

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048
Email: dmara@maralawfirm.com
jvecchi@maralawfirm.com

MELMED LAW GROUP P.C.
Jonathan Melmed (SBN 290218)
jm@melmedlaw.com
Laura Supanich (SBN 314805)
lms@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (310) 824-3828
Fax: (310) 862-6851

Peter Horton, Esq. (227678)
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS, APC
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
Telephone: (323) 486-5101
Facsimile: (323) 306-5571
Email: phorton@lfecr.com
Attorneys for Plaintiffs, the Putative Class, and the Aggrieved Employees

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

MANUEL BALUX OCH and PEDRO
GARCIA ALFEREZ on behalf of
themselves, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

SAC PROFLOORS; and DOES 1-100,

Defendants.

Case No. 23CV031860
(Consolidated with Case No. 23CV039543)

*[Assigned for All Purposes to the
Hon. Tara Desautels; Dept. 23]*

**DECLARATION OF JONATHAN
MELMED IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: September 12, 2024
Time: 10:30 a.m.
Reservation ID: A-31860-001

Action File: April 25, 2023
Trial Date: None Set

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1. I am an attorney licensed to practice law before this Court and the federal and state courts of California. I am over 18 years of age. I have personal knowledge of the facts set forth in this declaration and if called upon to testify, could and would testify competently thereto.

3. I have no knowledge of the existence of any conflicting interests between my firm and any of its attorneys on the one hand, and Plaintiff or any other Class Member, on the other.

5. The Settlement Agreement seeks to fully release and discharge Defendant from the claims brought against it in this matter. The Settlement Agreement contemplates a non-reversionary Gross Settlement Amount of \$942,500.00 (“Gross Settlement Amount”) for the Settlement Class. The Gross Settlement Amount is inclusive of individual settlement amounts to settlement class members, attorneys’ fees and costs, settlement administrative expenses, and the Class Representative Payment to the named Plaintiffs to be approved by the Court.

I. CLASS COUNSEL ARE EXPERIENCED IN WAGE-AND-OUR LITIGATION

2

1 8. In 2007, I received a B.A. from New York University, in New York, New York. In
2 2012, I received a J.D. from Loyola Law School, Los Angeles. I became a member of the Bar of
3 the State of California in June 2013.

4 9. From 2012 through 2014, I was an associate attorney at Von Behren & Hunter, LLP
5 (“VBH”) in Manhattan Beach, California. At VBH, I litigated complex commercial litigation
6 matters where I represented life and health insurers in in bad faith, ERISA, breach of contract, and
7 related disputes. At VBH, I also represented and assisted in the representation of hotels, restaurants
8 and real estate development groups in state and federal commercial litigation, including class action
9 cases (see, e.g., *Daniel Flannery Vs McCormick & Schmicks Seafood Restaurants*, Los Angeles
10 County Superior Court, Case No. BC487942).

11 10. From February 2015 through the present, I have been a founding and managing
12 shareholder in the firm of Melmed Law Group P.C. where I represent thousands of employees in
13 wage and hour class actions, and other employment-related matters. Melmed Law Group P.C. has
14 extensive experience in the litigation of complex cases, including California-wide class actions. I
15 am also an active of member of the plaintiff’s employment bar association called the California
Employment Lawyers Association (“CELA”).

16 11. In addition to the instant case, I have served as class counsel in a variety of wage
17 and hour class actions. I, along with my co-counsel, have developed extensive litigation experience
18 in complex employment litigation matters, particularly in California class actions representing
19 employees. *See Exhibit A.*

20 12. I, along with the legal staff at Melmed Law Group P.C. have diligently investigated
21 and prosecuted this case to a successful conclusion. Our work resulted in the creation of a
22 significant and non-reversionary settlement amount for the benefit of the Class. We avoided
23 protracted litigation by conducting considerable investigation before filing suit related to the class
24 claims, and efficiently communicated and exchanged information with defense counsel such that
25 the parties could successfully settle the case after being fully informed of the merits of each sides’
26 position. As a result of our efforts, we were able to obtain the favorable Settlement Agreement for
27 the Class now before this Court for final approval. Because of the risks involved in litigating the
28 case, particularly the contested legal and factual issues, I believe this settlement is fair, reasonable,

1 and favorable to the Class.

2 **II. THE REQUESTED INCENTIVE AWARD IS REASONABLE**

3 13. The Settlement Agreement provides an incentive award payment of \$7,500 to Plaintiff
4 Alferez as a Class Representative. Plaintiff requests payment of the incentive award from the non-
5 reversionary Gross Settlement Amount in addition to the payment he would otherwise be entitled
6 to receive as a Class Member. The proposed incentive award is reasonable compensation given
7 the time and effort that the named Plaintiff devoted to this case, the valuable assistance he provided
8 to Class Counsel.

9 14. Plaintiff provided invaluable assistance to Class Counsel and the Class in this case,
10 including providing factual background for mediation and the Class Complaint, reviewing the
11 relevant documents and Complaint, participating in phone calls with Class Counsel, attending a
12 full-day mediation by telephone, in gathering highly relevant documents, in speaking to and
13 interviewing other Class Members, and reviewing the settlement documents. Plaintiff agreed to
14 participate in this case with no guarantee of personal benefit.

15 15. Further, Plaintiff agreed to undertake the financial risk of serving as a Class
16 Representative and exposed himself to the risk of negative publicity by anyone who opposed this
17 case. Moreover, the requested incentive award for Plaintiff falls within the range of incentive
18 payments typically awarded to Class Representative in similar class actions. (See, e.g., *Bond v.*
19 *Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL
20 2648879 [approving **\$11,250.00** service award to each of the two Class Representative in a trucker
21 meal break class action]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C
22 07-02951 SI, 2010 WL 3833922, at *2 [approving **\$20,000.00** enhancement award to Class
23 Representative in California wage-and-hour class action settlement]; *Vasquez v. Coast Valley*
24 *Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of
25 **\$10,000.00** each from a \$300,000.00 settlement fund in a wage/hour class action]; *West v. Circle*
26 *K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS
27 76558, at *28 [“the court finds Plaintiff’s enhancement payments of **\$15,000.00** each to be
28 reasonable.”]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S.
Dist. LEXIS 8476, at *52 [finding “requested payment of **\$25,000** to each of the named Plaintiff

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

8 **III. CLASS COUNSEL’S COSTS INCURRED**

9 16. Class Counsel’s request for reimbursement is reasonable. The actual litigation costs
10 incurred in this case by my office to date amounts to no less than \$1,776.75 expended by Melmed
11 Law Group P.C. All of these costs were and are reasonably necessary for the successful prosecution
12 of this action.

13 **IV. THE ATTORNEYS’ FEES ALLOCATION IS REASONABLE**

14 17. Class Counsels’ application for an award of Attorneys’ Fees in an amount of
15 approximately 33.33% of the Settlement Amount on behalf of the Settlement Class is reasonable
16 and fair. The requested fee falls on the lower end of the Ninth Circuit’s historical benchmark for
17 attorneys’ fees of 20% to 40% of a common fund and is fair compensation for undertaking
18 complex, risky, expensive, and time-consuming litigation on a contingent basis.

19 18. Our law firms have never been paid any money for attorneys’ fees in this case and
20 have advanced significant time and costs, at great risk to the financial security of our law firms.

21 19. I have negotiated numerous contingency fee agreements with plaintiffs, both as
22 individuals and as representatives in PAGA and class action suits, on behalf of my firm. Nearly
23 all those agreements provided that counsel will receive a fee that is between 33% (one-third) and
24 40% of any gross recovery that is obtained, and, in addition, that counsel be reimbursed for the
25 costs they incurred out of the recovery amount. This practice is consistent with both industry
26 standards and court practices. (*Miller v. CEVA Logistics USA, Inc.* (E.D. Cal., Aug. 10, 2015, No.
27 2:13-CV-01321-TLN) 2015 WL 4730176, at *8 [“California district courts usually award
28 attorneys’ fees in the range of 30-40% in wage and hour class actions that result in the recovery of
a common fund under \$10 million.”]; *Beaver v. Tarsadia Hotels* (S.D. Cal., Sept. 28, 2017, No.

1 11-CV-01842-GPC-KSC) 2017 WL 4310707, at *9 [“California courts routinely award attorneys’
2 fees of one-third of the common fund.”].)

3 20. There are always risks attendant to billing cases on a contingency basis. It is not a
4 foregone conclusion that every case taken on a contingency fee basis will result in a recovery or
5 that the attorneys’ fees recovered will actually compensate my firm for the amount of time
6 expended in an action. Moreover, even when successful, a class action contingency law firm may
7 only receive a small percentage of the amount of attorneys’ fees incurred during the prosecution of
8 a case. Where plaintiffs’ counsel does succeed, therefore, it is appropriate to compensate the firm
9 for the risks the firm regularly undertakes. There is also always the possibility that the plaintiff will
10 not prevail and Class Counsel will not receive any compensation for its services or that the
11 defendant will declare bankruptcy or lack the assets necessary to satisfy any judgment obtained
12 against it. This has happened in cases handled by my firm.

13 21. When awarding attorneys’ fees, courts have discretion to choose among two
14 different methods for calculating a reasonable attorneys’ fees award: (1) the common fund
15 approach, or (2) the lodestar approach. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th
16 480, 504 [“The choice of a fee calculation method is generally one within the discretion of the trial
17 court, the goal under either the percentage or lodestar approach being the award of a reasonable
18 fee to compensate counsel for their efforts.”]). In *Laffitte*, the California Supreme Court held that
19 “[t]he recognized advantages of the percentage method-including relative ease of calculation,
20 alignment of incentives between counsel and the class, a better approximation of market conditions
21 in a contingency case, and the encouragement it provides counsel to seek an early settlement and
22 avoid unnecessarily prolonging litigation-convince us the percentage method is a valuable tool that
23 should not be denied by our trial courts.” (*Id.* at p. 503, emphasis added). Similarly the Ninth
24 Circuit has found that counsel should not “receive a lesser fee for settling a case quickly.”
(*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050 fn. 5).

25 22. Courts in California have consistently recognized “that most fee awards based on
26 either a lodestar or percentage calculation are 33%.” (*McCrary v. Elations Company, LLC* (C.D.
27 Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL 769703, at *10; *Petersen v. CJ America,*
28 *Inc.* (S.D. Cal., Sept. 30, 2016, No. 14-CV-2570 DMS JLB) 2016 WL 5719823, at *1; see also

1 *McClellan v. Chase Home Finance LLC* (C.D. Cal. Aug. 31, 2015, No. SACV 12-1331-JGB) 2015
2 U.S. Dist. LEXIS 118005, at *20 [explaining that, while the attorneys’ fee award that approximated
3 32% of all sums paid under the settlement was reasonable after citing numerous other cases, finding
4 that an award of 33% of the common fund was common in class actions]; *In re Activision Securities*
5 *Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1377 [“nearly all common fund awards range around
6 30%”]).

7 23. In reaching its decision in *McClellan*, the court recognized that courts in California
8 “routinely award attorneys’ fees in the range of 30-40% in class actions that result in the recovery
9 of a common fund under \$10 million.” (*McClellan v. Chase Home Finance LLC, supra*, 2015 U.S.
10 Dist. LEXIS 118005, at *20 [quoting *Miller v. CEVA Logistics USA, Inc.* (E.D. Cal., Aug. 10,
11 2015, No. 2:13-CV-01321-TLN) 2015 WL 4730176, at *8, and citing *In re Mego Financial Corp.*
12 *Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 463]; see also *Romero v. Producers Dairy*
13 *Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [awarding
14 33% of the settlement fund in a wage-and-hour case involving allegations of unpaid wages after
15 explaining that “fee awards in class actions average around one-third of the recovery.”]; *Stuart v.*
16 *Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6 [noting
17 that a fee award of one-third of the 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*
19 *Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving
20 fee award of 33.33% of the common fund]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov. 18,
21 2014, No. SACV 13-0561-DOC) 2014 WL 6473804, at *12 [awarding a 33.34% fee on a
22 \$5,800,000 settlement]; *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* (E.D. Cal., Mar. 27,
23 2020, No. 117CV00853DADEPG) 2020 WL 1492672, at *9 [awarding attorneys’ fees of one-third
24 the gross settlement amount]; *Singh v. Roadrunner Intermodal Services, LLC* (E.D. Cal., Jan. 24,
25 2019, No. 115CV01497DADBAM) 2019 WL 316814, at *11 [same]; *Shahbazian v. Fast Auto*
26 *Loans, Inc.* (C.D. Cal., June 20, 2019, No. 218CV03076ODWKSX) 2019 WL 8955420, at *2
27 [preliminarily approving the same].)

28 24. Of note, only a portion of the requested award will be paid to my firm, as this
attorneys’ fee award is to be split between three firms—Melmed Law Group P.C., Mara Law Firm,

1 PC, and Lawyers for Employee and Consumer Rights, APC—as compensation for our joint efforts
2 in litigating this case. Our firms have a fee-splitting arrangement in this case, which has been fully
3 disclosed to Plaintiffs, who have signed written acknowledgments of the fee split in accordance
4 with California Rules of Professional Responsibility, Rule 1.5.1.

5 25. Under the lodestar approach, a base amount is calculated by “multiplying the
6 reasonable hours expended by a reasonable hourly rate.” (*In re Washington Public Power Supply*
7 *System Securities Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295, fn. 2; *Wershba v. Apple Computer,*
8 *Inc.* (2001) 91 Cal.App.4th 224, 254; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48.) The reasonable
9 hourly rate is that prevailing in the community for similar work. (*Margolin v. Regional Planning*
10 *Com.* (1982) 134 Cal.App.3d 999, 1004–1005.)

11 26. Typically, the lodestar is merely the starting point of the calculation of a reasonable
12 fee, and courts often multiply the lodestar by a factor to account for the risk of non-payment, delay
13 in payment, the quality of work, and the novelty and difficulty of the issues involved. (See, e.g.,
14 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132; *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Radar*
15 *v. Thrasher* (1962) 57 Cal.2d 244, 253; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407,
16 1419; *Coalition for L.A. County Planning v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251).
17 Multipliers can range from two to four, or even higher. (*Wershba v. Apple Computer, Inc.* (2001)
18 91 Cal.App.4th 224, 255).

19 27. In the Ninth Circuit, for example, courts “must apply a risk multiplier to the lodestar
20 ‘when (1) attorneys take a case with the expectation they will receive a risk enhancement if they
21 prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence that the case was
22 risky. Failure to apply a risk multiplier in cases that meet these criteria is an abuse of discretion.”
23 (*Stetson v. Grissom* (9th Cir. 2016) 821 F.3d 1157, 1166, quoting *Stanger v. China Electric Motor,*
24 *Inc.* (9th Cir. 2016) 812 F.3d 734, 741).

25 28. Although a percentage of the common fund is both common and universally
26 accepted in wage and hour representative action litigation, I also performed a lodestar analysis for
27 my firm in support of the attorneys’ fees request. My hourly rate is \$777.00, which is typical for
28 an attorney in my position. This reflects both my experience with class and PAGA litigation,
including participating in the litigation of numerous class action cases, only some of which are

1 referenced herein. It also reflects the fact that I am a founding partner of Melmed Law Group P.C.
2 and not an associate. I have spent a considerable amount of time investigating, researching, and
3 litigating this matter. The following table summarizes my offices' timekeeper's fees incurred to
4 date:

Melmed Law Group P.C. Lodestar Summary				
Timekeeper	Experience	Rate Per Hour	Hours	Total
Jonathan Melmed, Esq.	11 years	\$777.00	2	\$1,554.00
Laura M. Supanich, Esq.	7 years	\$538.00	4.3	\$2,313.40
Rebecca Harteker, Esq.	1 year	\$437.00	12.6	\$5,506.20
Total			18.9	\$9,373.60

11 29. Importantly, the time delineated in the table above does not include time spent by
12 my co-counsel on this case with whom the workload was shared and, thus, the corresponding
13 attorneys' fees will also be shared.

14 30. Plaintiff's counsel has spent a considerable amount of time extensively
15 investigating, researching, and litigating this matter, including but not limited to the following:

16 A. Reviewing Plaintiffs' documents, speaking to Plaintiffs, preparing the
17 Notices to the LWDA, drafting and preparing the complaint, legal research into the viability
18 of Plaintiffs' claims;

19 B. Reviewing data and documents produced in informal discovery by
20 Defendant;

21 C. Preparing for and attending mediation, including the drafting of a mediation
22 brief;

23 D. Preparing the Settlement Agreement and moving papers for approval;

24 E. Negotiating and corresponding with Defendant's counsel in reaching the
25 settlement at issue before the Court; and

26 F. Preparing and appearing for approval.

27 31. Laura M. Supanich graduated from the University San Diego School of Law in
28 2016, and was admitted to the State Bar of California in May 2017, and the State Bar of Michigan

1 in March 2022. She has been practicing nationwide plaintiff-side labor & employment law (almost
2 exclusively focusing on wage and hour class and PAGA action litigation in state and federal court)
3 during her time since law school. Ms. Supanich was selected as a Super Lawyers® Rising Star in
4 California from 2022-2024.

5 32. Rebecca Harteker graduated from Georgetown University Law Center in 2022 and
6 was admitted to the State Bar of California in June 2023. She has been practicing labor &
7 employment law during her time since law school.

8 33. The requested attorneys' fees are justified here due to the contingent nature of the
9 representation, the risks involved, the complexity of the issues, the high quality of legal work
10 performed, and the excellent results obtained. After initially calculating the combined lodestar, the
11 court may adjust the lodestar based on several factors in order to "fix a fee at the fair market value
12 for the particular action." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132; *Graham v. Daimler*
13 *Chrysler Corp.* (2004) 34 Cal.4th 553, 574.) These additional factors include the contingent risk
14 of litigation, the novelty and complexity of the issues, and exceptional results obtained. (See
15 *Ketchum v. Moses, supra*, 24 Cal.4th 1122.)

16 34. Moreover, I anticipate spending 2-5 hours of additional work between now and the
17 conclusion of this matter, which cannot yet be accounted for in this declaration. Those hours
18 include time spent: editing and filing these final approval papers; preparing for, and appearing at
19 the final approval hearing; corresponding with the settlement administrator and opposing counsel
20 throughout the settlement administration process; corresponding with Plaintiffs; notifying the
21 LWDA of the final approval order and judgment; responding to Class Member inquiries; and other
22 typical and reasonably necessary tasks that arise post-final approval.

23 35. The requested attorneys' fees are justified here due to the contingent nature of the
24 representation, the risks involved, the complexity of the issues, the high quality of legal work
25 performed, and the excellent results obtained. After initially calculating the combined lodestar, the
26 court may adjust the lodestar based on several factors in order to "fix a fee at the fair market value
27 for the particular action." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132; *Graham v. Daimler*
28 *Chrysler Corp.* (2004) 34 Cal.4th 553, 574.) These additional factors include the contingent risk
of litigation, the novelty and complexity of the issues, and exceptional results obtained. (See

1 *Ketchum v. Moses, supra*, 24 Cal.4th 1122.)

2 36. Generally, rates of similarly trained and experienced attorneys and staff for complex
3 civil litigation, such as employment law and civil rights cases, vary per hour in the Southern
4 California area. Based on the experience and training of myself and my staff, I believe that the
5 current hourly rates charged by me, my associate, and my staff are reasonable and appropriate. I
6 am generally familiar with hourly rates charged by attorneys in the Southern California area whose
7 training and experience are similar to those at my firm, and I believe our rates are competitive in
8 that market for plaintiff attorneys in the field of employment law.

9 37. Moreover, the case involved significant risks of non-payment of attorneys' fees and
10 non-recovery of costs if the settlement was not granted approval, or of Plaintiff did not prevail.
11 California courts consider the risks counsel takes in litigating a case where they may not prevail
12 on the merits in granting attorneys' fees awards. (See *Graham v. Daimler Chrysler Corp., supra*,
13 34 Cal.4th 553, 583.) Thus, the attorneys' fees requested are also fair and reasonable.

14 I declare under penalty of perjury under the laws of the United States and the State of
15 California that the foregoing is true and correct.

16 Executed on August 19, 2024 in Los Angeles, California.

17 By: Jonathan Melmed
18 Jonathan Melmed, Esq.