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

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

Plaintiff,

v.

LEGGETT & PLATT, INC., a Missouri
Corporation; and DOES 1 TO 50,

Defendants.

Case Number: CIVSB2322398

**Declaration of Jonathan Melmed in Support
of Plaintiff's Motion for Preliminary
Approval of Class Action Settlement**

Hearing Date: April 9, 2025

Hearing Time: 8:30 a.m.

Dept.: S33

Judge: Hon. Stephanie J. Tanada

Complaint Filed: September 15, 2023

FAC Filed: November 21, 2023

Trial Date: None Set

DECLARATION OF JONATHAN MELMED

I, Jonathan Melmed, declare and state as follows:

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.

2. I am a founding shareholder in the law firm of Melmed Law Group P.C. My office, (“Class Counsel”), is attorney of record for Plaintiff Damon Newquist (“Plaintiff” or “Class Representative”) and the proposed settlement class (the “Class” or the “Class Members”) in the above-captioned matter.

3. I am submitting this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”). All terms used herein have the meaning given in the Motion for Preliminary Approval, unless otherwise defined. A true and correct copy of the Parties’ *Class Action and PAGA Settlement Agreement and Class Notice* (“Settlement Agreement”) is attached hereto as **Exhibit A**, which includes the *Notice of Class Action Settlement and Hearing Date for Final Court Approval* (“Class Notice”). Counsel for the Parties have reviewed the Settlement Agreement and notice to ensure they are consistent. A bid for the costs of settlement administration from the proposed settlement administrator Xpand Legal is attached as **Exhibit B**. The Settlement Agreement, in its entirety, is incorporated herein by reference.

4. After comprehensive arm’s-length settlement discussions with experienced defense counsel, Plaintiff and Leggett & Platt, Incorporated and L&P Financial Services Co. (“Defendants”), entered into a Settlement Agreement resolving the claims of the putative Class Members and Aggrieved Employees. The Settlement Agreement seeks to fully release and discharge Defendants from the claims brought against them in this matter. The Settlement Agreement contemplates a non-reversionary gross settlement amount of \$328,500.00, including a credit of \$54,000.00 already paid, (“Gross Settlement Amount”) to be paid to the Class of approximately 349 individual Class Members, as that Class is defined in the Motion for Preliminary Approval, and the approximately 159 Aggrieved Employees.

5. The Settlement Agreement is a “checks cashed,” non-reversionary settlement, meaning that Class Members are not required to submit a claim form to receive their settlement share, none of

1 the Gross Settlement Amount will revert to Defendants, and the applicable employer-side payroll taxes
2 are to be paid by Defendants outside the Gross Settlement Amount. The Gross Settlement Amount is
3 inclusive of individual settlement amounts to the Class members, attorneys' fees and costs, settlement
4 administrative expenses, and a class representative payment to Plaintiff to be approved by the Court.

5 6. I believe that, because the settlement is fair and reasonable, was negotiated at arm's
6 length between counsel following extensive investigation and discovery, was reached after
7 participation in a full-day mediation, it should be preliminarily approved.

8 7. I have no knowledge of the existence of any conflicting interests between my firm and
9 any of its attorneys, on the one hand, and Plaintiff or any other Class Member, on the other. I and the
10 attorneys at my firm have vigorously prosecuted this action and have the financial resources to handle
11 this case. I am aware of one class, representative, or other collective action in another court that asserts
12 claims similar to those asserted in this action on behalf of a class or group of individuals who would
13 also be members of the class defined in this action, *Stephan Crowder v. Leggett & Platt, Incorporated,*
14 *et. al*, San Joaquin Superior Court, Case No. STK-CV-UOE-2024-12508, filed on September 30, 2024.
15 This case was recently filed and Defendant has not been served yet.

16 **I. CLASS COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION**

17 8. Throughout my career, I have gained significant experience regarding the obligations
18 and burdens of representing a class. This knowledge has allowed me and my firm, Melmed Law Group
19 P.C., to successfully represent plaintiffs in many class actions in the past years. As noted, numerous
20 state and federal courts in California have found that my firm is competent and capable of representing
21 as Class Counsel large classes similar to the one here at issue.

22 9. In 2007, I received a B.A. from New York University, in New York, New York. In
23 2012, I received a J.D. from Loyola Law School, Los Angeles. I became a member of the Bar of the
24 State of California in June 2013.

25 10. From 2012 through 2014, I was an associate attorney at Von Behren & Hunter, LLP
26 ("VBH") in Manhattan Beach, California. At VBH, I litigated complex commercial litigation matters
27 where I represented life and health insurers in bad faith, ERISA, breach of contract and related disputes.
28 At VBH, I also represented and assisted in the representation of hotels, restaurants and real estate

1 development groups in state and federal commercial litigation, including class action cases (see, i.e.
2 *Daniel Flannery v. McCormick & Schmicks Seafood Restaurants*, Los Angeles County Superior Court,
3 Case No. BC487942).

4 11. From February 2015 through the present, I have been a founding and managing
5 shareholder in the firm of Melmed Law Group P.C. where I represented and continue to represent
6 thousands of employees in wage and hour class actions, and other employment-related matters.
7 Melmed Law Group P.C. has extensive experience in the litigation of complex cases, including
8 California-wide class actions. I am also an active member of the plaintiff's employment bar
9 association called the California Employment Lawyers Association ("CELA").

10 12. In addition to the instant case, I have served as class counsel in a variety of wage and
11 hour class actions. I have developed extensive litigation experience in complex employment litigation
12 matters, particularly in California class actions representing employees. See **Exhibit C**.

13 13. I, along with the attorneys at my firm and the legal staff at my firm, have diligently
14 investigated and prosecuted this case to a successful conclusion. Our work resulted in the creation of a
15 significant and non-reversionary settlement amount for the benefit of the Class Members. We avoided
16 protracted litigation by conducting considerable investigation before filing suit related to the class
17 claims, and efficiently communicated and exchanged information with defense counsel such that the
18 Parties could successfully settle the case after being fully informed of the merits of each sides' position.
19 As a result of our efforts, we were able to obtain the favorable Settlement Agreement for the Class now
20 before this Court for final approval. Because of the risks involved in litigating the case, particularly the
21 contested legal and factual issues, I and my co-counsel believe this settlement is fair, reasonable, and
22 favorable to the Class.

23 **II. OVERVIEW OF THE CASE**

24 **A. THE PARTIES**

25 14. Defendants produce and manufacture carpet padding and other floor underlayment
26 products. On information and belief, Defendants operated in San Bernardino County, California.
27 Defendants employed non-exempt workers during the Class Period and PAGA Period.
28

1 15. Plaintiff Damon Newquist was employed by Defendants in Ontario, California,
2 primarily as a maintenance apprentice. Plaintiff was employed from approximately August 12, 2019,
3 to December 14, 2022. Plaintiff was paid approximately \$30.00 per hour.

4 16. Plaintiff alleged that Defendants’ employees—including Plaintiff, the Class Members,
5 and the Aggrieved Employees (collectively, the “Class Members”)—experienced various violations of
6 California’s wage-and-hour laws.

7 **B. PROCEDURAL SUMMARY**

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

16 18. On September 14, 2023, Plaintiff commenced this action by filing a class action
17 complaint alleging causes of action against Defendants for **(1)** failure to pay minimum wage for all
18 hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order;
19 **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and
20 the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break
21 premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to
22 provide compliant meal periods and pay missed meal period premiums in violation of Labor Code
23 sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate employment
24 records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in
25 violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in
26 violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in
27 violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage
28 statements in violation of Labor Code sections 226 and 226.3; and **(10)** deceptive, fraudulent, or

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

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

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

19 21. Among other key pieces of information, Plaintiff’s counsel requested in its informal
20 discovery letter the wage statements and time records for a statistically significant sample size of Class
21 Members during the Class Period. The Parties agreed on, and Defendants produced, a 33% sampling
22 of randomly-selected employees, which Plaintiff’s counsel determined would provide a statistically
23 significant sample size with a high-degree of confidence for Plaintiff’s expert’s statistical analysis. This
24 sampling included payroll records and timesheets for the Class Members’ shifts during the Class
25 Period. From these records, Plaintiff’s expert was able to carefully craft a damages model for each of
26 the categories of alleged claims for which the data would reflect violations.

27 22. On October 10, 2024, the Parties participated in a full-day mediation with Brandon
28 McKelvey who is a full-time mediator with extensive experience in California wage and hour class

1 action lawsuits. The mediation negotiations were contentious, but the Parties were eventually able to
2 reach the broad terms of an agreement. After further negotiation, the Parties executed the longform
3 Settlement Agreement now before the Court for approval.

4 **III. THE PARTIES VIGOROUSLY DISPUTE THE MERITS OF THE CASE**

5 23. Plaintiff alleges several categories of wage and hour violations on behalf of the Class
6 Members. Plaintiff's primary claims stem from unpaid minimum wages, unpaid overtime wages, and
7 noncompliant rest and meal periods. As used herein for ease of reference to the reader, the term
8 "Plaintiff and the Class" shall refer to Plaintiff and the putative Class Members, and the Aggrieved
9 Employees.

10 24. Defendants have persistently denied all liability of any kind associated with the claims
11 and allegations, and further denied that the Class Members are entitled to any relief. Defendants also
12 deny that these allegations are appropriate for class or representative treatment for any purpose other
13 than the settlement. Defendants maintain, among other things, that they have complied with California
14 laws in all respects.

15 **A. MINIMUM AND OVERTIME WAGE ALLEGATIONS**

16 25. Plaintiff alleged that Defendants required Plaintiff and the Class Members to work off
17 the clock. Specifically, Plaintiff argued that he and the Class Members were required to begin
18 performing work tasks prior to clocking in, and were required to continue work tasks after clocking
19 out. Additionally, Plaintiff and the Class Members were required to perform work during their unpaid
20 meal period, and were therefore not paid for each minute work.

21 26. Defendants categorically denied that they underpaid regular or minimum wages to the
22 Class Members, and further denied that the Class Members' meal periods were recorded inaccurately.
23 Defendants asserted that the Employees recorded all hours worked, without completing any additional
24 off-the-clock work, and that their pay was based precisely on this recorded time. Defendants further
25 argued that any off-the-clock work was *de minimus* such that it would be difficult or impossible to
26 prove, both at trial and for the purposes of class certification.

27 27. Plaintiff alleged that, as a result of the off-the-clock work described above, the
28 Employees incurred unpaid overtime wages because their actual hours worked were not fully reflected

1 on their time sheets. Plaintiff argued that Defendants did not pay Plaintiff and the Class Members one-
2 and one-half times their regular rate of pay for all hours worked over eight in a day or forty in a week.
3 As with Plaintiff's minimum wage claims, Defendants categorically denied that Employees worked
4 off-the-clock at any point and therefore argued that no unpaid overtime had accrued.

5 28. According to Plaintiff's analysis, Plaintiff and the Class Members were underpaid an
6 average of 30 minutes per shift by Defendants. These underpaid hours create potential damages of
7 \$1,766,990.80 for unpaid wages that should have been paid at an overtime rate.

8 29. However, after applying a 50% discount for Defendants' alleged defenses, Defendants'
9 realistic exposure for this claim is **\$883,499.40**.

10 **B. REST PERIOD ALLEGATIONS**

11 30. Plaintiff alleged that Defendants failed to authorize or permit Plaintiff and the Class
12 Members to take duty-free rest periods of no less than ten minutes for every major fraction of four
13 hours worked. Plaintiff alleged that due to the demands of the job, he and the Class Members were
14 regularly required to forgo their rest periods entirely. Additionally, Plaintiff alleged that he and the
15 Class Members were not compensated with one hour's pay at their regular rate when they were not
16 provided a compliant rest break.

17 31. Defendants argued that Plaintiff and Class Members were authorized or permitted to
18 take compliant rest periods. Defendants asserted that no documentary evidence demonstrated that
19 Defendants deprived Plaintiff and Class Members of timely and complete rest periods. Likewise,
20 Defendants argued that Plaintiff would be unable to certify his rest period claims because his theory of
21 recovery is not based on facts common to all putative class members.

22 32. Defendants argued that Plaintiff's rest period claim was not "likely to prove amenable
23 to class treatment." (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.). Thus,
24 whether Class Members missed their rest periods would turn on individualized issues and therefore
25 present significant difficulty in obtaining class certification.

26 33. Based on Plaintiff's expert's analysis, Plaintiff estimates \$580,184.64 in potential
27 exposure for unpaid rest period premiums. However, after applying a 50% discount due to Defendants'
28 alleged defenses, their realistic exposure for this claim is approximately **\$290,092.32**.

1 **C. MEAL PERIOD ALLEGATIONS**

2 34. Plaintiff argued that due to the demands of their jobs, Defendants frequently required
3 Plaintiff and the Class Members to forgo their meal periods altogether. Additionally, Plaintiff argued
4 that when he and the Class Members were provided meal periods, they were on-duty and therefore
5 noncompliant.

6 35. Defendants argued that Plaintiff and Class Members were provided with compliant meal
7 breaks. Defendants further argued that any late or missed meal periods were, at most, sporadic such
8 that even if Plaintiff succeeded in arguing that Defendants did not sufficiently inform their employees
9 of their right to take meal and rest breaks, the resulting inquiries are entirely individual and would
10 overwhelm any class-wide questions.

11 36. From the sampling of records, Plaintiff's expert estimated 38,735 unique meal break
12 violations during the Class Period. These meal break violations collectively create \$776,563.20 in
13 potential exposure, not including PAGA penalties.

14 37. However, after applying a 75% discount due to Defendants' alleged defenses, its
15 realistic exposure for this claim is approximately **\$194,140.80**.

16 **D. WAITING TIME PENALTY ALLEGATIONS**

17 38. Due to the violations described above, Plaintiff alleged that Defendants did not pay all
18 wages due at separation.

19 39. As with Plaintiff's other claims, Defendants argued that the Class Members were fully
20 compensated and that such violations were rare and nominal in value, if they occurred at all. Defendants
21 thus concluded that the Class Members could not claim waiting time penalties because the Class
22 Members had been fully and timely compensated upon discharge. Defendants further argued that
23 waiting time penalties under Labor Code section 203 are only triggered if the violation is determined
24 to be willful. Defendants argued that it attempted to accurately reflect California's legal requirements
25 a short while after beginning to do business in California, and argued that it therefore was acting in
26 good faith. (See *Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 832 F.Supp.2d 1122, 1133 ["a good faith
27 dispute that any wages are due will preclude imposition of waiting time penalties"].) Thus, even if any
28

1 underpayments had occurred, Defendants argued that they were inadvertent, made in good faith, and
2 could not result in waiting time penalties.

3 40. There were 164 terminated employees in the waiting time period. Assuming 30 days per
4 employee at 8.9 hours per day, per employee, Plaintiff estimates \$882,472.60 in potential worst-case
5 liability for waiting time penalties. However, after applying a 75% discount due to Defendants' alleged
6 defenses, their realistic exposure for this claim is approximately **\$220,618.15**.

7 **E. REIMBURSEMENT ALLEGATIONS**

8 41. Plaintiff alleged that, at the direction of Defendants and/or with Defendants' knowledge
9 and acquiescence, he and the Class have used their personal cell phones to communicate with their
10 supervisors to perform necessary work-related duties for Defendants. Plaintiff argued that Defendants
11 required Plaintiff and the Class to shoulder the cost associated with business use of their personal cell
12 phones and personal devices.

13 42. Defendants contended that Plaintiff and the Class Members were not required to use
14 their personal cell phones for work-related purposes, that other communication devices were provided,
15 and this claim was entirely without merit. Defendants also argued that there were multiple
16 individualized liability issues related to the expense reimbursement claims.

17 43. Defendants, relying on *Dugan v. Ashley Furniture Industries, Inc.* (C.D. Cal., Nov. 29,
18 2016, No. SACV161125PAFFMX) 2016 WL 9173459, and *Morgan v. Wet Seal, Inc.* (2012) 210
19 Cal.App.4th 1341, contended that those issues included whether phones were made available, the
20 motivation of each employee who opted to use his or her own cell phone, whether any expenses claimed
21 were necessary or reasonable, and whether individual Class Members chose not to seek reimbursement.

22 44. Plaintiff conservatively estimates \$5.00 in unreimbursed business-related cell phone use
23 per employee per workweek. This creates \$126,330.00 in liability for unreimbursed business expenses.

24 **F. WAGE STATEMENT ALLEGATIONS**

25 45. Plaintiff alleged that, by virtue of the allegations that Defendants failed to properly pay
26 the Class Members their wages as described above, Defendants had likewise failed to provide the Class
27 Members with compliant wage statements reflecting their gross wages earned and their net wages
28 earned.

1 46. As with Plaintiff's other claims, Defendants argued that the Class Members were fully
2 compensated and that such violations were rare and nominal in value, if they occurred at all. Defendants
3 thus concluded that Plaintiff could not claim wage statement penalties because there were no wage
4 statement violations.

5 47. Defendants further argued that purely derivative wage statement claims could not
6 support a cause of action for wage statement penalties. In *Maldonado v. Epsilon Plastics, Inc.* (2018)
7 22 Cal.App.5th 1308, 1334–1337, the appellate court held that inaccurate wage statements alone based
8 on derivative Labor Code violations do not justify penalties. Rather, the plaintiff must establish injury
9 from the inaccuracy and independent inaccuracies different from underpayments or derivative claims.
10 Defendants further argued that Plaintiff would be unable to prove “injury” for purposes of recovering
11 penalties under Labor Code section 226, subdivision (e).

12 48. In terms of Defendants' exposure for this claim, Plaintiff estimated 7,545 pay periods
13 in the wage statement period. Defendants' estimated exposure is \$595,950 using \$50.00 for the first
14 violation and \$100.00 for subsequent violations, with a \$4,000.00 per employee maximum.

15 49. However, after applying a 50% discount due to Defendants' alleged defenses, their
16 realistic exposure for this claim is approximately **\$297,975.00**. (*Id.*)

17 **G. FAILURE TO MAINTAIN ACCURATE RECORDS ALLEGATIONS**

18 50. Labor Code section 1174 states, “[e]very person employing labor in this state shall...
19 [k]eep, at a central location in the state or at the plants or establishments at which employees are
20 employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees
21 employed at the respective plants or establishments.” The “Records” section of the applicable IWC
22 Wage Order states that every employer shall keep accurate information with respect to each one of its
23 employees, including time records showing when the employee begins and ends each work period and
24 meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid
25 each payroll period.

26 51. Further, Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's
27 failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty
28

1 of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section
2 2699 for a violation of Labor Code section 1174(d).

3 52. Here, Plaintiff argued that Defendants violated these requirements by failing to
4 accurately record employee hours worked including, but not limited to, Defendants' failure to record
5 the proper beginning and end of each work period and each meal period taken, the applicable rates of
6 pay, and the wages paid. Under Labor Code section 1174.5, Defendants' estimated exposure is
7 \$147,500.00. However, after applying a 50% discount due to Defendants' alleged defenses, their
8 realistic exposure for this claim is approximately **\$73,750.00**.

9 **H. UNTIMELY WAGES DURING EMPLOYMENT ALLEGATIONS**

10 53. Labor Code § 204 expressly requires employers who pay employees on a weekly,
11 biweekly, or semimonthly basis to pay all wages "not more than seven calendar days following the
12 close of the payroll period."

13 54. Here, Plaintiff alleged that due to Defendants' failure to pay to Plaintiff and the Class
14 minimum wage and overtime compensation and meal and rest period premiums as described above,
15 Defendants failed to timely pay their employees within seven calendar days following the close of
16 payroll in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden*
17 *State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016)
18 (finding after *Ling vs. P.F. Chang's China Bistro, Inc.* that a failure to pay rest period premiums can
19 support claims under Labor Code §§ 203 and 204).

20 55. Due to Defendants' faulty policies described above, Plaintiff argued that he and the
21 Class whose employment with Defendants concluded were not compensated for each and every hour
22 worked or at the appropriate rate. Based on 174 estimated employees in the waiting time penalty period,
23 Defendants' estimated exposure is \$696,000.00 for this claim. However, after applying a 50% discount
24 due to Defendants' alleged defenses, their realistic exposure for this claim is approximately
25 **\$348,000.00**.

26 **I. UNFAIR COMPETITION ALLEGATIONS**

27 56. Plaintiff alleged that, by virtue of the allegations that Defendants failed to properly pay
28 the Class Members their wages as described above, Defendants were liable for restitution in the same

1 amount of the unlawfully withheld wages described above. Because the relief sought under Plaintiff's
2 UCL claims—namely, in the form of restitution for unpaid wages—was coterminous with Plaintiff's
3 other claims, Plaintiff's UCL allegations did not materially change Plaintiff's analysis of Defendants'
4 exposure.

5 **J. PAGA ALLEGATIONS**

6 57. In ascertaining Defendants' exposure for this claim, Plaintiff considered several
7 important cases. First, courts to consider the issue have refused to “stack” PAGA penalties, severely
8 limiting the recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th
9 504, 529 [approving PAGA penalty reduction to \$5 per pay period]; accord *Atempa v. Pedrazzani*
10 (2018) 27 Cal.App.5th 809.)

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

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

27 60. There are 10,986 total PAGA pay periods. At \$100.00 per pay period, this results in
28 **\$1,098,600.00** in liability *without stacking*. However, after Plaintiff calculated Defendants' realistic

1 exposure at \$25.00 per pay period due to Defendants’ alleged defenses, resulting in **\$274,650.00** in
2 realistic exposure. The allocation of \$20,000 to PAGA in the Settlement Agreement is fair to those
3 affected because it is a reasonable recovery of Defendant’s realistic exposure. Under *Moniz v. Adecco*
4 *USA, Inc.* (2021) 72 Cal.App.5th 56, 75-77, this Court must determine whether the allocation is “is
5 fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
6 deter future ones, and to maximize enforcement of state labor laws.”

7 **IV. THE SETTLEMENT ACHIEVED IS FAIR AND REASONABLE**

8 61. In coming to a determination that this settlement is fair and reasonable and in the best
9 interests of the Class, Plaintiff took the following factors into consideration: First, Plaintiff recognized
10 that certification of the meal and rest break claims may prove challenging given Defendants’ defense
11 that individualized inquiries would predominate. Plaintiff ascribed a realistic settlement value of these
12 claims at 25–50% of the maximum value given the risks of (1) not certifying the class, and (2) not
13 being able to establish (if the class is certified) damages on a classwide basis. Second, Plaintiff
14 considered the possibility a *Pick Up Stix* strategy, whereby Defendants could enter into individual
15 settlement agreements with each of the Class Members. Plaintiff had to take this very real risk into
16 account. Third, Plaintiff took into account that this Court may not find the requisite willfulness to award
17 penalties, and that this Court may exercise its discretion to reduce (or perhaps not award any) PAGA
18 penalties.

19 62. Defendants also asserted that any violations of the Labor Code were unintentional, and
20 that Plaintiff would have difficulty proving willfulness or intentionality for penalty purposes, including
21 claims for civil penalties under PAGA and claims for waiting time penalties. Defendants further argued
22 that Plaintiff would be unable to prove “injury” for purposes of recovering penalties under Labor Code
23 226(e).

24 63. As explained above, the issues in this case were hotly contested—both legally and
25 factually. While Plaintiff continues to believe in the merits of the case, Defendants argued that they
26 fully complied with California’s wage and hour laws, and thus faced minimal exposure, if any.
27 Therefore, the Gross Settlement Amount of \$328,500.00 is an excellent result and within the zone of
28 reasonableness for all parties. If preliminary approval is granted, Plaintiff will have recovered a

1 significant portion of the estimated settlement value for the Class Members in this case—a fair
2 compromise of the claims, by any measure.

3 64. The Gross Settlement Amount in the Settlement Agreement was reached only after the
4 case was thoroughly investigated by Plaintiff's counsel. As explained above, Plaintiff's reviewed,
5 among other key pieces of information, the records of a 33% sampling of randomly-selected
6 employees, which Plaintiff's counsel determined would provide a statistically significant sample size
7 with a high-degree of confidence for Plaintiff's expert's statistical analysis. This sampling included
8 payroll records and timesheets for the Class Members' shifts during the Class Period. Plaintiff's
9 counsel also conducted a detailed examination of Defendants' relevant policies to inform Plaintiff's
10 counsel's analysis of Defendants' potential exposure. From these records, Plaintiff's expert was able
11 to carefully craft a damages model for each of the categories of alleged claims for which the data would
12 reflect violations. In total, Plaintiff's counsel and Plaintiff's expert reviewed thousands of pages of
13 documents prior to agreeing to settle the case.

14 65. These documents, along with the other investigation and discovery described above,
15 were sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and
16 determining that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48
17 Cal.App.4th 1794, 1802.) Indeed, after a thorough review of all available evidence in the case,
18 Plaintiff's counsel have concluded that the Gross Settlement Amount represents an excellent result for
19 the Class.

20 66. The Settlement Agreement was negotiated at arm's length between counsel using a
21 professional and well-respected third-party neutral. Counsel for both parties were thoroughly familiar
22 with the complex legal and factual questions at issue in this litigation. The Settlement Agreement is a
23 product of intensive negotiations, supported by investigation and direct exchanges of information
24 through informal discovery, during the course of settlement negotiations, including a full-day
25 mediation. Although Plaintiff and his counsel believed the class claims had merit and there was a
26 possibility of certifying the class and claims, they recognized the potential risk, expense, and
27 complexity posed by litigation, such as unfavorable decisions on class certification, summary
28 judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years

1 to litigate. The resulting Settlement Agreement was based on calculations, risk assessment, and non-
2 collusive negotiation. It takes the risks identified above and others into account in arriving at the non-
3 reversionary Gross Settlement Amount.

4 67. Counsel for the Parties spent months prior to the mediation developing the factual record
5 for this case, engaging in informal discovery and exchanges of documents and information, and drafting
6 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and
7 weaknesses of their respective positions at the mediation and during subsequent settlement
8 negotiations. The Parties and their counsel attended a full-day mediation session before an experienced
9 and well-respected mediator which resulted in the resolution of the case on a class and representative
10 basis. Brandon McKelvey is a nationally recognized mediator of complex class actions and
11 employment matters.

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

19 69. Defendants had strong defenses to Plaintiff's claims, which created a real possibility
20 that the claims might not be certified or might fail on the merits. Proceeding with litigation would
21 impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time
22 and resources. If settlement were not achieved, continued litigation of the claims would take a
23 substantial amount time and possibly confer no benefit on Class Members. By contrast, the settlement
24 will yield a prompt, certain, and substantial recovery for the Class Members, which also benefits the
25 Parties and the Court. In considering these risks, the choice was overwhelmingly in favor of settlement.

26 70. The Settlement Agreement represents a fair compromise given the risks and
27 uncertainties presented by continued litigation. Defendants asserted and would have continued to assert
28 legal and factual grounds to defend against this action, including factual and legal defenses on the

1 merits. Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the
2 Settlement Agreement ensures timely relief and substantial recovery of the Defendants' realistic
3 exposure.

4 71. Plaintiff's counsel are experienced in wage-and-hour class actions. Numerous state and
5 federal courts have certified Mr. Melmed as adequate and competent class counsel in wage and hour
6 class actions. Mr. Melmed devotes the vast majority of his law practice to plaintiff-side class and
7 representative employment-law cases.

8 72. The Parties' counsel agree that this settlement is fair, adequate, and reasonable in light
9 of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state
10 of the law, and uncertainties of class certification and litigation. Given the risks inherent in litigation
11 and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of
12 Class Members and should be preliminarily approved. The Settlement Agreement is also consistent
13 with other settlements that received approval of the Courts.

14 73. Experienced counsel, operating at arm's length, have weighed the strengths and risks of
15 the case, and endorse the proposed settlement. The view of the attorneys actively conducting the
16 litigation is entitled to significant weight in deciding whether to approve the settlement.

17 **V. SELECTION OF THE SETTLEMENT ADMINISTRATOR.**

18 74. Plaintiff, through counsel, has obtained bids from several settlement administration
19 companies for the settlement administration of this case. Of those, Xpand Legal presented the most
20 qualified and agreeable bid. Accordingly, Plaintiff proposes to use Xpand Legal as the settlement
21 administrator. (Settlement Agreement, at ¶ 8.1.) The settlement administrator will be responsible for
22 processing the settlement payments and providing notice to the Class Members as outlined in the
23 Settlement Agreement. (Settlement Agreement, at ¶ 8.4.)

24 **VI. PLAINTIFF IS AN ADEQUATE CLASS REPRESENTATIVE AND THE INCENTIVE**
25 **AWARD IS FAIR AND APPROPRIATE**

26 75. Plaintiff is adequate as a class representative because he is a member of the Class,
27 experienced the same wage and hour practices as the rest of the Class, is committed to representing the
28 interests of the Class, has no interests that are adverse to members of the Class, and understands and

1 accepts his duty to represent the best interests of the Class. Plaintiff is committed to the Class and is
2 adequate to represent the interests of the Class in this litigation. (Damon Newquist Decl., ¶ 5.)

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

7 77. Plaintiff is represented by counsel experienced in the litigation of wage and hour class
8 actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this action,
9 and who have the financial resources to handle this case.

10 78. Plaintiff will request payment of a service award from the Gross Settlement Amount of
11 up to \$7,500.00 in addition to whatever payment he is otherwise entitled to receive as a Class Member.
12 (Settlement Agreement, at ¶ 3.2.1.) The proposed service award is reasonable compensation given the
13 time and effort that Plaintiff devoted to this case, the valuable assistance he provided to counsel, and
14 the fact that he entered into a general release of claims that is broader than the release of the Class.
15 (Settlement Agreement, at ¶ 6.3; Newquist Decl., ¶ 11.)

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

23 **VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT**
24 **AGREEMENT IS FAIR**

25 80. In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees
26 of up to one-third of the Gross Settlement Amount, (i.e., \$109,500.00), plus reimbursement of litigation
27 expenses and costs of up to 20,000.00. (Settlement Agreement, at ¶ 3.2.2.) As the California Supreme
28 Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to

1 award as attorneys' fees in a class action where a common fund was generated as a result of the case.
2 (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion
3 where trial court approved a fee request of one-third of the common fund].) The California Supreme
4 Court further clarified that trial courts "have discretion to conduct a lodestar cross check on a
5 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and
6 use other means to evaluate the reasonableness of a requested percentage fee." (*Ibid.*)

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

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

24 **VIII. SUBMISSION TO THE LWDA**

25 83. The Settlement Agreement and this motion are concurrently being submitted to the
26 LWDA in accordance with Labor Code section 2699, subdivision (1)(2). The proof of electronic
27 submission is attached hereto as **Exhibit D**.
28

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2 I declare under penalty of perjury under the laws of the State of California that all the
3 foregoing is true and correct. Executed on March 17, 2025, in California.
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5 Dated: March 17, 2025
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9 **JONATHAN MELMED**
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