

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Kyle D. Smith (SBN 280489)

ks@melmedlaw.com

Rachel Jo (SBN 358235)

rj@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JUDITH CORONA, an individual, on behalf of
herself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

DISH 'N DASH, INC., a California Corporation;
and DOES 1 TO 50,

Defendants.

Case Number: 23CV419355

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

Complaint Filed: July 18, 2023

Trial Date: None Set

Hearing Date: March 5, 2025

Hearing Time: 1:30 p.m.

Dept.: 19

Judge: Hon. Theodore C. Zayner

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

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

3 **PLEASE TAKE NOTICE** that on March 5, 2025, at 1:30 p.m., or as soon thereafter as the
4 matter may be heard, in Department 19 of the Santa Clara County Superior Court for the State of
5 California, located at the Downtown Superior Court, 191 North First Street, San Jose, California 95113,
6 before the Honorable Theodore C. Zayner, Plaintiff Judith Corona (“Plaintiff”), on behalf of herself,
7 the State of California, as a private attorney general, and on behalf of all others similarly situated, will
8 and hereby does move this court for entry of an order:

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

11 2. Preliminarily appointing Plaintiff as class representative for purposes of settlement;

12 3. Preliminarily appointing Jonathan Melmed, Kyle D. Smith, and Rachel Jo of Melmed
13 Law Group P.C. as class counsel for purposes of settlement;

14 4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the
15 terms set forth in the parties’ *Settlement Agreement and Release of Class Action* (the “Settlement
16 Agreement”), including payment by Defendant Dish ‘N Dash, Inc. (“Defendant”) of the non-
17 reversionary gross settlement amount of \$700,000.00 (“Gross Settlement Amount”);

18 5. Preliminarily approving payment of reasonable attorneys’ fees from the Gross
19 Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to
20 \$233,333.33), plus necessary litigation costs not to exceed \$13,000.00;

21 6. Preliminarily approving a class representative service payment in an amount of up to
22 \$10,000.00 for Judith Corona from the Gross Settlement Amount to compensate her for the
23 responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

24 7. Preliminarily approving the allocation of \$25,000.00 for penalties pursuant to the
25 California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$18,750.00) shall
26 be paid to the California Labor and Workforce Development Agency (“LWDA”) from the Gross
27 Settlement Amount, with the remaining 25% (i.e., \$6,250.00) payable to the aggrieved employees;
28

1 8. Appointing Phoenix Settlement Administrators (the “Settlement Administrator”) as the
2 settlement administrator to handle the notice and administration process and preliminarily approving
3 settlement administration costs estimated to be \$10,000.00;

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

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

7 11. Approving the proposed deadlines for the notice and administration process as reflected
8 in this motion and in the Settlement Agreement;

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

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

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

18 Dated: February 7, 2025

MELMED LAW GROUP P.C.



KYLE D. SMITH

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

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND.....	2
A.	The Parties	2
B.	Procedural Summary	3
III.	SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE.....	5
A.	Minimum Wage Allegations	5
B.	Overtime Allegations.....	6
C.	Rest Period Allegations	7
D.	Meal Period Allegations	8
E.	Recordkeeping Allegations	8
F.	Untimely Wages Allegations.....	9
G.	Waiting Time Penalty Allegations	10
H.	Reimbursement Allegations.....	11
I.	Wage Statement Allegations.....	11
J.	Unfair Competition Allegations	12
K.	PAGA Allegations.....	13
IV.	SUMMARY OF THE PROPOSED SETTLEMENT	14
A.	Reasonableness of the Gross Settlement Amount.....	14
B.	Settlement Consideration and Allocation.....	15
C.	The Release.....	15
D.	Settlement Allocation Formula	15
E.	Selection of the Settlement Administrator	16
F.	Notice Procedures	16
G.	Timing of Settlement Disbursements.....	18
H.	<i>Cy Pres</i> Distribution.....	18
I.	Tax Treatment	18
V.	THE CLASS SHOULD BE PRELIMINARILY CERTIFIED	19

1	A.	The Lesser Standard of Scrutiny for Settlement-only Consideration is	
2		appropriate.....	19
3	B.	The Proposed Class is Numerous and Ascertainable.....	19
4	C.	Members of the Proposed Class Share a Well-Defined Community of Interest ..	20
5	1.	<i>Commonality</i>	20
6	2.	<i>Typicality</i>	20
7	3.	<i>Adequacy of Representation</i>	20
8	4.	<i>Superiority</i>	21
9	5.	<i>Predominance</i>	21
10	VI.	PRELIMINARY APPROVAL SHOULD BE GRANTED.....	21
11	A.	The Settlement is the Result of Serious, Informed, and Non-Collusive	
12		negotiations	21
13	B.	The Discovery and Investigations were Extensive.....	22
14	C.	The Risks Inherent in Continued Litigation Are Great.....	22
15	D.	The Settlement Is a Reasonable Compromise of Claims	23
16	E.	Plaintiff’s Counsel Are Experienced in Similar Wage-And-Hour Litigation	23
17	F.	The Class Notice Plan Conforms to All Applicable Statutes and Rules	24
18	VII.	THE ATTORNEYS’ FEE ALLOCATION UNDER THE SETTLEMENT	
19		AGREEMENT IS FAIR	25
20	VIII.	THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE	
21			26
22	IX.	SUBMISSION TO THE LWDA	27
23	X.	CONCLUSION	27

TABLE OF AUTHORITIES

CASES

<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	13
<i>Amchem Products, Inc. v. Windsor</i> (1997) 521 U.S. 591 [117 S.Ct. 2231]	19
<i>Archibald v. Cinerama Hotels</i> (1976) 15 Cal.3d 853	24
<i>Arenas v. El Torito Restaurants, Inc.</i> (2010) 183 Cal.App.4th 723	20
<i>Armenta v. Osmose, Inc.</i> (2005) 135 Cal.App.4th 314	6
<i>Atempa v. Pedrazzani</i> (2018) 27 Cal.App.5th 809	13
<i>Barboza v. West Coast Digital GSM, Inc.</i> (2009) 179 Cal.App.4th 540	20
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879	26
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	13, 14
<i>Cochran v. Schwan's Home Service, Inc.</i> (2014) 228 Cal.App.4th 1137	11
<i>Cortez v. Purolator Air Filtration Products Co.</i> (2000) 23 Cal.4th 163	12
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	19, 23
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	24
<i>Garner v. State Farm Mut. Auto. Ins. Co.</i> (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832	27
<i>Gattuso v. Harte-Hanks Shoppers, Inc.</i> (2007) 42 Cal.4th 554	11
<i>Glass v. UBS Fin. Servs.</i> (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476	27
<i>Hodge v. Superior Court</i> (2006) 145 Cal.App.4th 278	12
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	5, 24
<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480	25
<i>Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> (9th Cir. 2001) 244 F.3d 1152	21
<i>Louie v. Kaiser Found. Health Plan, Inc.</i> (S.D. Cal. Oct. 6, 2008) No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314	27

1	<i>Mamika v. Barca</i> (1998) 68 Cal.App.4th 487	10
2	<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW)	
3	2008 WL 5478576.....	26
4	<i>Martinez v. Joe’s Crab Shack Holdings</i> (2014) 231 Cal.App.4th 362.....	20
5	<i>Medrazo v. Honda of North Hollywood</i> (2008) 166 Cal.App.4th 89	19
6	<i>Munoz v. BCI CocaCola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	5
7	<i>Officers for Justice v. Civil Service Com’n of City and County of San Francisco</i> (9th Cir. 1982) 688	
8	F.2d 615	19
9	<i>Raines v. Coastal Pacific Food Distributors, Inc.</i> (2018) 23 Cal.App.5th 667	9
10	<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL	
11	3492841	25
12	<i>Ross v. US Bank National Association</i> (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL	
13	3833922	26
14	<i>Seastrom v. Neways, Inc.</i> (2007) 149 Cal.App.4th 1496.....	20
15	<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL	
16	2196104	25
17	<i>Stuart v. RadioShack Corp.</i> (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645	25
18	<i>Sullivan v. Oracle Corp.</i> (2011) 51 Cal.4th 1191.....	12
19	<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 482	27
20	<i>Washington Mutual Bank, FA v. Superior Court</i> (2001) 24 Cal.4th 906.....	20
21	<i>West v. Circle K Stores, Inc.</i> (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S.	
22	Dist. LEXIS 76558	27
23	STATUTES	
24	Bus. & Prof. Code, § 17200	4, 12
25	Bus. & Prof. Code, § 17203	12
26	Bus. & Prof. Code, § 17210	4
27	Code Civ. Proc., § 382.....	19
28	Code Civ. Proc., § 384.....	18

1	Lab. Code, § 1174	3, 9
2	Lab. Code, § 1174.5	3, 9
3	Lab. Code, § 1185	3, 5
4	Lab. Code, § 1194	3, 5
5	Lab. Code, § 1194.2	3
6	Lab. Code, § 1197	3, 5
7	Lab. Code, § 1197.1	3
8	Lab. Code, § 1198	3, 5
9	Lab. Code, § 1198.5	3
10	Lab. Code, § 1199	3
11	Lab. Code, § 201	3, 10
12	Lab. Code, § 202	3, 10
13	Lab. Code, § 203	3, 10
14	Lab. Code, § 204	3, 9, 10
15	Lab. Code, § 210	3, 9, 10
16	Lab. Code, § 226	3, 8, 11
17	Lab. Code, § 226.3	3, 8, 9
18	Lab. Code, § 226.7	3, 7, 8
19	Lab. Code, § 256	3
20	Lab. Code, § 2698	1, 4
21	Lab. Code, § 2699	13, 14, 27
22	Lab. Code, § 2699.5	9, 13
23	Lab. Code, § 2699.6	1, 4
24	Lab. Code, § 2802	3, 11
25	Lab. Code, § 2804	3
26	Lab. Code, § 510	3, 6
27	Lab. Code, § 512	3, 8
28		

RULES

Cal. Rules of Court, Rule 3.766	24
Cal. Rules of Court, Rule 3.769	19

REGULATIONS

Cal. Code of Regs., tit. 8, § 11040	3
---	---

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action settlement between Plaintiff Judith Corona (“Plaintiff”) and Defendant Dish ‘N Dash, Inc. (“Defendant”) (collectively, the “Parties”) for the Gross Settlement Amount of \$700,000.00 to be distributed to approximately 618 individuals defined as: *All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period.* (Settlement Agreement, at p. 10.) These employees are referred to herein individually as the “Class Members” or collectively as the “Class.” The “Class Period” for these purposes is defined as the period from July 18, 2019, through July 10, 2024. A true and correct copy of the *Settlement Agreement and Release of Class Action* (the “Settlement Agreement”), is attached as **Exhibit A** to the concurrently filed *Declaration of Jonathan Melmed in Support of Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action Settlement* (“Declaration of Jonathan Melmed” or “Melmed Decl.”).

Plaintiff also represents a group of approximately 360 aggrieved employees on behalf of the State of California as a private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 (“PAGA”). The “PAGA Period” for these purposes is defined as the period from July 18, 2022, through July 10, 2024. The “Aggrieved Employees,” for these purposes, are defined as: *All individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period.* (Settlement Agreement, at p. 8.)

The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendant. (Settlement Agreement, at pp. 6, 14.) Class Members are not required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 20.) The applicable employer-side payroll taxes are to be paid by Defendant outside the Gross Settlement Amount. (Settlement Agreement, at pp. 6, 18.) Because the settlement is fair and reasonable, was negotiated at arm’s length between counsel following extensive investigation and discovery, was reached after participation in a full-day mediation, it should be preliminarily approved. (Melmed Decl.,

¶ 6.) Subject to court approval, the “Net Settlement Amount” of at least **\$414,916.67**, will be distributed to Class Members who do not request exclusion from the settlement and the Aggrieved Employees.

Gross Settlement Amount	\$700,000.00
Attorneys’ Fees	(up to \$233,333.33)
Litigation Costs	(up to \$13,000.00)
Settlement Administration Costs	(up to \$10,000.00)
Service Award to Plaintiff	(up to \$10,000.00)
PAGA Payment to LWDA	(\$18,750.00)
Net Settlement Amount	\$414,916.67

This settlement is an excellent result considering the number of Class Members affected and will result in an anticipated average payment of **\$671.39** to each Class Member ($\$414,916.67 \div 618 = \$671.39$). Because the Settlement is well within the zone of reasonableness, Plaintiff requests entry of an order preliminarily approving the Settlement Agreement.

II. BACKGROUND

A. THE PARTIES

Defendant is a business that operates several restaurants that serve Middle Eastern cuisine. (Melmed Decl., ¶ 14.) Defendant maintains five locations in or around Santa Clara County, each of which employed non-exempt workers during the Class and PAGA period. (Melmed Decl., ¶ 14.)

Plaintiff was employed as a crew member and was later promoted to a shift leader at the Dish N’ Dash restaurant located in San Jose. (Melmed Decl., ¶ 15) As a crew member, her responsibilities included greeting guests, taking orders, and ensuring guest satisfaction. (Melmed Decl., ¶ 15.) As a shift leader, her duties included cashier work, taking care of paperwork, and maintaining the restaurant’s cleanliness. (Melmed Decl., ¶ 15.) Plaintiff worked with Defendant on three separate occasions—on or about April 2016 until April 2017; on or about January 2020 until March 2020; and on or about July 6, 2020 until August 11, 2023. (Melmed Decl., ¶ 15.) At the time her employment ended, she was earning about \$18.50 per hour. (Melmed Decl., ¶ 15.)

1 Plaintiff alleged that Defendant’s employees—including Plaintiff, the Class Members, and the
2 Aggrieved Employees (collectively, the “Employees”)—experienced various violations of California’s
3 wage-and-hour laws. (Melmed Decl., ¶ 16.)

4 **B. PROCEDURAL SUMMARY**

5 On July 18, 2023, Plaintiff submitted a letter to the California Labor and Workforce
6 Development Agency (“LWDA”) to notify the LWDA, pursuant to PAGA, of Plaintiff’s intent to seek
7 civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226,
8 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
9 2802, 2804, and others that may be applicable; and California Industrial Welfare Commission (“IWC”)
10 Wage Order 4-2001 (the “Applicable Wage Order”). (Cal. Code of Regs., tit. 8, § 11040; Melmed
11 Decl., ¶ 17.) The letter attached Plaintiff’s original complaint, and incorporated the original complaint
12 by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court’s
13 reference, a copy of Plaintiff’s letter to the LWDA is attached as **Exhibit B** to the concurrently filed
14 Declaration of Jonathan Melmed.

15 On July 18, 2023, Plaintiff commenced this action by filing a class action complaint alleging
16 causes of action against Defendant for **(1)** failure to pay minimum wage for all hours worked in
17 violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay
18 proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable
19 Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in
20 violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant
21 meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512,
22 and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of
23 Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor
24 Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor
25 Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code
26 sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of
27 Labor Code sections 226 and 226.3; and **(10)** deceptive, fraudulent, or otherwise unlawful business
28

1 practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof.
2 Code, §§ 17200–17210). (Melmed Decl., ¶ 18.)

3 On September 21, 2023, Plaintiff filed a first amended complaint alleging causes of action
4 against Defendant for those described in the original Complaint and adding one cause of action for
5 penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The first amended
6 complaint is the operative complaint in the action (the “Operative Complaint”). (Melmed Decl., ¶ 19.)

7 Thereafter, the Parties agreed to attend a private mediation with James Johnston. (Melmed
8 Decl., ¶ 20.) Prior to the mediation, Plaintiff’s counsel conducted significant informal discovery.
9 (Melmed Decl., ¶ 20.) Discovery, investigation, and prosecution has included, among other things,
10 numerous telephonic conferences with Plaintiff; inspection and analysis of thousands of pages of
11 documents, including Defendant’s relevant policies and employee handbook, and other information
12 produced by Plaintiff and Defendant; analysis of work-related data from a sample of Class Members
13 and Aggrieved Employees; an analysis of the legal positions taken by Defendant; investigation into the
14 viability of class treatment of the claims asserted in the action; analysis of potential class-wide
15 damages, including information sufficient to understand Defendant’s potential defenses to Plaintiff’s
16 claims; research of the applicable law with respect to the claims asserted in the Operative Complaint
17 and the potential defenses thereto; and assembling and analyzing of data for calculating damages.
18 (Melmed Decl., ¶ 20.)

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

1 On July 10, 2024, the Parties participated in a full-day mediation with James Johnston who is
2 a full-time mediator with extensive experience in California wage and hour class action lawsuits.
3 (Melmed Decl., ¶ 22.) The mediation negotiations were contentious, but the Parties were eventually
4 able to reach the broad terms of an agreement. (Melmed Decl., ¶ 22.) After further negotiation, the
5 Parties executed the longform Settlement Agreement now before the Court for approval. (Melmed
6 Decl., ¶ 23.)

7 **III. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE**

8 Plaintiff alleges several categories of wage and hour violations on behalf of the Employees.
9 Most importantly, Plaintiff alleged that Defendant failed to pay employees for each minute worked,
10 failed to properly provide the Employees with meal periods and rest periods, and failed to reimburse
11 all business expenses. From these violations, Plaintiff sought damages for derivative claims for waiting
12 time penalties, inaccurate itemized wage statements, unfair competition, and PAGA penalties based on
13 the foregoing. (Melmed Decl., ¶ 24.)

14 Defendant has persistently denied all liability of any kind associated with the claims and
15 allegations, and further denied that the Employees are entitled to any relief. Defendant also denies that
16 these allegations are appropriate for class or representative treatment for any purpose other than the
17 settlement. Defendant maintains, among other things, that it has complied with California laws in all
18 respects. (Melmed Decl., ¶ 25.)

19 A summary of the legal and factual basis for each claim, the applicable defenses, and the
20 potential damages are summarized in more detail below. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
21 Cal.App.4th 116, 133; *Munoz v. BCI CocaCola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
22 399, 409.)

23 **A. MINIMUM WAGE ALLEGATIONS**

24 Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by
25 the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section
26 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a civil action
27 the unpaid balance of the full amount of this minimum wage.” (See also Lab. Code, §§ 1185 [giving
28 the Applicable Wage Order the force of law], 1198 [same].) These minimum wage standards apply to

1 each hour that employees work. Therefore, an employer's failure to pay for any particular time worked
2 by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or
3 not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135
4 Cal.App.4th 314, 324.)

5 Here, Plaintiff alleged that the Employees were periodically required to work off the clock.
6 Specifically, Plaintiff alleged that Defendant understaffed the Employees' shifts and the Employees
7 would therefore have to clock out for their meal periods but keep working. Plaintiff alleged that this
8 off-the-clock time resulted in a minimum wage violation. (Melmed Decl., ¶ 26.)

9 Defendant categorically denied that it underpaid regular or minimum wages to the Class
10 Members, and further denied that the Class Members' meal periods were recorded inaccurately.
11 Defendant asserted that the Employees recorded all hours worked, without completing any additional
12 off-the-clock work, and that their pay was based precisely on this recorded time. Defendant further
13 argued that any off-the-clock work was *de minimus* such that it would be difficult or impossible to
14 prove, both at trial and for the purposes of class certification. (Melmed Decl., ¶ 27.)

15 After a review of informal discovery, Plaintiff's expert calculated Defendant's *maximum*
16 alleged exposure for unpaid wages to be approximately \$117,029. (Melmed Decl., ¶ 28.) Plaintiff
17 discounted this amount by 80% due to the very real risks that this Court would agree with Defendant's
18 good faith defense that its employees were instructed to clock in and out for all time worked. (Melmed
19 Decl., ¶ 28.) Plaintiff estimated Defendant's realistic exposure for this claim to be approximately
20 **\$23,405.80**. (Melmed Decl. ¶ 28.)

21 **B. OVERTIME ALLEGATIONS**

22 Labor Code section 510 requires employers to pay employees time-and-a-half or double time
23 when they work over a certain number of hours. Here, Plaintiff alleged that, as a result of the off-the-
24 clock time described above, the Employees incurred unpaid overtime wages because their actual hours
25 worked were not fully reflected on their time sheets. (Melmed Decl., ¶ 29.) As with Plaintiff's minimum
26 wage claims, Defendant categorically denied that Employees worked off-the-clock at any point and
27 therefore argued that no unpaid overtime had accrued. (Melmed Decl., ¶ 29.)
28

1 Based on the informal discovery produced, Plaintiff's expert determined that 10% of all shifts
2 worked were greater than 8 hours in length. As such, Plaintiff reasoned that Defendant's maximum
3 exposure for this claim would be approximately 10% of the exposure of Plaintiff's minimum wage
4 claims described above, less half—because the initial unpaid time was already calculated as unpaid
5 minimum wages in Plaintiff's exposure analysis above, leaving only the unpaid overtime rate portion
6 being unpaid. Plaintiff thus estimated that Defendant's *maximum* exposure for this claim was
7 approximately \$5,851.45. Considering Defendant's good faith argument that its overtime policies were
8 compliant, Plaintiff discounted these potential damages for the purpose of settlement. (Melmed Decl.
9 ¶ 30.)

10 C. REST PERIOD ALLEGATIONS

11 Under Labor Code section 226.7 and the Applicable Wage Order, employers are required to
12 provide their non-exempt employees with compensated, duty-free rest periods of not less than ten
13 minutes for every major fraction of four hours worked. Labor Code section 226.7 also provides that
14 employers must pay their employees one additional hour of pay at the employee's regular rate for each
15 workday that a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7, subd. (c).)

16 Here, Plaintiff alleged that the Employees were not provided with rest periods. Plaintiff, for
17 example, reported that she was never able to take rest periods. (Melmed Decl., ¶ 31.) Defendant argued
18 that it maintained a compliant rest period policy and that the Employees were provided with rest periods
19 as required by law. Defendant further argued that, as an employer, it is not obligated to police rest and
20 meal breaks. (Melmed Decl., ¶ 31.) Defendant further argued that it did not impede, discourage, or
21 prohibit employees from taking meal or rest breaks. (Melmed Decl., ¶ 31.)

22 In terms of Defendant's exposure for this claim, Plaintiff's expert determined that Defendant's
23 *maximum* exposure for the rest period claim was approximately \$1,539,125.00 in unpaid rest premiums
24 owed. (Melmed Decl., ¶ 31.) However, Plaintiff ascribed an 80% discount due to the risks that this
25 Court would agree with Defendant's good faith defenses, Defendant's argument that the Employees
26 may have voluntarily waived their rest periods, and the individualized reasons for the failure to take
27 rest breaks. (Melmed Decl., ¶ 32.) Plaintiffs estimated Defendant's realistic exposure for this claim to
28 be approximately **\$307,825.00**. (Melmed Decl., ¶ 32.)

1 **D. MEAL PERIOD ALLEGATIONS**

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

9 As described above, Plaintiff alleged that Defendant understaffed the Employees’ shifts and the
10 Employees would therefore have to clock out for their meal periods but keep working. Plaintiff alleged
11 that these skipped meal periods triggered a right to uncompensated meal period premiums. (Melmed
12 Decl., ¶ 33.) As with Plaintiff’s off-the-clock claim, Defendant categorically denied that it underpaid
13 regular or minimum wages to the Class Members, and further denied that the Class Members’ meal
14 periods were recorded inaccurately. Defendant asserted that the Employees recorded all hours worked,
15 without completing any additional off-the-clock work, and that their pay was based precisely on this
16 recorded time. (Melmed Decl., ¶ 33.)

17 In terms of Defendant’s exposure for this claim, Plaintiff’s expert determined that there were
18 approximately \$701,634.00 of unpaid meal break premiums—representing Defendant’s likely
19 *maximum* exposure for this claim. (Melmed Decl., ¶ 34.) Plaintiff discounted this amount by 80% due
20 to the very real risks that this Court would agree with Defendant’s good faith defense, and the
21 individualized reasons for failure to take meal breaks. Plaintiffs estimated Defendants’ realistic
22 exposure for this claim to be approximately **\$140,326.80**. (Melmed Decl., ¶ 34.)

23 **E. RECORDKEEPING ALLEGATIONS**

24 Labor Code section 226, subdivision (a), requires employers to keep an accurate record of,
25 among other things, all hours worked by employees, their gross wages earned, and all applicable hourly
26 rates in effect during the pay period. Labor Code section 226.3 provides that “in addition to any other
27 penalty provided by law” employers who fail to keep the records required by Labor Code section 226,
28

subdivision (a), are subject to a civil penalty of \$250 per employee per violation in an “initial citation” and \$1,000 per employee for each violation “in a subsequent citation.” (Lab. Code, § 226.3.)

Likewise, Labor Code section 1174, subdivision (d), requires every employer to keep these records for at least three years. Labor Code section 1174.5 provides for a civil penalty of \$500 for any employer who willfully fails to maintain the records required by Labor Code section 1174. These penalties are recoverable through PAGA. (Lab. Code, § 2699.5 [listing violations of Labor Code section 1174, subdivision (d), as an applicable PAGA claim]; *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 680 [claims under Labor Code section 226.3 recoverable through PAGA].)

In ascertaining Defendant’ realistic exposure, however, Plaintiff discounted the amounts attributable to penalties under Labor Code section 1174 because of the very real risk that Defendant would successfully argue that its payroll records were, in fact, accurate and complete, as they reflected the true amount of payroll wages issued to the Employees. (Melmed Decl., ¶ 35.) Plaintiff further discounted the amounts attributable to penalties under Labor Code section 226.3 based on the very real risks that Defendant’s good faith argument would prevail, and that Courts have opted to impose the base PAGA penalties (accounted for in the “PAGA Penalties” section below) in lieu of the heightened penalties under 226.3. (Melmed Decl., ¶ 35.)

F. UNTIMELY WAGES ALLEGATIONS

Labor Code section 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of \$100 for each initial violation, and \$200 for each subsequent violation, plus 25% of the amount unlawfully withheld. (Lab. Code, § 210, subd. (a).) The penalty provided by Labor Code section 210 is “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210, subd. (a).)

Plaintiff argued that Defendant’s alleged failure to pay applicable meal and rest period premiums, as described above, resulted in a portion of the wages earned by the Employees not being paid with seven calendar days following the close of the payroll period as required by Labor Code

1 section 204, and thus triggering a right to penalties under Labor Code section 210. (Melmed Decl.,
2 ¶ 36.)

3 As with Plaintiff's other claims, Defendant argued that the Employees were not entitled to meal
4 and rest breaks, fully compensated, and that such violations were rare and nominal in value, if they
5 occurred at all. Defendant thus concluded that Plaintiff could not claim untimely wage penalties.
6 Defendant could also argue that Labor Code sections 204 and 210 are statutes aimed at the improper
7 scheduling of wages. Because Defendant's wage payment schedule was correct, and because the wages
8 Defendant believed were owed were in fact paid on time, no penalty under Labor Code section 210
9 should therefore be imposed. (Melmed Decl., ¶ 37.)

10 Because of Defendant's strong defenses, and the high likelihood that a Court would opt to
11 impose base PAGA penalties in lieu of heightened penalties under section 204, Plaintiff therefore
12 discounted these damages for settlement purposes. (Melmed Decl., ¶ 38.)

13 **G. WAITING TIME PENALTY ALLEGATIONS**

14 Labor Code section 203 provides that if an employer willfully fails to pay compensation
15 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
16 employer is liable for penalties in the form of continued compensation up to thirty workdays. (See
17 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

18 Plaintiff alleged that, because of the violations described above, several derivative causes of
19 action arise. First, Plaintiff sought recovery for waiting time penalties under Labor Code section 203.
20 (Melmed Decl., ¶ 39.) As with Plaintiff's other claims, Defendant argued that the Employees were
21 provided compliant meal and rest breaks and that such violations were rare and nominal in value, if
22 they occurred at all. (Melmed Decl., ¶ 39.) Defendant thus concluded that the Employees could not
23 claim waiting time penalties because the Employees had been fully and timely compensated upon
24 discharge. (Melmed Decl., ¶ 39.)

25 From the informal discovery produced by Defendant, approximately 281 Employees terminated
26 their employment during the waiting time date range. Thus, the maximum value of the waiting time
27 penalty claim was therefore derived from the following formula: 281 employees × 30 days × 6.2 hours
28 average per day × average rate of pay of \$17.93 per hour (or \$937,129.38). However, after ascribing

1 an 80% discount due to the very real risks that this court would agree with Defendant's good faith
2 defense and because the claim is derivative of the underlying claims which may also fail to be certified
3 or win on the merits, Plaintiff estimated Defendant's realistic exposure for this claim to be
4 approximately **\$187,425.88**. (Melmed Decl., ¶ 40.)

5 **H. REIMBURSEMENT ALLEGATIONS**

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

14 Plaintiff alleged that certain protective clothing accessories were purchased by the Employees
15 but not reimbursed by Defendant. Specifically, Plaintiff alleged that she had to purchase her own
16 uniform or apron. Defendant argued that all equipment and materials that Plaintiff needed to perform
17 her work were always supplied by Defendant and Defendant has a practice of reimbursing all necessary
18 business expenses. Defendant also argued that employees could chose not to wear any uniform or
19 apron, and could instead wear a simple black shirt. Defendant therefore argued that the Employees
20 were not entitled to any reimbursement of business expenses. (Melmed Decl., ¶ 41.)

21 In consideration of this good faith defense, Plaintiff determined this allegation was not viable
22 and, accordingly, this allegation did not play a material role in Plaintiff's calculation of Defendant's
23 maximum or settlement-based exposure. (Melmed Decl., ¶ 42.)

24 **I. WAGE STATEMENT ALLEGATIONS**

25 Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of
26 each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail
27 to provide their employees with accurate, itemized wage statements may be subject to penalties under
28 Labor Code section 226, subdivision (e). Plaintiff alleged that, by virtue of the allegations that

1 Defendant failed to properly pay the Employees their wages as described above, Defendant had
2 likewise failed to provide the Employees with compliant wage statements reflecting their gross wages
3 earned and their net wages earned. (Melmed Decl., ¶ 43.)

4 As with Plaintiff's other claims, Defendant argued that the Employees were fully compensated
5 and that such violations were rare and nominal in value, if they occurred at all. Defendant thus
6 concluded that Plaintiff could not claim wage statement penalties because there were no wage statement
7 violations. (Melmed Decl., ¶ 44.)

8 In terms of Defendant's exposure for this claim, Plaintiff calculated that approximately 360
9 Class Members worked a total of approximately 9,500 pay periods during the applicable statutory
10 period for this claim. (Melmed Decl., ¶ 45.) Thus, Plaintiff determined that Defendant's maximum
11 exposure for this claim was \$932,000.00. (Melmed Decl., ¶ 45.) Plaintiff then ascribed an 80% discount
12 based on the very real risks that: **(1)** this court might find that Defendant's alleged wage statement
13 errors were not made knowingly and intentionally such that the penalties would not be triggered,
14 **(2)** this court might find that Defendant's alleged wage statement errors caused little or no injury to the
15 Class Members, or **(3)** that this court might find that there were no errors made on the wage statements.
16 (Melmed Decl., ¶ 43.) Plaintiff calculated that Defendant's realistic exposure for this claim was
17 **\$186,400.00.** (Melmed Decl., ¶ 45.)

18 **J. UNFAIR COMPETITION ALLEGATIONS**

19 California's Unfair Competition Law ("UCL") proscribes unlawful business practices, which
20 is defined broadly to include "any unlawful, unfair or fraudulent business act or practice." (Bus. &
21 Prof. Code, § 17200.) Violations of California's Labor Code are actionable under the UCL. (*Sullivan*
22 *v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1206; *Hodge v. Superior Court* (2006) 145 Cal.App.4th 278,
23 283.) Under the UCL, damages cannot be recovered, and plaintiffs are generally limited to restitution
24 and injunctive relief. (Bus. & Prof. Code, § 17203.) Claims for "payment of wages unlawfully withheld
25 from an employee are . . . a restitutionary remedy authorized by section 17203." (*Cortez v. Purolator*
26 *Air Filtration Products Co.* (2000) 23 Cal.4th 163, 177.)

27 Here, Plaintiff alleged that, by virtue of the allegations that Defendant failed to properly pay
28 the Employees their wages as described above, Defendant was liable for restitution in the same amount

1 of the unlawfully withheld wages described above. (Melmed Decl., ¶ 44.) Because the relief sought
2 under Plaintiff’s UCL claims—namely, in the form of restitution for unpaid wages—was coterminous
3 with Plaintiff’s other claims, Plaintiff’s UCL allegations did not materially change Plaintiff’s analysis
4 of Defendant’s exposure. (Melmed Decl., ¶ 46.)

5 **K. PAGA ALLEGATIONS**

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

- 8 1. \$100.00 for the initial violation per employee per pay period; and
- 9 2. \$200.00 for each subsequent violation per employee per pay period.

10 These penalties must be allocated seventy-five percent (75%) to the LWDA and twenty-five
11 percent (25%) to the affected employees. (Form. Lab. Code, § 2699, subd. (i).) Plaintiff alleged that,
12 because of the violations described above, Defendant was liable for these penalties for each applicable
13 pay period during the applicable PAGA Period. (Melmed Decl., ¶ 47.)

14 In ascertaining Defendant’s exposure for this claim, Plaintiff considered several important
15 cases. First, courts to consider the issue have refused to “stack” PAGA penalties, severely limiting the
16 recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529
17 [approving PAGA penalty reduction to \$5 per pay period]; accord *Atempa v. Pedrazzani* (2018) 27
18 Cal.App.5th 809.) (Melmed Decl., ¶ 47.)

19 Second, Defendant argued that Plaintiff is not entitled to recover PAGA penalties at the
20 subsequent violation rate of \$200 per pay period. (Melmed Decl., ¶ 48.) California’s appellate courts
21 have held that “[u]ntil the employer has been notified that it is violating a Labor Code provision
22 (whether or not the commissioner or court chooses to impose penalties), the employer cannot be
23 presumed to be aware [of the violation]” and therefore, until a Court or the Commissioner issues a
24 finding of a violation, the initial \$100 violation rate applies for each pay period in which the alleged
25 violation occurred. (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.) Thus,
26 Defendant argued that even if Plaintiff was able to establish any violation of the Labor Code, the PAGA
27 penalties assessed for these violations will be computed at the \$100 rate, as opposed to the \$100 per
28 pay period rate at maximum. (Melmed Decl., ¶ 48.)

Defendant further argued that, given the nature of the allegations and Defendant's efforts at good faith compliance with the Labor code, there is a likelihood that a further reduction of the penalty to \$5 per pay period as approved in *Carrington* would apply. (Melmed Decl., ¶ 49; *Carrington v. Starbucks Corp.*, *supra*, 30 Cal.App.5th at p. 529.) Thus, Defendant argued that even if Plaintiff was able to recover some PAGA penalties on behalf of other aggrieved employees, courts frequently use their discretion under former Labor Code section 2699, subdivision (e)(2), to significantly reduce PAGA penalties where such penalties would be unjust, arbitrary, and improper. (Melmed Decl., ¶ 49.)

Here, there were approximately 9,500 pay periods within the applicable PAGA period. Applying PAGA's maximum penalties would yield a maximum exposure for Defendant of \$950,000—assuming an initial \$100 per pay period rate. (Melmed Decl., ¶ 50.) However, considering Defendant's defenses to the PAGA claim, Plaintiff ascribed the very real risk of a court reducing the amount of awarded PAGA penalties, especially considering that the PAGA penalties themselves rival the amount of wages actually owed. (Melmed Decl., ¶ 50.) For that reason, Plaintiff the approach adopted in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 and ascribed a settlement value of \$5.00 per pay period for a total realistic exposure of **\$47,500.00**. (Melmed Decl., ¶ 50.)

IV. 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 \$700,000.00. (See generally, Settlement Agreement.)

A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT

Plaintiff has applied appropriate discounts on the maximum settlement value as calculated above to come to Defendant's realistic exposure of \$892,883.48. (Melmed Decl., ¶ 51.) As explained above, the issues in this case were hotly contested—both legally and factually. (Melmed Decl., ¶ 51.) 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 \$700,000.00 is an excellent result and within the zone of reasonableness for all parties. (*Ibid.*) If preliminary approval is granted, Plaintiff will have recovered **78.4%** of the

1 estimated settlement value for the Class Members in this case—a fair compromise of the claims, by
2 any measure. (*Ibid.*)

3 **B. SETTLEMENT CONSIDERATION AND ALLOCATION**

4 The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement
5 Administrator, currently estimated to not exceed \$10,000.00; **(2)** Plaintiff's counsel's attorney fees not
6 to exceed one-third of the Gross Settlement Amount, i.e., \$233,333.33; **(3)** litigation expenses and costs
7 not to exceed \$13,000.00; **(4)** a service award to the named Plaintiff of up to \$10,000.00; and
8 **(5)** payment to the LWDA of \$18,750.00 for its 75% share of the settlement for civil penalties pursuant
9 to PAGA. (Settlement Agreement, at p. 22.)

10 After all Court-approved deductions from the Gross Settlement Amount, the Net Settlement
11 Amount, which consist of at least \$414,916.67, will be distributed to all Class Members who do not
12 request exclusion from the settlement and the Aggrieved Employees. (Settlement Agreement, at p. 15.)
13 Applicable employer-side payroll taxes will be paid by Defendant outside and separate from the Gross
14 Settlement Amount. (Settlement Agreement, at p. 6.)

15 **C. THE RELEASE**

16 Under the Settlement Agreement, the "Released Claims" are divided into two categories: **(1)** the
17 released claims for the purposes of the class action portion of the Settlement Agreement, and **(2)** the
18 released claims for the purposes of the PAGA portion of the Settlement Agreement. (Settlement
19 Agreement, at p. 8.) The Released Claims for the purposes of the class action portion of the settlement
20 agreement include all claims arising out of or related to the allegations set forth in the operative
21 complaint. (Settlement Agreement, at pp. 8–9.) The Released Claims for the purposes of the PAGA
22 portion of the settlement agreement include all claims for civil penalties pursuant to PAGA that
23 Plaintiff asserted in Plaintiff's PAGA notice to the LWDA and in the operative complaint. (Settlement
24 Agreement, at p. 9.) These releases will become effective on the date when Defendant fully funds the
25 entire Gross Settlement Amount and funds all employer payroll taxes. (Settlement Agreement, at p. 28.)

26 **D. SETTLEMENT ALLOCATION FORMULA**

27 Individual payments to the Class Members from the class-portion of the settlement will be
28 calculated and apportioned based on the number of weeks worked as an eligible Class Member in

1 California by the participating Class Member during the Class Period (the “Individual Settlement
2 Payments”). (Settlement Agreement, at p. 23.) Specific calculations of Individual Settlement Payments
3 will be apportioned based on each participating Class Member’s number of workweeks worked.
4 (Settlement Agreement, at p. 23.)

5 Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement
6 (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number
7 of pay periods worked by each Aggrieved Employee during the PAGA Period compared to the total
8 number of pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement
9 Agreement, at pp. 23–24.)

10 **E. SELECTION OF THE SETTLEMENT ADMINISTRATOR**

11 Plaintiff, through counsel, has obtained bids from several settlement administration companies
12 for the settlement administration of this case. Of those, Phoenix Settlement Administrator Solutions
13 (“Phoenix”) presented the lowest qualified bid. Accordingly, Plaintiff propose to use Phoenix as the
14 settlement administrator. (Melmed Decl., ¶ 55; Settlement Agreement, at p. 10.) A true and correct
15 copy of the Declaration of Jodey Lawrence describing Phoenix’s qualifications and experience is
16 attached as **Exhibit C** to the concurrently filed Declaration of Jonathan Melmed. (Melmed Decl., ¶ 55.)

17 **F. NOTICE PROCEDURES**

18 Within 14 days of the Court granting preliminary approval of the Settlement Agreement,
19 Defendant shall provide the Settlement Administrator with an updated list of Class Members and
20 Aggrieved Employees containing names, number of Class Period workweeks, number of PAGA Period
21 pay periods, addresses, and social security numbers (the “Class Data”). (Settlement Agreement, at
22 p. 19.)

23 Within 14 days of receiving the Class Data, the Settlement Administrator shall send the Class
24 Notice by bulk first class mail, forwarding requested, to the Class Members at the addresses identified
25 through the process described above. (Settlement Agreement, at pp. 19–20.) Plaintiff proposes using a
26 Class Notice in substantially the form as is attached as **Exhibit D** to the Declaration of Jonathan
27 Melmed.
28

1 The Class Notice will inform Class Members that the location, date, and time of the final
2 approval hearing may be changed. Additionally, the Class Notice will inform each Class Member of
3 his or her estimated share of the settlement, as well as an easily understood statement alerting the Class
4 Members that, unless they elect to opt out of the Settlement Agreement, the Class Member is releasing
5 and waiving all “Released Claims” (as that term is defined in the Settlement Agreement and explained
6 in the Class Notice). (See Melmed Decl., Exh. D.)

7 The Class Notice will also inform the Class Members of their right to object to the Settlement
8 Agreement. (Settlement Agreement, at pp. 21–22.) Any Class Member who wishes to object to the
9 Class Settlement may submit a written objection to the Settlement Administrator no later than 45 days
10 following the date on which the Settlement Administrator first mails the Class Notice to the Class
11 Members (“Response Deadline”). (Settlement Agreement, at p. 20.) Alternatively, Class Members may
12 also object to the Settlement Agreement by appearing at the final approval hearing, either on their own
13 or through an attorney. (Settlement Agreement, at p. 22.)

14 Class Members who do not timely request exclusion from the Settlement Agreement will be
15 deemed to be a participating Class Member without having to submit a claim form or take any other
16 action. (Settlement Agreement, at p. 20.) To request exclusion from the Settlement Agreement, the
17 Class Member must submit a written request for exclusion from the Settlement Agreement to the
18 Settlement Administrator (“Request for Exclusion”), postmarked no later than the Response Deadline.
19 (Settlement Agreement, at pp. 20–21.)

20 If any Class Notice mailed to a Class Member is returned as having been undelivered by the
21 U.S. Postal Service, the Settlement Administrator shall re-mail the Class Notice to the forwarding
22 address affixed thereto, if one is provided. (Settlement Agreement, at pp. 20–21.) If no forwarding
23 address is provided, the Settlement Administrator will conduct an address search and remail the Class
24 Notice to the most current address of that Class Member. (Settlement Agreement, at p. 21.) Class
25 Members to whom the Class Notice is re-mailed are given an extension of up to 14 calendar days for
26 disputes, objections, or to request exclusion. (Settlement Agreement, at p. 21.)

1 **G. TIMING OF SETTLEMENT DISBURSEMENTS**

2 Defendant will deposit the Gross Settlement Amount in a lump sum payment, plus the
3 employer-side payroll taxes, with the Settlement Administrator within 7 days of the “Effective Date,”
4 as that term is defined in the Settlement Agreement. (Settlement Agreement, at p. 18.) At that time, the
5 settlement will be fully funded. The Settlement Administrator will then distribute the Individual
6 Settlement Payments within 14 days of the date the class settlement is funded. (Settlement Agreement,
7 at p. 25.) The Settlement Agreement further provides that disbursement of Plaintiff’s counsel’s
8 attorneys’ fees, the litigation costs, and Plaintiff’s service award shall not precede disbursement of the
9 Individual Settlement Payments. (Settlement Agreement, at p. 25.)

10 **H. CY PRES DISTRIBUTION**

11 Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at
12 p. 25.) If a Class Member fails to cash his/her/their check by the deadline, then the Settlement
13 Administrator shall distribute such funds to the California State Controller for deposit in the Unclaimed
14 Property Fund in the name of the individual whose check was uncashed. (Settlement Agreement, at p.
15 25.)

16 Because all funds and interest under the Settlement Agreement are to be completely distributed
17 to the class participants, or to the Unclaimed Property Fund in the name of the individual whose check
18 was uncashed, the Parties agree that this disposition results in no “unpaid residue” or “unclaimed or
19 abandoned class member funds” under Code of Civil Procedure Section 384. (Settlement Agreement,
20 at p. 25.)

21 **I. TAX TREATMENT**

22 The Settlement Agreement provides that 20% of each individual settlement payment from the
23 class-portion of the Settlement Agreement shall constitute wages (for which each participating Class
24 Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute
25 interest, reimbursement, and penalties (for which each participating Class Member will be issued an
26 IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at pp. 15–16.)

27 With respect to the individual payments made under the PAGA-portion of the Settlement
28 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which

1 each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation).
2 (Settlement Agreement, at p. 16.)

3 Defendant will separately and additionally pay its share of employer payroll taxes on the sum
4 allocated to wages. (Settlement Agreement, at p. 16.)

5 **V. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED**

6 **A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
7 **CONSIDERATION IS APPROPRIATE**

8 California Rules of Court, rule 3.769, subdivision (d), provides that the Court may make an
9 order approving certification of a provisional settlement class at the preliminary approval stage. It is
10 well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
11 of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48
12 Cal.App.4th 1794, 1807, fn. 19.) Since no trial is anticipated in a class-based settlement, the case
13 management issues inherent in determining if the class should be certified need not be confronted, and
14 the Court’s fairness review of the settlement focuses on protecting the interests of the non-
15 representative class members. (*Ibid.*; see also *Officers for Justice v. Civil Service Com’n of City and*
16 *County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997)
17 521 U.S. 591, 620 [117 S.Ct. 2231, 2248] [“Confronted with a request for settlement-only class
18 certification, a district court need not inquire whether the case, if tried, would present intractable
19 management problems . . . for the proposal is that there be no trial.”].)

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

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

23 Numerosity is met if a proposed class is so large that joinder of all members would be
24 impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class
25 members can be objectively identified and given notice of the litigation without unreasonable time or
26 expense. (See *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendant has
27 represented that the proposed Class consists of approximately 618 Class Members ascertained through
28 Defendant’s records. As such, the numerosity requirement is met.

1 **C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED**
2 **COMMUNITY OF INTEREST**

3 **1. Commonality**

4 To justify certification, the class proponent must show that questions of law or fact common to
5 the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito*
6 *Restaurants, Inc.* (2010) 183 Cal.App.4th 723 [citing *Washington Mutual Bank, FA v. Superior Court*
7 (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal and
8 factual questions exist, such as **(a)** whether individuals working for Defendant were subject to unlawful
9 wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these violations
10 triggered derivative claims for penalties; and **(c)** whether Defendant’s violations were knowing or
11 willful.

12 **2. Typicality**

13 Typicality focuses on: **(1)** whether other members of the proposed class have the same or
14 similar injury to the named plaintiff(s), **(2)** whether the action is based on conduct which is not unique
15 to the named plaintiff(s), and **(3)** whether other class members have been injured by the same course
16 of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe’s Crab*
17 *Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiff’s claims are typical of the Class
18 Members because she was subject to Defendant’s policies and practices described above in Plaintiff’s
19 analysis of the claims and defenses, which were consistently applied to class-wide to all Employees.
20 (Declaration of Judith Corona in Support of Plaintiff’s Motion for Preliminary Approval of Class
21 Action Settlement (“Judith Corona Decl.”), ¶ 4.)

22 **3. Adequacy of Representation**

23 A proposed class representative must establish that they will adequately represent the proposed
24 class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiff is
25 adequate as a class representative because she is a member of the Class, experienced the same wage
26 and hour practices as the rest of the Class, is committed to representing the interests of the Class, has
27 no interests that are adverse to members of the Class, and understands and accepts her duty to represent
28

1 the best interests of the Class. Plaintiff is committed to the Class and is adequate to represent the
2 interests of the Class in this litigation. (Judith Corona Decl., ¶ 5.)

3 Plaintiff also provided counsel with information that was crucial to initiating the action and
4 preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable
5 information about the Class Members and their experiences working for Defendant. (Melmed Decl., ¶
6 70; Judith Corona Decl., ¶ 6.)

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

12 4. Superiority

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

17 5. Predominance

18 The common issues here, concerning the uniform deficiencies to Defendant’s wage-and-hour
19 policies and practices raise predominating factual and legal issues supporting certification of a
20 settlement class.

21 VI. PRELIMINARY APPROVAL SHOULD BE GRANTED

22 A. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, AND 23 NON-COLLUSIVE NEGOTIATIONS

24 The Settlement Agreement was negotiated at arm’s length between counsel using a professional
25 and well-respected third-party neutral. (Melmed Decl., ¶ 57.) Counsel for both parties were thoroughly
26 familiar with the complex legal and factual questions at issue in this litigation. (Melmed Decl., ¶ 57.)
27 The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct
28 exchanges of information through informal discovery, during the course of settlement negotiations,

1 including a full-day mediation. (Melmed Decl., ¶ 57.) Although Plaintiff and her counsel believed the
2 class claims had merit and there was a possibility of certifying the class and claims, they recognized
3 the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class
4 certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can
5 take several more years to litigate. (Melmed Decl., ¶ 58.) The resulting Settlement Agreement was
6 based on calculations, risk assessment, and non-collusive negotiation. (Melmed Decl., ¶ 59.) It takes
7 the risks identified above and others into account in arriving at the non-reversionary Gross Settlement
8 Amount. (Melmed Decl., ¶ 59.)

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

10 Counsel for the Parties spent months prior to the mediation developing the factual record for
11 this case, engaging in informal discovery and exchanges of documents and information, and drafting
12 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and
13 weaknesses of their respective positions at the mediation and during subsequent settlement
14 negotiations. (Melmed Decl., ¶ 60.) The Parties and their counsel attended a full-day mediation session
15 before an experienced and well-respected mediator which resulted in the resolution of the case on a
16 class and representative basis. (Melmed Decl., ¶ 61.) James Johnston is a nationally recognized
17 mediator of complex class actions and employment matters. (Melmed Decl., ¶ 61.)

18 In addition, the parties are represented by skilled and experienced counsel with extensive
19 backgrounds in complex litigation and experience litigating similar wage and hour class actions.
20 (Melmed Decl., ¶ 62.) The Settlement Agreement was reached after extensive investigation and
21 research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiff's
22 counsel's thorough factual investigation, which were sufficient to evaluate Defendant's defenses.
23 (Melmed Decl., ¶ 62.) The Settlement Agreement came only after the case was thoroughly investigated
24 by Plaintiff's counsel. (*Ibid.*) Plaintiff's counsel all agree that this settlement is fair, adequate, and
25 reasonable, and in the best interests of Class Members. (Melmed Decl., ¶ 63.)

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

27 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
28 should also consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration

1 of further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.* (1996)
2 48 Cal.App.4th 1794, 1801.) As described above, Defendant had strong defenses to Plaintiff’s claims,
3 which create a real possibility that the claims might not be certified or might fail on the merits. (Melmed
4 Decl., ¶ 64.) Proceeding with litigation would impose a significant risk of no recovery as well as
5 ongoing, substantial additional expenditures of time and resources. (Melmed Decl., ¶ 65.) If settlement
6 were not achieved, continued litigation of the claims would take a substantial amount time and possibly
7 confer no benefit on Class Members. (Melmed Decl., ¶ 65.) By contrast, the settlement will yield a
8 prompt, certain, and substantial recovery for the Class Members, which also benefits the Parties and
9 the Court. In considering these risks, the choice was overwhelmingly in favor of settlement. (Melmed
10 Decl., ¶ 65.)

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

12 The Settlement Agreement represents a fair compromise given the risks and uncertainties
13 presented by continued litigation. (Melmed Decl., ¶ 66.) Defendant asserted and would have continued
14 to assert legal and factual grounds to defend against this action, including factual and legal defenses on
15 the merits. Moreover, continued litigation would be costly, time-consuming, and uncertain. (Melmed
16 Decl., ¶ 66.) In contrast, the Settlement Agreement ensures timely relief and substantial recovery of the
17 Defendant’s realistic exposure. (Melmed Decl., ¶ 66.)

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

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

24 The Parties’ counsel agree that this settlement is fair, adequate, and reasonable in light of the
25 nature of the claims, realistic risk-adjusted value of damages, complexities of the case, the state of
26 the law, and uncertainties of class certification and litigation. (Melmed Decl., ¶ 67.) Given the risks
27 inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and
28 in the best interests of Class Members and should be preliminarily approved. (Melmed Decl., ¶ 67.)

1 The Settlement Agreement is also consistent with other settlements that received approval of the
2 Courts. (Melmed Decl., ¶ 67.)

3 Experienced counsel, operating at arm's length, have weighed the strengths and risks of the
4 case, and endorse the proposed settlement. (Melmed Decl., ¶ 67.) The view of the attorneys actively
5 conducting the litigation is entitled to significant weight in deciding whether to approve the settlement.
6 (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff'd* (9th Cir. 1981) 661 F.2d
7 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-
8 fought negotiations is entitled to considerable weight."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
9 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

10 **F. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE**
11 **STATUTES AND RULES**

12 The proposed Class Notice should be approved, as it fully informs the Class Members of the
13 nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and
14 applicable law. (Melmed Decl., Exh. D.) The way the Class Notice is to be disseminated, as outlined
15 above, will ensure that all of the Class Members will be properly notified of the proposed settlement.

16 The Court has wide discretion in approving the means of providing notice, so long as the class
17 representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching
18 a substantial percentage of class members." (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860,
19 quotation marks omitted.) Here, the Parties' notice plan is that notice of the Settlement Agreement will
20 be disseminated directly to the class members by first class mail by the settlement administrator within
21 14 days of the date on which the Settlement Administrator receives the Class Data from Defendant.
22 (Settlement Agreement, at pp. 19–20.)

23 The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California
24 Rules of Court and afford the Class Members with all due process protections required by the United
25 States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766,
26 subdivision (d), of the California Rules of Court, because the Class Notice includes, among other
27 things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties;
28 **(2)** a statement that the court will exclude the member from the class if the member so requests by a

1 specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a
2 statement that the judgment, whether favorable or not, will bind all members who do not request
3 exclusion; and (5) a statement that any member who does not request exclusion may, if the member so
4 desires, enter an appearance through counsel. (Melmed Decl., Exh. D.) The 45-day deadline for Class
5 Members to exclude themselves or challenge the number of workweeks worked during the Class Period
6 is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek
7 independent legal advice in the interim. (Settlement Agreement, at p. 20.)

8 **VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT**
9 **AGREEMENT IS FAIR**

10 In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees of up
11 to one-third of the Gross Settlement Amount, (i.e., \$233,333.33), plus reimbursement of litigation
12 expenses and costs of up to \$13,000.00. (Settlement Agreement, at p. 4.) As the California Supreme
13 Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to
14 award as attorneys' fees in a class action where a common fund was generated as a result of the case.
15 (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion
16 where trial court approved a fee request of one-third of the common fund].) The California Supreme
17 Court further clarified that trial courts "have discretion to conduct a lodestar cross check on a
18 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and
19 use other means to evaluate the reasonableness of a requested percentage fee." (*Ibid.*)

20 The requested fee of one-third of the Gross Settlement Amount is also consistent with awards
21 obtained in similar wage and hour class action cases approved by various courts in California. (See
22 *Stuart v. RadioShack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645
23 [approving fee award of one-third of the total maximum settlement amount of \$4.5 million and noting
24 that the fee award of one-third of the total settlement was "well within the range of percentages which
25 courts have upheld as reasonable in other class action lawsuits"]; *Singer v. Becton Dickinson and Co.*
26 (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at * 8 [approving fee award
27 of 33.33% of the common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007,
28 No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [awarding fees of one-third of common fund in a

1 wage and hour class action, noting: “[f]ee awards in class actions average around one-third of the
2 recovery.”]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883
3 VRW) 2008 WL 5478576, at *8 [approving attorneys’ fees of one-third of common fund].)

4 As part of the final approval motion, Plaintiff’s counsel will request approval of the attorneys’
5 fees and costs described in this motion and in the Settlement Agreement, which will be heard at the
6 final approval hearing. Accordingly, the Court need not decide the fees and costs at this time, but only
7 authorize the Class Notice to inform class members that counsel will seek fees and costs up to one third
8 of the Gross Settlement Amount in fees, plus actual litigation costs.

9 **VIII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE**

10 Plaintiff will request payment of a service award from the Gross Settlement Amount of up to
11 \$10,000.00 in addition to whatever payment she is otherwise entitled to receive as a Class Member.
12 (Settlement Agreement, at pp. 14–15.) The proposed service award is reasonable compensation given
13 the time and effort that Plaintiff devoted to this case, the valuable assistance she provided to counsel,
14 and the fact that she entered into a general release of claims that is broader than the release of the Class.
15 (Melmed Decl., ¶ 69; Settlement Agreement, at pp. 14–15; Judith Corona Decl., ¶ 11.)

16 Plaintiff provided invaluable assistance to Plaintiff’s counsel and the Class Members in this
17 case, including providing factual background for mediation and the operative complaint, reviewing the
18 relevant documents, participating in phone calls with Plaintiff’s counsel, gathering highly relevant
19 documents, and reviewing the settlement documents. (Melmed Decl., ¶ 70.) Plaintiff agreed to
20 participate in this case with no guarantee of personal benefit. (*Ibid.*) Further, Plaintiff agreed to
21 undertake the financial risk of serving as a class representative and exposed herself to the risk of
22 negative publicity by anyone who opposed this case. (*Ibid.*)

23 Moreover, the requested service award for Plaintiff falls within the range of service payments
24 typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson*
25 *Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879
26 [approving **\$11,250.00** service award to each of the two Class Representative in a meal break class
27 action]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010
28 WL 3833922, at *2 [approving **\$20,000.00** enhancement award to the class representative in a

1 California wage-and-hour class action settlement]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal.
2 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **\$10,000.00** each from a
3 \$300,000.00 settlement fund in a wage/hour class action]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct.
4 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 [“the court finds
5 Plaintiff’s enhancement payments of **\$15,000.00** each to be reasonable.”], emphasis added; *Glass v.*
6 *UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52
7 [finding “requested payment of **\$25,000** to each of the named Plaintiff is appropriate” in wage and hour
8 settlement], emphasis added; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) No.
9 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 [approving “**\$25,000** incentive award for
10 each Class Representative” in wage an hour settlement], emphasis added; *Garner v. State Farm Mut.*
11 *Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8
12 [“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **\$20,000** or
13 more where, as here, the class representative has demonstrated a strong commitment to the class”],
14 emphasis added.)

15 **IX. SUBMISSION TO THE LWDA**

16 The Settlement Agreement and this motion are concurrently being submitted to the LWDA in
17 accordance with Labor Code section 2699, subdivision (l)(2). (Melmed Decl., ¶ 71.) The proof of
18 electronic submission is attached as **Exhibit E** to the Declaration of Jonathan Melmed.

19 **X. CONCLUSION**

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

22 Dated: February 7, 2025

MELMED LAW GROUP P.C.



KYLE D. SMITH

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