaintiff Ronaldo Velasquez (“Plaintiff”), on behalf of himself, the State of California, as a private attorneys general, and on behalf of all others similarly situated, will and hereby does move this court for entry of an order:

1. Preliminarily certifying the settlement class for purposes of settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;
2. Preliminarily appointing Plaintiff as class representative for purposes of settlement;
3. Preliminarily appointing Jonathan Melmed, Megan E. Ross, and Hannah Becker of Melmed Law Group P.C. as class counsel for purposes of settlement;
4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the parties’ *Class Action and PAGA Settlement Agreement and Class Notice* (the “Settlement Agreement”), including payment by Defendant SIP Manufacturing, LLC (“Defendant”) of the non-reversionary gross settlement amount of \$190,000 (“Gross Settlement Amount”);
5. Preliminarily approving payment of reasonable attorneys’ fees and costs from the Gross Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to \$63,333.33), plus necessary litigation costs not to exceed \$17,000.00;
6. Preliminarily approving a class representative incentive payment to Plaintiff in an amount of up to \$10,000.00 from the Gross Settlement Amount to compensate him for the responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;
7. Preliminarily approving the allocation of \$15,000.00 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$11,250.00) shall be paid to the California Labor and Workforce Development Agency (“LWDA”) from the Gross

1 Settlement Amount, with the remaining 25% (i.e., \$3,750.00) payable to the aggrieved employees;

2 8. Appointing ILYM Group, Inc. (the “Settlement Administrator”) as the settlement  
3 administrator to handle the notice and administration process and preliminarily approving  
4 settlement administration costs estimated to be \$7,950.00;

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

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

8 11. Approving the proposed deadlines for the notice and administration process as  
9 reflected herein and in the Settlement Agreement;

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

12 13. Granting Plaintiff leave to file the overlength brief included with this motion.

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

19 Dated: September 9, 2024

**MELMED LAW GROUP P.C.**

20  
21 

**KYLE D. SMITH**

22 Attorneys for Plaintiff, the Putative Class, and the  
23 Aggrieved Employees  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks preliminary approval of a wage-and-hour class and representative action  
4 settlement between Plaintiff Ronaldo Velasquez (“Plaintiff”) and Defendant SIP Manufacturing, LLC  
5 (“Defendant”) (collectively, the “Parties”) for \$190,000.00 (the “Gross Settlement Amount”) to be  
6 distributed to approximately 211 individuals defined as:

7 All individuals who are or were employed by Defendant as nonexempt employees in  
8 California during the period from June 1, 2022, through the date of preliminary approval  
9 of the settlement (the “Class Period”).  
10

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

17 Plaintiff also represents a group of aggrieved employees on behalf of the State of California as  
18 a private attorney 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 are defined as:

21 All individuals who are or were employed by Defendant as non-exempt employees in  
22 California during the period from June 1, 2022, through the date of court approval of  
23 the settlement (the “PAGA Period”).  
24

25 The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross  
26 Settlement Amount will revert to Defendant. (Melmed Decl., ¶ 5; Settlement Agreement, at p. 6). Class  
27 Members are not required to submit a claim form to receive their settlement share, none of the Gross  
28 Settlement Amount will revert to Defendant, and the applicable employer-side payroll taxes are to be

1 paid by Defendant outside the Gross Settlement Amount. (See Melmed Decl., ¶ 5; Settlement  
2 Agreement, at pp. 6, 14).

3 Because the settlement is fair and reasonable, was negotiated at arm's length between counsel  
4 following extensive investigation and discovery, was reached after participation in a full-day  
5 mediation, it should be preliminarily approved. (Melmed Decl., ¶ 6.) Subject to court approval, at least  
6 **\$80,466.67** will be distributed to Class Members who do not request exclusion from the settlement and  
7 Aggrieved Employees.

|                                                             |                     |
|-------------------------------------------------------------|---------------------|
| <b>Gross Settlement Amount</b>                              | <b>\$190,000.00</b> |
| Attorneys' Fees                                             | (up to \$63,333.33) |
| Litigation Costs                                            | (up to \$17,000.00) |
| Settlement Administration Costs                             | (up to \$7,950.00)  |
| Incentive Award                                             | (up to \$10,000.00) |
| PAGA Payment to LWDA                                        | (\$11,250.00)       |
| <b>Net Settlement Amount + Individual<br/>PAGA Payments</b> | <b>\$80,466.67</b>  |

16  
17 This settlement is an excellent result considering the strength of Plaintiff's claims and  
18 Defendant's plausible defenses. Because the Settlement Agreement is well within the zone of  
19 reasonableness, Plaintiff requests entry of an order: **(1)** conditionally certifying the Settlement Class  
20 under California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 (c), for  
21 settlement purposes and preliminarily approving the settlement; **(2)** approving the proposed Notice of  
22 Proposed Class Action Settlement ("Class Notice") to be distributed to Class Members pursuant to the  
23 Settlement Agreement, as reflected in Exhibit 1 to the Settlement Agreement; **(3)** appointing ILYM  
24 Group, Inc. to administer the settlement ("Settlement Administrator"); and **(4)** scheduling a hearing for  
25 final approval after the completion of the settlement notice process.

1 **II. BACKGROUND**

2 **A. THE PARTIES**

3 Defendant is an Ohio Limited Liability Company and maintained employees in California  
4 during the Class Period and PAGA Period. (Melmed Decl., ¶ 14.)

5 Plaintiff is a citizen of California and at all relevant times worked for Defendant in California—  
6 specifically he was based in Los Angeles, California. (Melmed Decl., ¶ 15.) Plaintiff was employed by  
7 Defendant from August 19, 2022 through January 26, 2023. (Melmed Decl., ¶ 15.) During the Class  
8 Period and PAGA Period, Plaintiff was employed by Defendant as an hourly, non-exempt employee,  
9 working as a packer. (Melmed Decl., ¶ 15.) Plaintiff alleged that Defendant’s hourly, non-exempt  
10 employees—including Plaintiff, the Class Members, and the Aggrieved Employees (collectively, the  
11 “Employees”)—experienced various violations of California’s wage-and-hour laws. (Melmed Decl., ¶  
12 15.)

13 **B. PROCEDURAL SUMMARY**

14 On March 28, 2023, Plaintiff submitted a letter to the California Labor and Workforce  
15 Development Agency (“LWDA”) to notify the LWDA, pursuant to PAGA, of his intent to seek civil  
16 penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3,  
17 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and  
18 California Industrial Welfare Commission Wage Order 4-2001 (the “Applicable Wage Order”).  
19 (Melmed Decl., ¶ 16.) The letter attached Plaintiff’s original complaint, and incorporated the original  
20 complaint by reference, and thus sought penalties for claims identical to those alleged in the case.  
21 (Melmed Decl., ¶ 16.) For the Court’s reference, a copy of Plaintiff’s letter to the LWDA is attached  
22 as **Exhibit C** to the concurrently-filed *Declaration of Jonathan Melmed in Support of Plaintiff’s Motion*  
23 *for Preliminary Approval of Class Action Settlement*.

24 On March 28, 2023, Plaintiff filed a class action complaint in Los Angeles Superior Court.  
25 Plaintiff alleged claims for: **(1)** failure to pay minimum wage for all hours worked; **(2)** failure to pay  
26 all overtime wages; **(3)** failure to provide compliant rest periods and pay missed rest break premiums;  
27 **(4)** failure to provide compliant meal periods and pay missed meal period premiums; **(5)** failure to  
28 maintain accurate employment records; **(6)** failure to pay timely wages during employment; **(7)** failure

1 to pay all wages earned and unpaid at separation; **(8)** failure to indemnify all necessary business  
2 expenditures; **(9)** failure to provide complete and accurate wage statements; and **(10)** violations of  
3 California’s Unfair Competition Law. (Melmed Decl., ¶ 17.)

4 On June 20, 2023, Plaintiff filed a first amended class and representative action complaint,  
5 adding an additional cause of action for PAGA penalties based on the allegations set forth in the original  
6 complaint. (Melmed Decl., ¶ 18.)

7 On or about August 28, 2023, the Parties agreed to attend a private mediation. (Melmed Decl.,  
8 ¶ 19.) Prior to mediation, Plaintiff’s counsel conducted significant informal discovery. (Melmed Decl.,  
9 ¶ 19.) Discovery, investigation, and prosecution has included, among other things, numerous telephonic  
10 conferences with Plaintiff; inspection and analysis of hundreds of pages of documents and other  
11 information produced by Defendant; analysis of work-related data from a sample of Class Members  
12 and Aggrieved Employees; an analysis of the legal positions taken by Defendant; investigation into the  
13 viability of class treatment of the claims asserted in the action; analysis of potential class-wide  
14 damages, including information sufficient to understand Defendant’s potential defenses to Plaintiff’s  
15 claims; research of the applicable law with respect to the claims asserted in the operative FAC and the  
16 potential defenses thereto; and assembling and analyzing of data for calculating damages. (Melmed  
17 Decl., ¶ 19.)

18 Among other key pieces of information, Plaintiff’s counsel requested in its informal discovery  
19 letter the wage statements and time records for “a statistically significant sample size” of Class  
20 Members during the Class Period. (Melmed Decl., ¶ 20.) The Parties agreed on a statistically significant  
21 sampling, which Plaintiff’s counsel determined would provide a statistically significant sample size with a  
22 high-degree of confidence for Plaintiff’s expert’s statistical analysis. (Melmed Decl., ¶ 20.) Pursuant to  
23 their agreement, Defendant produced Employees’ timekeeping and payroll data during the period of  
24 June 2022 through June 2023. (Melmed Decl., ¶ 20.) From these records, Plaintiff’s expert was able to  
25 carefully craft a damages model for each of the categories of alleged claims for which the data would reflect  
26 violations. (Melmed Decl., ¶ 20.)

27 On January 19, 2024, the Parties participated in a full-day mediation with Steve Pearl, who is a  
28 full-time mediator with extensive experience in California wage and hour class action lawsuits.

(Melmed Decl., ¶ 21.) The mediation negotiations were contentious, but the Parties were eventually able to reach the broad terms of an agreement. (Melmed Decl., ¶ 20.) After further negotiation, the Parties executed a long-form settlement agreement on September 4, 2024. (Melmed Decl., ¶ 20.)

Plaintiff now seeks the Court’s preliminary approval of the Settlement Agreement.

### **C. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE**

Plaintiff alleges several categories of wage and hour violations on behalf of the Employees. Most importantly, Plaintiff alleged that Defendant rounded employee’s hours and did not pay them for each minute worked, failed to properly provide the Employees with meal periods, rest periods, and reimbursement for their required phone expenses. From these violations, Plaintiff sought damages for derivative claims for waiting time penalties, inaccurate itemized wage statements, unfair competition, and PAGA penalties based on the foregoing. (Melmed Decl., ¶ 22.)

Defendant has persistently denied all liability of any kind associated with the claims and allegations, and further denied that Plaintiff, the Class Members, or the Aggrieved Employees are entitled to any relief. Defendant also denies that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. Defendant maintains, among other things, that it has complied with California laws in all respects. (Melmed Decl., ¶ 23.)

These claims, defenses, and potential damages are summarized in more detail below.

#### **1. Minimum Wage and Overtime Allegations**

Plaintiff alleged that Employees were not paid all wages for all hours worked due to Defendant’s alleged policy and practice that rounded employees’ wages. (Melmed Decl., ¶ 24.)

An employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *See, Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. When employees are not paid for all hours worked under Labor Code section 1194, they are entitled to recover minimum wages for the time which they received no compensation. *See, Sillah v. Command International Security Services* (N.D. Cal. 2015) 154 F.Supp.3d 891 (employees suing for failure to pay overtime could recover liquidated damages under Labor Code section 1194.2 if they also showed they were paid less than minimum wage). (Melmed Decl., ¶ 25.)

1 Defendant argued that Employees were paid all wages for all hours worked. Defendant further  
2 argued that it paid Employees for more hours than were worked. (Melmed Decl., ¶ 26.)

3 Due to Defendant's good faith defenses, the difficulty of proving this claim, Plaintiff discounted  
4 these potential damages for the purpose of settlement. (Melmed Decl., ¶ 27.)

## 5 **2. Meal Period Allegations**

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

13 Here, Plaintiff alleged that the Employees were regularly subjected to meal period violations.  
14 (Melmed Decl., ¶ 28.) Plaintiff alleged that there were widespread failures of the Employees to take  
15 compliant meal periods, and corresponding violations of Labor Code section 512. Plaintiff further  
16 alleges that approximately 89% of all shifts involving noncompliant meal periods receiving no meal  
17 period premium payment. (Melmed Decl., ¶ 28.)

18 Defendant argued that the Employees were provided with compliant meal breaks. Defendant's  
19 schedules contained permissive meal periods for the Employees to take. Defendant asserted that no  
20 documentary evidence demonstrated that Defendant had a uniform policy or practice of interrupting,  
21 shorting, or depriving the Employees of their meal breaks. (Melmed Decl., ¶ 29.) Defendant further  
22 argued that Plaintiff could not obtain class certification because the allegedly noncompliant meal  
23 periods were not recorded in any meaningful way that would permit the damages to be calculated with  
24 any reasonable degree of certainty. Specifically, Defendant argued that it did not promulgate an  
25 unlawful meal break policy. In *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004,  
26 the California Supreme Court held an employer is required only to "provide" breaks, but is not required  
27 (and, in this context, simply cannot as a practical matter) to ensure that they are taken. Given that  
28 Defendant had a policy of offering the Employees permissive meal periods on their schedules, any

1 meal periods that might appear noncompliant were presumably voluntarily waived by the Employees.  
2 (Melmed Decl., ¶ 29.)

3 Defendant further argued that any late or missed meal periods were, at most, sporadic such that  
4 even if Plaintiff succeeded in arguing that Defendant did not sufficiently inform its employees of their  
5 right to take meal and rest breaks, the resulting inquiries are entirely individual and would overwhelm  
6 any class-wide questions. (Melmed Decl., ¶ 30.) Separate mini-trials would have to determine both  
7 *liability* (i.e., whether Defendant prevented a particular employee from taking meal breaks they knew  
8 they were entitled to take) and *damages* (i.e., how often Defendant prevented a particular employee  
9 from taking a meal break). (Melmed Decl., ¶ 30.)

10 In terms of Defendant's exposure for this claim, Plaintiff's expert determined that there were  
11 approximately \$562,145.00 of unpaid meal premiums owed. (Melmed Decl., ¶ 31.) This is subject to  
12 \$37,438.00 in mandatory interest, creating a maximum exposure of \$599,583.00. (Melmed Decl., ¶  
13 31.) However, Plaintiff ascribed a 65% discount due to the risks that this Court would agree with  
14 Defendant's good faith defense, and due to the individualized reasons for the failure to take breaks.  
15 Plaintiff estimated Defendant's realistic exposure for this claim to be approximately \$209,854.05.  
16 (Melmed Decl., ¶ 31.)

### 17 **3. Rest Period Allegations**

18 Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendant was required  
19 to provide the Employees with compensated, duty-free rest periods of not less than ten minutes for  
20 every major fraction of four hours worked. Under the Applicable Wage Order, an employer must  
21 authorize and permit all employees to take ten-minute duty-free rest periods for every major fraction  
22 of four hours worked.

23 Likewise, Labor Code section 226.7 provides that "[a]n employer shall not require an employee  
24 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or  
25 applicable regulation, standard, or order of the Industrial Welfare Commission . . . ." (Lab. Code, §  
26 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one  
27 additional hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery  
28 period is not provided." (Lab. Code, § 226.7, subd. (c).) Thus, the Applicable Wage Order set when

1 and for how long the rest period must take place and the Labor Code establishes that violations of the  
2 Applicable Wage Order are unlawful and sets forth the premium pay employer must pay their  
3 employees when employers fail to provide rest periods.

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

9 Here, Plaintiff alleged that Defendant failed to disseminate written policies that properly  
10 informed the Employees of their right to take rest periods compliant with California law and that rest  
11 breaks were never taken. (Melmed Decl., ¶ 32.) Plaintiff alleged that rest period violations occurred at  
12 a rate of 100%. (Melmed Decl., ¶ 32.)

13 Defendant argued that the Employees were permitted and authorized to take compliant rest  
14 periods. Defendant argued that its workers were off-site and could find time within their daily schedules  
15 and duties to take rest periods if they chose to do so, even without having been expressly informed of  
16 their right to take rest periods. Defendant also contended that the Employees worked with different  
17 supervisors who may have instructed the Employees differently regarding when and how they must  
18 take rest breaks, leading to serious challenges to certification and manageability as to this claim.  
19 (Melmed Decl., ¶ 33.)

20 In terms of Defendant’s exposure for this claim, Plaintiff’s expert determined that there were  
21 approximately \$686,157.00 of unpaid rest premiums owed. (Melmed Decl., ¶ 34.) This is subject to  
22 \$46,437.00 in mandatory interest, creating a maximum exposure of \$732,594.00. (Melmed Decl., ¶  
23 34.) However, Plaintiff ascribed a 65% discount due to the risks that this Court would agree with  
24 Defendant’s good faith defense and due to the individualized reasons for the failure to take breaks.  
25 Plaintiff estimated Defendant’s realistic exposure for this claim to be approximately \$256,407.90.  
26 (Melmed Decl., ¶ 34.)  
27  
28

#### 4. Reimbursement Allegations

Labor Code section 2802 provides that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” The purpose of this section is to “prevent employers from passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.) The duty to reimburse extends to the use of equipment the employee may already own and would be required to pay for anyway. (*Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 [employer must reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone].)

Plaintiff alleged that Defendant failed to fully reimburse the Employees for necessary expenditures incurred as a direct consequence and requirement of performing their job duties. Specifically, Plaintiff alleged that Defendant did not reimburse the Employees for required personal phone use. (Melmed Decl., ¶ 35.)

Defendant contended that it had a practice of reimbursing the Employees for business-related expenses incurred in connection with their duties. (Melmed Decl., ¶ 36.) Defendant claimed that, to the extent the Employees were not reimbursed, it was due to their failure to request reimbursement, not a failure on Defendant’s part to permit reimbursement. (Melmed Decl., ¶ 36.)

Defendant also argued that there were multiple individualized liability issues related to the expense reimbursement claims. (Melmed Decl., ¶ 37.) Defendant argued that there would be significant variation between the Employees in terms of what kinds of expenses were actually incurred. (See, e.g., *Harris v. Vector Marketing Corp.* (N.D. Cal. 2010) 753 F.Supp.2d 996, 1022; but see *Uschold v. NSMG Shared Services, LLC* (N.D. Cal. 2019) 333 F.R.D. 157, 162.) Defendant further argued that separate, highly-individualized determinations would be needed to determine whether such equipment was previously owned by the Employees and, if not, the reasonableness of each Employees’ purchasing choices. (Melmed Decl., ¶ 37.) Thus, Defendant concluded that the individualized inquiries necessary to determine liability and damages would render any class action unmanageable. (*Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 157.)

1 Due to Defendant's good faith defenses and the difficulty of proving this claim, Plaintiff  
2 discounted these potential damages for the purpose of settlement. (Melmed Decl., ¶ 38.)

### 3 5. Derivative Waiting Time Penalty Allegations

4 Plaintiff alleged that, because of the violations described above, several derivative causes of  
5 action arise. (Melmed Decl., ¶ 39.) First, Labor Code section 203 provides that if an employer willfully  
6 fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections  
7 201 and 202, then the employer is liable for penalties in the form of continued compensation up to  
8 thirty workdays. (See *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

9 As with Plaintiff's other claims, Defendant argued that the Employees were fully compensated  
10 and that such violations were rare and nominal in value, if they occurred at all. (Melmed Decl., ¶ 39.)  
11 Defendant thus concluded that the Employees could not claim waiting time penalties because the  
12 Employees had been fully and timely compensated upon discharge. (Melmed Decl., ¶ 39.) Defendant  
13 further argued that waiting time penalties under Labor Code section 203 are only triggered if the  
14 violation is determined to be willful. Defendant argued that it attempted to accurately reflect  
15 California's legal requirements a short while after beginning to do business in California, and argued  
16 that it therefore was acting in good faith. (See *Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 832 F.Supp.2d  
17 1122, 1133 ["a good faith dispute that any wages are due will preclude imposition of waiting time  
18 penalties"].) Thus, even if any underpayments had occurred, Defendant argued that they were  
19 inadvertent, made in good faith, and could not result in waiting time penalties. (Melmed Decl., ¶ 39.)

20 Defendant further argued that Plaintiff's claims of unpaid rest period and meal period premiums  
21 cannot support a claim for waiting time penalties. (*Ling v. P.F. Chang's China Bistro, Inc.* (2016) 245  
22 Cal.App.4th 1242, 1261 ["section 226.7 cannot support a section 203 penalty"].) Thus, any applicable  
23 waiting time penalties would have to be limited to those employees who experienced an underpayment  
24 of the Employees' actual wages. Defendant argued that any such violations were rare, if they occurred  
25 at all. (Melmed Decl., ¶ 40.) Plaintiff argued, however, that Defendant's failures to reimburse the  
26 Employees for phone and mileage expenses served as an unlawful deduction in violation of Labor Code  
27 section 221, and effectively reduced the Employees' wages for overtime and minimum wage purposes  
28

1 and thus created an entitlement to waiting time penalties. (Melmed Decl., ¶ 40; Lab. Code, §§ 510,  
2 1194, 1194.2, 1197, 1198.)

3 From the informal discovery produced by Defendant, approximately 39 Employees terminated  
4 their employment during the waiting time date range. Thus, the maximum value of the waiting time  
5 penalty claim was therefore derived from the following formula: 39 employees × 30 days × 10.8 hours  
6 average per day × average rate of pay of \$18.48 per hour (or \$233,513.28). However, after ascribing  
7 an 85% discount due to the very real risks that this court would agree with Defendant's good faith  
8 defense and because the claim is derivative of the underlying claims which may also fail to be certified  
9 or win on the merits, Plaintiff estimated Defendant's realistic exposure for this claim to be  
10 approximately \$35,026.99. (Melmed Decl., ¶ 41.)

#### 11 **6. Derivative Wage Statement Allegations**

12 Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of  
13 each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail  
14 to provide their employees with accurate, itemized wage statements may be subject to penalties under  
15 Labor Code section 226, subdivision (e). Plaintiff alleged that, by virtue of the allegations that  
16 Defendant failed to properly pay the Employees their wages as described above, Defendant had  
17 likewise failed to provide the Employees with compliant wage statements reflecting their gross wages  
18 earned and their net wages earned. (Melmed Decl., ¶ 42.)

19 As with Plaintiff's other claims, Defendant argued that the Employees were fully compensated  
20 and that such violations were rare and nominal in value, if they occurred at all. Defendant thus  
21 concluded that Plaintiff could not claim wage statement penalties because there were no wage statement  
22 violations. (Melmed Decl., ¶ 42.)

23 Defendant further argued that unpaid meal or rest period premiums do not give rise to wage  
24 statement penalties under Labor Code section 226. (Melmed Decl., ¶ 43.) The decision in *Naranjo v.*  
25 *Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, review granted January 2, 2020, held that  
26 unpaid premium wages for meal break violations do not entitle employees to additional remedies under  
27 the California Labor Code for inaccurate wage statements. Defendant can also rely on the recent  
28 California Court of Appeal case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308,

1 1334–1337, in which the appellate court also held that inaccurate wage statements alone based on  
2 derivative Labor Code violations do not justify penalties. Rather, the plaintiff must establish injury  
3 from the inaccuracy and independent inaccuracies different from underpayments or derivative claims.  
4 Defendant further argued that Plaintiff would be unable to prove “injury” for purposes of recovering  
5 penalties under Labor Code section 226, subdivision (e). (Melmed Decl., ¶ 43.)

6 In terms of Defendant’s exposure for this claim, Plaintiff calculated that approximately 211  
7 Class Members worked a total of approximately 4,968 pay periods during the applicable statutory  
8 period for this claim. Thus, Plaintiff determined that Defendant’s maximum exposure for this claim  
9 was \$484,900.00. Plaintiff then ascribed an 85% discount based on the very real risks that: (1) this  
10 court might find that Defendant’s alleged wage statement errors were not made knowingly and  
11 intentionally such that the penalties would not be triggered, (2) this court might find that Defendant’s  
12 alleged wage statement errors caused little or no injury to the Class Members, or (3) that this court  
13 might find that there were no errors made on the wage statements. Plaintiff calculated that Defendant’s  
14 realistic exposure for this claim was \$72,735.00. (Melmed Decl., ¶ 44.)

## 15 7. Derivative Recordkeeping Allegations

16 Labor Code section 226, subdivision (a), requires employers to keep an accurate record of,  
17 among other things, all hours worked by employees and the gross wages *earned* by—not just paid to—  
18 employees. Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation “in  
19 an initial citation” and \$1,000 per employee for each violation “in a subsequent citation” where an  
20 employer fails to “keep the records required in subdivision (a) of Section 226.” Likewise, Labor Code  
21 sections 1174 and 1174.5 require employers to keep “accurate and complete” payroll records or else  
22 be subject to a civil penalty in the amount of \$500.

23 The California Supreme Court has held that meal and rest break premium payments are a form  
24 of “wages” and not “penalties.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094,  
25 1102.) Accordingly, Plaintiff argued that Defendant’s alleged failure to pay applicable meal and rest  
26 period premiums, as described above, resulted in the Employees receiving wage statements that did not  
27 show the gross wages earned by the Employees, and thus failed to accurately keep the records required  
28 by Labor Code sections 226, subdivision (a), 226.3, 1174, and 1174.5. (Melmed Decl., ¶ 45.)

1 As with Plaintiff's other claims, Defendant argued that the Employees were fully compensated  
2 and that such violations were rare and nominal in value, if they occurred at all. Defendant thus  
3 concluded that Plaintiff could not claim recordkeeping penalties because the wage statements  
4 accurately reflected all wages *earned* by the Employees. (Melmed Decl., ¶ 45.)

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

10 Defendant has not yet received "an initial citation" as required by Labor Code section 226.3.  
11 Defendant therefore had a strong claim that the penalties under Labor Code section 226.3 were  
12 altogether inapplicable as mere inadvertent mistakes, or, at best, were subject only to the lower \$250  
13 penalty per employee. (Melmed Decl., ¶ 47.) Accordingly, Plaintiff calculated Defendant's maximum  
14 exposure for this claim as being \$1,239,250.00 (\$250 per penalty). In ascertaining Defendant's realistic  
15 exposure, however, Plaintiff discounted the amounts attributable to penalties under Labor Code section  
16 1174 because of the very real risk that Defendant would successfully argue that its payroll records  
17 were, in fact, accurate and complete, as they reflected the true amount of payroll wages issued to the  
18 Employees. Plaintiff further discounted the amounts attributable to penalties under Labor Code section  
19 226.3 based on the very real risks that Defendant's good faith argument would prevail and that Courts  
20 have opted to impose the base PAGA penalties (accounted for in the "PAGA Penalties" section below)  
21 in lieu of the heightened penalties under 226.3. (Melmed Decl., ¶ 47.)

## 22 8. Derivative Untimely Wages Allegations

23 Labor Code section 204 requires employers who pay employees on a weekly, biweekly, or  
24 semimonthly basis to pay *all wages earned* "not more than seven calendar days following the close of  
25 the payroll period." Labor Code section 210, subdivision (a), makes employers who violate Labor Code  
26 section 204 subject to a penalty of \$100 for any initial violation and \$200 for each subsequent violation.  
27 Notably, the penalty provided by Labor Code section 210 is "[i]n addition to, and entirely independent  
28

1 and apart from, any other penalty provided in this article” and may be “recovered by the employee as  
2 a statutory penalty.” (Lab. Code, § 210, subds. (a), (b).)

3 The California Supreme Court has held that meal and rest break premium payments are a form  
4 of “wages” and not “penalties.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094,  
5 1102.) Accordingly, Plaintiff argued that Defendant’s alleged failure to pay applicable meal and rest  
6 period premiums, as described above, resulted in a portion of the wages earned by the Employees not  
7 being paid with seven calendar days following the close of the payroll period as required by Labor  
8 Code section 204, and thus triggering a right to penalties under Labor Code section 210. (Melmed  
9 Decl., ¶ 48.)

10 As with Plaintiff’s other claims, Defendant argued that the Employees were fully compensated  
11 and that such violations were rare and nominal in value, if they occurred at all. Defendant thus  
12 concluded that Plaintiff could not claim untimely wage penalties. (Melmed Decl., ¶ 49.) Defendant  
13 could also argue that Labor Code sections 204 and 210 are statutes aimed at the improper *scheduling*  
14 of wages. Because Defendant’s wage payment schedule was correct, and because the wages Defendant  
15 believed were owed were in fact paid on time, no penalty under Labor Code section 210 should  
16 therefore be imposed.

17 Because of Defendant’s strong defenses, the high likelihood that a Court would opt to impose  
18 base PAGA penalties in lieu of heightened penalties under section 204, Plaintiff entirely discounted  
19 these damages for settlement purposes. (Melmed Decl., ¶ 50.)

## 20 **9. PAGA Penalties**

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

- 23 1. \$100.00 for the initial violation per employee per pay period; and
- 24 2. \$200.00 for each subsequent violation per employee per pay period.

25 These penalties must be allocated seventy-five percent (75%) to the Labor and Workforce  
26 Development Agency (“LWDA”) and twenty-five percent (25%) to the affected employees. (Lab.  
27 Code, § 2699, subd. (i).) Plaintiff alleged that, because of the violations described above, Defendant  
28 was liable for these penalties for each applicable pay period during the applicable PAGA period.

1 In ascertaining Defendant's exposure for this claim, Plaintiff considered several important  
2 cases. First, courts to consider the issue have refused to "stack" PAGA penalties, severely limiting the  
3 recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529  
4 [approving PAGA penalty reduction to \$5 per pay period]; accord *Atempa v. Pedrazzani* (2018) 27  
5 Cal.App.5th 809.) Moreover, Defendant argued that Plaintiff are not entitled to recover PAGA  
6 penalties at the subsequent violation rate of \$200 per pay period. (Melmed Decl., ¶ 51.) California's  
7 appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code  
8 provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot  
9 be presumed to be aware [of the violation]" and therefore, until a Court or the Commissioner issues a  
10 finding of a violation, the initial \$100 violation rate applies for each pay period in which the alleged  
11 violation occurred. (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.) Thus,  
12 Defendant argued that even if the Plaintiff were able to establish any violation of the Labor Code, the  
13 PAGA penalties assessed for these violations will be computed at the \$100 rate, as opposed to the \$100  
14 per pay period rate at maximum, and there is a likelihood that a further reduction of the penalty to \$5  
15 per pay period as approved in *Carrington* would apply given Defendant's compliance with the Labor  
16 Code as discussed above. (Melmed Decl., ¶ 52.) Defendant further argued that even if Plaintiff were  
17 able to recover some PAGA penalties on behalf of other aggrieved employees, courts frequently use  
18 their discretion under Labor Code section 2699, subdivision (e)(2), to significantly reduce PAGA  
19 penalties where such penalties would be unjust, arbitrary, and improper. (Melmed Decl., ¶ 52.)

20 Here, there were approximately 4,957 pay periods within the applicable PAGA period.  
21 (Melmed Decl., ¶ 53.) Applying PAGA's maximum penalties (i.e., "one hundred dollars (\$100) for  
22 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for  
23 each aggrieved employee per pay period for each subsequent violation" (Lab. Code, § 2699, subd.  
24 (f)(2))) would yield a maximum exposure for Defendant of \$1,474,000.00. (Melmed Decl., ¶ 53.)  
25 However, considering Defendant's defenses to the PAGA claim, Plaintiff ascribed the very real risk of  
26 a court reducing the amount of awarded PAGA penalties, especially considering that the PAGA  
27 penalties themselves rival the amount of wages actually owed. (Melmed Decl., ¶ 53.) For that reason,  
28 Plaintiff followed a slightly-higher approach than was adopted in *Carrington v. Starbucks Corp.* (2018)

30 Cal.App.5th 504, 529 and ascribed a settlement value of \$15.00 per pay period for a total realistic exposure of \$74,355.00. (Melmed Decl., ¶ 53.)

#### **D. REASONABLENESS OF THE SETTLEMENT ACHIEVED**

Plaintiff has applied appropriate discounts on the maximum settlement value as calculated above to come to Defendant’s realistic exposure of \$648,378.94. (Melmed Decl., ¶ 54.) As explained above, the issues in this case were hotly contested—both legally and factually. (Melmed Decl., ¶ 54.) While Plaintiff continues to believe in the merits of the case, Defendant argued that it fully complied with California’s wage and hour laws, and thus faced minimal exposure, if any. (*Ibid.*) Therefore, the Gross Settlement Amount of \$190,000.00 is an excellent result and within the zone of reasonableness for both parties. (*Ibid.*) If preliminary approval is granted, Plaintiff will have recovered 29% of their estimated settlement value for the Class Members in this case—a fair compromise of the claims, by any measure. (*Ibid.*)

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

Under the terms of the Settlement Agreement, Defendant will be released of all claims asserted in the Complaint in exchange for Defendant’s agreement to pay a non-reversionary settlement Gross Settlement Amount of \$190,000.00. (See generally, Settlement Agreement.)

#### **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement Administrator; **(2)** Class Counsel’s attorney fees not to exceed one-third of the Gross Settlement Amount, i.e., \$63,333.33; **(3)** litigation expenses and costs not to exceed \$17,000.00; **(4)** an incentive award to the named Plaintiff of up to \$10,000.00; **(5)** payment to the LWDA of \$11,250.00 for its 75% share of the settlement for civil penalties pursuant to PAGA (Settlement Agreement, at pp. 6–8.); and **(6)** payment to the Aggrieved Employees for their 25% share of the settlement for civil penalties pursuant to PAGA (Settlement Agreement, at pp. 6–8.).

After all Court-approved deductions from the Gross Settlement Amount, the remaining amount, which consist of at least \$76,716.67, will be distributed to all Class Members who do not request exclusion from the settlement and the Aggrieved Employees (the “Net Settlement Amount”).

1 Applicable employer-side payroll taxes will be paid by Defendant outside and separate from the Gross  
2 Settlement Amount. (Settlement Agreement, at p. 6.)

3 **B. THE RELEASE**

4 The “Released Claims” are divided into two categories under the Settlement Agreement: **(1)** the  
5 released claims for the purposes of the class action portion of the Settlement Agreement, and **(2)** the  
6 released claims for the purposes of the PAGA portion of the Settlement Agreement. (Settlement  
7 Agreement, at pp. 10–11.) The Released Claims for the purposes of the class action portion of the  
8 settlement agreement include all claims arising out of or related to the allegations set forth in the  
9 operative complaint. (Settlement Agreement, at p. 10.) The Released Claims for the purposes of the  
10 PAGA portion of the settlement agreement include all claims for civil penalties pursuant to PAGA that  
11 Plaintiff asserted in *both* Plaintiff’s PAGA notice to the LWDA and in the operative complaint.  
12 (Settlement Agreement, at pp. 10–11.) A true and correct copy of Plaintiff’s PAGA letter to the LWDA  
13 in this case is attached as **Exhibit C** the concurrently-filed *Declaration of Jonathan Melmed in Support*  
14 *of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement*.

15 These releases will become effective on the date when the Defendant fully funds the entire  
16 Gross Settlement Amount and funds all employer side payroll taxes owed. (Settlement Agreement, at  
17 p. 10.)

18 **C. SETTLEMENT ALLOCATION FORMULA**

19 Individual payments to the Class Members from the class-portion of the settlement will be  
20 calculated and apportioned based on the number of weeks worked as an eligible Class Member in  
21 California by the participating Class Member during the Class Period (the “Individual Class  
22 Payments”). (Settlement Agreement, at p. 7.) Specific calculations of Individual Class Payments will  
23 be determined by dividing the Net Settlement Amount by the total number of Workweeks worked by  
24 all Participating Class Members during the Class Period, and multiplying the result by each  
25 Participating Class Member’s Workweeks. (Settlement Agreement, at p. 7.)

26 Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement  
27 (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number  
28

1 of pay periods worked during the PAGA Period compared to the total number of pay periods worked  
2 by all Aggrieved Employees during the PAGA Period. (Settlement Agreement, at p. 8.)

3 **D. NOTICE PROCEDURES**

4 Within 30 days of the court granting preliminary approval of the Settlement Agreement (the  
5 “Preliminary Approval Date”), Defendant shall provide the Settlement Administrator with an updated  
6 list of Class Members and Aggrieved Employees containing names, dates of employment, addresses,  
7 and social security numbers (the “Class Data”). (Settlement Agreement, at p. 8.)

8 Within fourteen (14) days after receipt of the Class Data, the Settlement Administrator shall  
9 determine the number of workweeks worked by each Class Member, populate the data for each Class  
10 Member accordingly, and send each Class Member the Class Notice via first-class, United States mail.  
11 (Settlement Agreement, at p. 13.) The Class Notice will be substantially the same as the form attached  
12 as **Exhibit 1** to Settlement Agreement. The release language of the Class Notice matches the release  
13 language of the Settlement Agreement. (Compare Settlement Agreement, Exh. 1, at pp. 6–8, with  
14 Settlement Agreement, at pp. 10–11.)

15 The Class Notice will inform each Class Member of his or her estimated share of the settlement,  
16 as well as an easily understood statement alerting the Class Members that, unless they elect to opt out  
17 of the Settlement Agreement, the Class Member is releasing and waiving all “Released Claims” against  
18 the “Released Parties” (as those terms are defined in the Settlement Agreement and explained in the  
19 Class Notice). (Settlement Agreement, at p. 13.)

20 The Class Notice will also inform the Class Members of their right to object to the Settlement  
21 Agreement. (Settlement Agreement, Exh. 1, at p. 9–10.) Any Class Member who wishes to object to  
22 the Class Settlement may submit a written objection to the Settlement Administrator no later than 60  
23 days following the date on which the Settlement Administrator first mails the Class Notice to the Class  
24 Members (“Response Deadline”). (Settlement Agreement, Exh. 1, at p. 9–10.) Alternatively, Class  
25 Members may also object to the Settlement Agreement by appearing at the final approval hearing,  
26 either on their own or through an attorney. (Settlement Agreement, Exh. 1, at p. 10 [“You have the  
27 right to appear either in person or through your own attorney at this hearing.”].)  
28

1 Class Members who do not timely request exclusion from the Settlement Agreement will be  
2 deemed to be a participating Class Member without having to submit a claim form or take any other  
3 action. (Settlement Agreement, at p. 14.) To request exclusion from the Settlement Agreement, the  
4 Class Member must submit a written request for exclusion from the Settlement Agreement to the  
5 Settlement Administrator (“Request for Exclusion”), postmarked no later than the sixty (60) days after  
6 the Administrator mails the Class Notice. (Settlement Agreement, at p. 14.) The Settlement Agreement  
7 and Class Notice both permit Class Members to use any language of their choosing to request exclusion,  
8 so long as their intent to be excluded is made clear. (Settlement Agreement, at p. 14; Settlement  
9 Agreement, Exh. 1, at p. 9.)

10 In the event that any Class Notice mailed to a Class Member is returned as having been  
11 undelivered by the U.S. Postal Service, the Settlement Administrator shall re-mail the Class Notice to  
12 the forwarding address affixed thereto, if one is provided. (Settlement Agreement, at p. 9.) If no  
13 forwarding address is provided, the Settlement Administrator will conduct a national change of address  
14 search and a skip trace for the most current address of that Class Member. (Settlement Agreement, at  
15 p. 9.)

16 Class Members to whom the Class Notice is re-mailed are given an extension of up to 14 days  
17 for disputes, objections, or to request exclusion. (Settlement Agreement, at p. 13.)

#### 18 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

19 Defendant will deposit the Gross Settlement Amount in a lump sum payment, plus the  
20 employer-side payroll taxes, with the Settlement Administrator within fourteen (14) days of Effective  
21 Date. (Settlement Agreement, at p. 8.) At that time, the settlement will be fully funded. The Settlement  
22 Administrator will then distribute the Individual Settlement Payments within 14 days of the date the  
23 class settlement is funded. (Settlement Agreement, at pp. 8-9.)

24 Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at  
25 p. 9.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator  
26 shall distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund  
27 in the name of the individual whose check was uncashed. (Settlement Agreement, at p. 9.)  
28

1 Because all funds and interest under the Settlement Agreement are to be completely distributed  
2 to the class participants, or to the Unclaimed Property Fund in the name of the individual whose check  
3 was uncashed, the Parties agree that this disposition results in no “unpaid residue” or “unclaimed or  
4 abandoned class member funds” under Code of Civil Procedure Section 384. (Settlement Agreement,  
5 at p. 9.) The Settlement Agreement therefore proactively complies with the Court’s Omnibus Trailer  
6 Bill of 2018 by eliminating the need for the Court to re-open the judgment following final distribution.  
7 (Settlement Agreement, at p. 9.)

#### 8 **F. TAX TREATMENT**

9 The Settlement Agreement provides that 20% of each individual settlement payment from the  
10 class-portion of the Settlement Agreement shall constitute wages (for which each participating Class  
11 Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute  
12 interest and penalties (for which each participating Class Member will be issued an IRS Form 1099 for  
13 the interest and penalty allocation). (Settlement Agreement, at p. 7.)

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

18 Defendant will separately and additionally pay its share of employer payroll taxes on the sum  
19 allocated to wages. (Settlement Agreement, at p. 6.)

#### 20 **IV. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED**

##### 21 **A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY** 22 **CONSIDERATION IS APPROPRIATE**

23 California Rules of Court, rule 3.769, subdivision (d), provides that the court may make an  
24 order approving certification of a provisional settlement class at the preliminary approval stage. It is  
25 well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety  
26 of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48  
27 Cal.App.4th 1794, 1807, fn.19.) Since no trial is anticipated in a settlement class, the case management  
28 issues inherent in determining if the class should be certified need not be confronted, and the trial

1 court's fairness review of the settlement protects the interests of the non-representative class members.  
2 (*Ibid.*; see also *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th  
3 Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620 [117 S.Ct.  
4 2231, 2248] ["Confronted with a request for settlement-only class certification, a district court need  
5 not inquire whether the case, if tried, would present intractable management problems . . . for the  
6 proposal is that there be no trial."].)

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

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

10 Numerosity is met if a proposed class is so large that joinder of all members would be  
11 impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class  
12 members can be objectively identified and given notice of the litigation without unreasonable time or  
13 expense. (See *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendant has  
14 represented that the proposed Class consisted of approximately 211 Class Members ascertained through  
15 Defendant's records. As such, these requirements are met.

16 **C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED**  
17 **COMMUNITY OF INTEREST**

18 **1. Commonality**

19 To justify certification, the class proponent must show that questions of law or fact common to  
20 the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito*  
21 *Restaurants, Inc.* (2010) 183 Cal.App.4th 723 [citing *Washington Mutual Bank, FA v. Superior Court*  
22 (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal and  
23 factual questions exist, such as **(a)** whether individuals working for Defendant were subject to unlawful  
24 reimbursement practices; **(b)** whether individuals working for Defendant were subject to unlawful meal  
25 and rest period policies; **(c)** whether these violations triggered derivative claims for wage statement  
26 violations and waiting time penalties; and **(d)** whether Defendant's violations were knowing or willful.  
27  
28

## 2. Typicality

Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims and the claims alleged on behalf of the class.” (Newberg & Conte, *Newberg on Class Actions* (4th ed. 2002) § 3:13.) Plaintiff’s claims are typical of the Class Members because they were subject to Defendant’s policies and practices of phone and mileage reimbursements (and lack thereof), failing to provide Labor Code compliant meal and rest periods (and failing to pay missed meal and rest period premiums), failing to timely pay all outstanding wages due and owed on discharge, failing to provide complete and accurate wage statements, having deceptive, fraudulent, or otherwise unlawful business practices, and failing to provide wage statements in compliance with Labor Code section 226, which was consistently applied to class-wide to all Employees. (Velasquez Decl., at ¶¶ 3–4.)

## 3. Adequacy of Representation

A proposed class representative must establish that they will adequately represent the proposed class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiff is adequate as a class representative because he is a member of the Class, experienced the same wage and hour practices as the rest of the Class, is committed to representing the interests of the Class, has no interests that are adverse to members of the Class, and understands and accepts his duty to represent the best interests of the Class. Plaintiff is committed to the Class and is adequate to represent the interests of the Class in this litigation. (Velasquez Decl., at ¶ 5.)

Plaintiff also provided counsel with information that was crucial to initiating the action and preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable information about the Class Members and their experiences working for Defendant. (Melmed Decl., ¶¶ 75; Velasquez Decl., at ¶¶ 6–11.)

Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour class actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this action, and who have the financial resources to handle this case. (Melmed Decl., ¶¶ 8–13.)

1                   **4.       Superiority**

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

6                   **5.       Predominance**

7           The common issues here, concerning the uniform deficiencies to Defendant's reimbursement  
8 practices, rest breaks, meal periods, final pay, and wage statement policies raise predominating factual  
9 and legal issues supporting certification of a settlement class.

10 **V.       PRELIMINARY APPROVAL SHOULD BE GRANTED**

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

13           The Settlement Agreement was negotiated at arm's length between counsel utilizing a  
14 professional and well-respected third party neutral. (Melmed Decl., ¶ 19.) Counsel for both parties were  
15 thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Melmed  
16 Decl., ¶¶ 19–20.) The Settlement Agreement is a product of intensive negotiations, supported by  
17 investigation and direct exchanges of information through informal discovery, during the course of  
18 settlement negotiations, including a full-day mediation. (Melmed Decl., ¶¶ 19–21.) Although Plaintiff  
19 and his counsel believed the class claims had merit and there was a possibility of certifying the class  
20 and claims, they recognized the potential risk, expense, and complexity posed by litigation, such as  
21 unfavorable decisions on class certification, summary judgment, at trial and/or on the damages  
22 awarded, and/or on an appeal that can take several more years to litigate. (Melmed Decl., ¶ 60.) The  
23 resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive  
24 negotiation. (Melmed Decl., ¶ 64.) It takes the risks identified above and others into account in arriving  
25 at the non-reversionary settlement. (*Id.*)

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

27           Counsel for the Parties spent months prior to the mediation developing the factual record for  
28 this case, engaging in informal discovery and exchanges of documents and information, and drafting

1 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and  
2 weaknesses of their respective positions at the mediation and during subsequent settlement  
3 negotiations. (Melmed Decl., ¶¶ 67–68.) The Parties and their counsel attended a full-day mediation  
4 session before an experienced and well-respected mediator which resulted in the resolution of the case  
5 on a class and representative basis. (*Ibid.*) Steve Pearl is a nationally recognized mediator of complex  
6 class actions and commercial matters.

7 In addition, the parties are represented by skilled and experienced counsel with extensive  
8 backgrounds in complex litigation and experience litigating similar wage and hour class actions.  
9 (Melmed Decl., ¶¶ 8–13.) The Settlement Agreement was reached after extensive investigation and  
10 research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiff’s  
11 counsel’s thorough factual investigation, which were sufficient to evaluate Defendant’s defenses.  
12 (Melmed Decl., ¶ 68.) The Settlement Agreement came only after the case was thoroughly investigated  
13 by Plaintiff’s counsel. (*Ibid.*) Plaintiff’s counsel all agree that this settlement is fair, adequate, and  
14 reasonable, and in the best interests of Class Members. (Melmed Decl., ¶ 71.)

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

16 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court  
17 should also consider “[t]he strength of plaintiff’s case, the risk, expense, complexity and likely duration  
18 of further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.* (1996)  
19 48 Cal.App.4th 1794, 1801.) As described above, Defendant had strong defenses to Plaintiff’s claims,  
20 which create a real possibility that the claims might not be certified or might fail on the merits. (Melmed  
21 Decl., ¶ 69.) Proceeding with litigation would impose a significant risk of no recovery as well as  
22 ongoing, substantial additional expenditures of time and resources. If settlement were not achieved,  
23 continued litigation of the claims would take a substantial amount time and possibly confer no benefit  
24 on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery  
25 for the Class Members, which also benefits the Parties and the Court. In considering these risks, the  
26 choice was overwhelmingly in favor of settlement. (Melmed Decl., ¶ 69.)  
27  
28

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

2           The Settlement Agreement represents a fair compromise given the risks and uncertainties  
3 presented by continued litigation. Defendant asserted and would have continued to assert legal and  
4 factual grounds to defend against this action, including factual and legal defenses on the merits.  
5 Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the  
6 Settlement Agreement ensures timely relief and substantial recovery of the Defendant’s realistic  
7 exposure. (Melmed Decl., ¶ 70.)

8           **E.       PLAINTIFF’S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-  
9                    HOUR LITIGATION**

10          Plaintiff’s counsel are experienced in wage-and-hour class actions. (Melmed Decl., ¶¶ 8–13.)  
11 Numerous state and federal courts have certified Mr. Melmed as adequate and competent class counsel  
12 in wage and hour class actions. (Melmed Decl., ¶¶ 8–13.) Mr. Melmed devotes the vast majority of his  
13 law practice to plaintiff class and representative employment-law. (Melmed Decl., ¶¶ 8–13.)

14          The Parties’ counsel agree that this settlement is fair, adequate, and reasonable in light of the  
15 nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of  
16 the law, and uncertainties of class certification and litigation. (Melmed Decl., ¶ 71.) Given the risks  
17 inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and  
18 in the best interests of Class Members and should be preliminarily approved. (*Ibid.*) The Settlement  
19 Agreement is also consistent with other settlements that received approval of the Courts. (*Ibid.*)

20          Experienced counsel, operating at arm’s length, have weighed the strengths and risks of the  
21 case, and endorse the proposed settlement. (Melmed Decl., ¶ 63.) The view of the attorneys actively  
22 conducting the litigation is entitled to significant weight in deciding whether to approve the settlement.  
23 (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d  
24 939 [“[T]he fact that experienced counsel involved in the case approved the settlement after hard-  
25 fought negotiations is entitled to considerable weight.”]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168  
26 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

1           **F.       THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE**  
2                   **STATUTES AND RULES**

3           The proposed Class Notice—which the parties have already agreed to—should be approved, as  
4 it fully informs the Class Members of the nature of the lawsuit and each Class Member’s rights under  
5 the terms of the Settlement Agreement and applicable law. (Settlement Agreement, Exh. 1.) The way  
6 the Class Notice is to be disseminated, as outlined above, will ensure that all of the Class Members will  
7 be properly notified of the proposed settlement.

8           The Court has wide discretion in approving the means of providing notice, so long as the class  
9 representative “provide(s) meaningful notice in a form that should have a reasonable chance of reaching  
10 a substantial percentage of class members.” (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860,  
11 quotation marks omitted.) Here, the Parties’ notice plan is that notice of the Settlement Agreement will  
12 be disseminated directly to the class members by first class mail by the settlement administrator within  
13 fourteen (14) days after the receiving the Class Data. (Settlement Agreement, at p. 13.)

14           The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California  
15 Rules of Court and afford the Class Members with all due process protections required by the United  
16 States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766,  
17 subdivision (d), of the California Rules of Court, because the Notice includes, among other things: **(1)** a  
18 detailed explanation of the case, including the basic contentions or denials of the parties; **(2)** a statement  
19 that the court will exclude the member from the class if the member so requests by a specified date;  
20 **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a statement that  
21 the judgment, whether favorable or not, will bind all members who do not request exclusion; and **(5)** a  
22 statement that any member who does not request exclusion may, if the member so desires, enter an  
23 appearance through counsel. (Settlement Agreement, Exh. 1.) The 60-day deadline for Class Members  
24 to exclude themselves or challenge the number of workweeks worked during the Class Period is  
25 reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek  
26 independent legal advice in the interim. (Settlement Agreement, at p. 14.)  
27  
28

1           **G.       THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT**  
2                   **AGREEMENT IS FAIR**

3           In addition, at the time of final approval, Class Counsel will request attorneys' fees of up to  
4 one-third of the Gross Settlement Amount (i.e., \$63,333.33), plus reimbursement of litigation expenses  
5 and costs of up to \$17,000.00. (Settlement Agreement, at pp. 6–7.) As the California Supreme Court  
6 has made clear, one third of the common fund is a reasonable percentage for a trial court to award as  
7 attorneys' fees in a class action where a common fund was generated as a result of the case. (See *Laffitte*  
8 *v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion where trial court  
9 approved a fee request of one-third of the common fund].) The California Supreme Court further  
10 clarified that trial courts “have discretion to conduct a lodestar cross check on a percentage fee, as the  
11 court did here; they also retain the discretion to forgo a lodestar cross check and use other means to  
12 evaluate the reasonableness of a requested percentage fee.” (*Ibid.*)

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

25           As part of the final approval motion, Plaintiff's counsel will request approval of the attorneys'  
26 fees and costs described herein and in the Settlement Agreement, which will be heard at the final  
27 approval hearing. Accordingly, the Court need not decide the fees and costs at this time, but only  
28

1 authorize the Class Notice to inform class members that counsel will seek fees and costs up to one third  
2 of the Gross Settlement Amount in fees, plus actual litigation costs.

3 **H. THE CLASS REPRESENTATIVE INCENTIVE AWARD IS FAIR AND**  
4 **APPROPRIATE**

5 Plaintiff will request payment of an incentive award from the non-reversionary Gross  
6 Settlement Amount in the amount of \$10,000 in addition to whatever payment he is otherwise entitled  
7 to receive as a Class Member. (Melmed Decl., ¶ 74; Settlement Agreement, at p. 6.) The proposed  
8 incentive award is reasonable compensation given the time and effort that Plaintiff devoted to this case,  
9 the valuable assistance he provided to counsel, and the fact that he entered into a general release of  
10 claims that is broader than the release of the Class. (Melmed Decl., ¶ 75; Velasquez Decl., ¶ 2–12.)

11 Plaintiff provided invaluable assistance to Plaintiff’s counsel and the Class Members in this  
12 case, including providing factual background for mediation and the operative complaint, reviewing the  
13 relevant documents, participating in phone calls with Plaintiff’s counsel, gathering highly relevant  
14 documents, and reviewing the settlement documents. (Melmed Decl., ¶ 75.) Plaintiff agreed to  
15 participate in this case with no guarantee of personal benefit. (*Ibid.*) Further, Plaintiff agreed to  
16 undertake the financial risk of serving as class representatives and exposed himself to the risk of  
17 negative publicity by anyone who opposed this case. (*Ibid.*)

18 Moreover, the requested incentive award for Plaintiff falls within the range of incentive  
19 payments typically awarded to class representatives in similar class actions. (See, e.g., *Bond v.*  
20 *Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879  
21 [approving **\$11,250.00** service award to each of the two Class Representative in a trucker meal break  
22 class action]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI,  
23 2010 WL 3833922, at \*2 [approving **\$20,000.00** enhancement award to Class Representative in  
24 California wage-and-hour class action settlement]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal.  
25 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **\$10,000.00** each from a  
26 \$300,000.00 settlement fund in a wage/hour class action]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct.  
27 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at \*28 [“the court finds  
28 Plaintiff’s enhancement payments of **\$15,000.00** each to be reasonable.”], emphasis added; *Glass v.*

1 *UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at \*52  
2 [finding “requested payment of **\$25,000** to each of the named Plaintiff is appropriate” in wage and hour  
3 settlement], emphasis added; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) No.  
4 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at \*18 [approving “**\$25,000** incentive award for  
5 each Class Representative” in wage an hour settlement], emphasis added; *Garner v. State Farm Mut.*  
6 *Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at \*17 n.8  
7 [“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **\$20,000** or  
8 more where, as here, the class representative has demonstrated a strong commitment to the class”],  
9 emphasis added.)

10 **VI. CONCLUSION**

11 For these reasons, Plaintiff’s motion for preliminary approval of the parties’ class action  
12 settlement should be granted.

13 Dated: September 9, 2024

**MELMED LAW GROUP P.C.**



**KYLE D. SMITH**

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the Aggrieved Employees