

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Laura Supanich (SBN 314805)

lms@melmedlaw.com

Hannah Becker (SBN 345452)

hb@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 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

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

*[Declarations of Jonathan Melmed, Damon
Newquist, and [Proposed] Order filed
concurrently herewith]*

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

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

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

3 **PLEASE TAKE NOTICE** that on April 9, 2025, at 8:30 a.m., or as soon thereafter as the
4 matter may be heard, in Department S33 of the San Bernardino County Superior Court for the State of
5 California, located at 247 W. Third Street, San Bernardino, California 92415, before the Honorable
6 Stephanie J. Tanada, Plaintiff Damon Newquist (“Plaintiff”), on behalf of himself, the State of
7 California, as a private attorneys general, and on behalf of all others similarly situated, will and hereby
8 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, Laura Supanich, and Hannah Becker of
13 Melmed 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’ *Class Action and PAGA Settlement Agreement and Class Notice* (the
16 “Settlement Agreement”), including payment by Defendants Leggett & Platt, Incorporated, and L&P
17 Financial Services Co. (“Defendants”) of the non-reversionary gross settlement amount of
18 \$328,500.00, including a credit of \$54,000.00 already paid, (“Gross Settlement Amount”), plus the
19 employers’ side payroll taxes;

20 5. Preliminarily approving payment of reasonable attorneys’ fees from the Gross
21 Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to
22 \$109,500.00), plus necessary litigation costs not to exceed \$20,000.00;

23 6. Preliminarily approving a class representative service payment in an amount of up to
24 \$7,500.00 for Plaintiff Damon Newquist from the Gross Settlement Amount to compensate him for the
25 responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

26 7. Preliminarily approving the allocation of \$20,000.00 for penalties pursuant to the
27 California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$15,000.00) shall
28

1 be paid to the California Labor and Workforce Development Agency (“LWDA”) from the Gross
2 Settlement Amount, with the remaining 25% (i.e., \$5,000.00) payable to the aggrieved employees;

3 8. Appointing Xpand Legal (the “Settlement Administrator”) as the settlement
4 administrator to handle the notice and administration process and preliminarily approving settlement
5 administration costs estimated to be \$9,500.00;

6 9. Approving the proposed Notice of Class Action Settlement and Hearing Date for Final
7 Court Approval (“Class Notice”) and ordering it be disseminated to the class members as provided in
8 the Settlement Agreement;

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

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

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

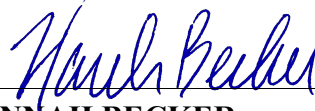
14 13. Granting Plaintiff leave to file the overlength brief included with this motion.

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

21 Lastly, given the multiplicity of issues addressed in this Motion, and because this Motion is
22 unopposed, Plaintiff believes that there is good cause to exceed the page limit set forth in California
23 Rule of Court 3.764(c)(2), and respectfully requests that the Court consider Plaintiff’s memorandum
24 of points and authorities, which exceeds the statutory page limit.

1 Dated: March 17, 2025

MELMED LAW GROUP P.C.

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4 **HANNAH BECKER**

5 Attorney for Plaintiff, the Putative Class, and the
6 Aggrieved Employees
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND.....	3
A.	The Parties	3
B.	Procedural Summary	3
III.	SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE.....	5
A.	Minimum and overtime Wage Allegations.....	6
B.	Rest Period Allegations	7
C.	Meal Period Allegations	9
D.	Waiting Time Penalty Allegations	10
E.	Reimbursement Allegations.....	11
F.	Wage Statement Allegations.....	12
G.	FAILURE TO MAINTAIN ACCURATE RECORDS ALLEGATIONS.....	13
H.	UNTIMELY WAGES DURING EMPLOYMENT ALLEGATIONS	13
I.	Unfair Competition Allegations	14
J.	PAGA Allegations.....	14
IV.	SUMMARY OF THE PROPOSED SETTLEMENT	16
A.	Reasonableness of the Gross Settlement Amount.....	16
B.	Settlement Consideration and Allocation.....	18
C.	The Release.....	18
D.	Settlement Allocation Formula	19
E.	Selection of the Settlement Administrator	20
F.	Notice Procedures	20
G.	Timing of Settlement Disbursements.....	22
H.	<i>Cy Pres</i> Distribution	23
I.	Tax Treatment	23
V.	THE CLASS SHOULD BE PRELIMINARILY CERTIFIED	23

1	A.	The Lesser Standard of Scrutiny for Settlement-only Consideration is	
2		appropriate.....	23
3	B.	The Proposed Class is Numerous and Ascertainable.....	24
4	C.	Members of the Proposed Class Share a Well-Defined Community of Interest ..	24
5	1.	<i>Commonality</i>	24
6	2.	<i>Typicality</i>	25
7	3.	<i>Adequacy of Representation</i>	25
8	4.	<i>Superiority</i>	26
9	5.	<i>Predominance</i>	26
10	VI.	PRELIMINARY APPROVAL SHOULD BE GRANTED.....	26
11	A.	The Settlement is the Result of Serious, Informed, and Non-Collusive	
12		negotiations	26
13	B.	The Discovery and Investigations were Extensive.....	27
14	C.	The Risks Inherent in Continued Litigation Are Great.....	27
15	D.	The Settlement Is a Reasonable Compromise of Claims	28
16	E.	Plaintiff’s Counsel Are Experienced in Similar Wage-And-Hour Litigation	28
17	F.	The Class Notice Plan Conforms to All Applicable Statutes and Rules	29
18	VII.	THE ATTORNEYS’ FEE ALLOCATION UNDER THE SETTLEMENT	
19		AGREEMENT IS FAIR	30
20	VIII.	THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE	
21			31
22	IX.	SUBMISSION TO THE LWDA	32
23	X.	CONCLUSION	32

TABLE OF AUTHORITIES

CASES

<i>Alonzo v. Maximus, Inc.</i> (C.D. Cal. 2011) 832 F.Supp.2d 1122	11
<i>Alvarado v. Dart Container Corp. of California</i> (2018) 4 Cal.5th 542	7, 9
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	14
<i>Amchem Products, Inc. v. Windsor</i> (1997) 521 U.S. 591	21
<i>Archibald v. Cinerama Hotels</i> (1976) 15 Cal.3d 853	27
<i>Arenas v. El Torito Restaurants, Inc.</i> (2010) 183 Cal.App.4th 723	22
<i>Armenta v. Osmose, Inc.</i> (2005) 135 Cal.App.4th 314	6
<i>Atempa v. Pedrazzani</i> (2018) 27 Cal.App.5th 809	14
<i>Augustus v. ABM Security Services, Inc.</i> (2016) 2 Cal.5th 257	8
<i>Barboza v. West Coast Digital GSM, Inc.</i> (2009) 179 Cal.App.4th 540	23
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879	29
<i>Brinker Rest. Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	9
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	14, 15
<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	13
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	16, 21, 25
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15 aff'd (9th Cir. 1981) 661 F.2d 939	26
<i>Ferra v. Loews Hollywood Hotel, LLC</i> (2021) 11 Cal.5th 858	8, 9
<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	29
<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	29
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	6, 26

1	<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480	27
2	<i>Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> (9th Cir. 2001)	
3	244 F.3d 1152	23
4	<i>Louie v. Kaiser Found. Health Plan, Inc.</i> (S.D. Cal. Oct. 6, 2008) No. 08cv0795 IEG RBB, 2008 U.S.	
5	Dist. LEXIS 78314	29
6	<i>Maldonado v. Epsilon Plastics, Inc.</i> (2018) 22 Cal.App.5th 1308.....	13
7	<i>Mamika v. Barca</i> (1998) 68 Cal.App.4th 487	10
8	<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW)	
9	2008 WL 5478576.....	28
10	<i>Martinez v. Joe’s Crab Shack Holdings</i> (2014) 231 Cal.App.4th 362.....	22
11	<i>Medrazo v. Honda of North Hollywood</i> (2008) 166 Cal.App.4th 89	22
12	<i>Munoz v. BCI CocaCola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	6
13	<i>Officers for Justice v. Civil Service Com’n of City and County of San Francisco</i> (9th Cir. 1982) 688	
14	F.2d 615	21
15	<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL	
16	3492841	28
17	<i>Ross v. US Bank National Association</i> (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL	
18	3833922	29
19	<i>Seastrom v. Neways, Inc.</i> (2007) 149 Cal.App.4th 1496.....	22
20	<i>See’s Candy Shops v. Superior Court</i> (2012) 210 Cal. App. 4th 889, 907	7
21	<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL	
22	2196104	28
23	<i>Stuart v. RadioShack Corp.</i> (N.D. Cal. 2009) 641 F.Supp.2d 901	11, 28
24	<i>Sullivan v. Oracle Corp.</i> (2011) 51 Cal.4th 1191.....	13
25	<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 482	29
26	<i>West v. Circle K Stores, Inc.</i> (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S.	
27	Dist. LEXIS 76558	29
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Motion seeks preliminary approval of a wage-and-hour class action settlement between
4 Plaintiff Damon Newquist (“Plaintiff”) and Defendants Leggett & Platt, Incorporated and L&P
5 Financial Services Co. (“Defendants”) (collectively, the “Parties”) for the Gross Settlement Amount of
6 \$328,500.00, including a credit of \$54,000.00 already paid, to be distributed to approximately 349
7 individuals defined as: “all individuals who are or were employed by Defendants as non-exempt
8 employees in California from September 14, 2019, through December 17, 2024.”

9 These employees are referred to herein individually as the “Class Members” or collectively as
10 the “Class.” The “Class Period” for these purposes is defined as the period from September 14, 2019,
11 through December 17, 2024. A true and correct copy of the Settlement Agreement is attached as
12 **Exhibit A** to the concurrently filed *Declaration of Jonathan Melmed in Support of Plaintiff’s Motion*
13 *for Preliminary Approval of Class Action Settlement* (“Declaration of Jonathan Melmed” or “Melmed
14 Decl.”). The Settlement Agreement, in its entirety, is incorporated herein by reference.

15 Plaintiff also represents a group of approximately 159 aggrieved employees on behalf of the
16 State of California as a private attorney general pursuant to the California Labor Code Private Attorneys
17 General Act of 2004, Labor Code sections 2698 through 2699.6 (“PAGA”). The “PAGA Period” for
18 these purposes is defined as the period from September 14, 2022, through December 17, 2024 of the
19 settlement. The “Aggrieved Employees,” for these purposes, are defined as: “all individuals who are
20 or were employed by Defendants as non-exempt employees in California during the PAGA Period.”

21 The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross
22 Settlement Amount will revert to Defendant. (Settlement Agreement, at ¶ 3.1.) Class Members are not
23 required to submit a claim form to receive their settlement share. (Settlement Agreement, at ¶ 3.1.) The
24 applicable employer-side payroll taxes are to be paid by Defendants outside the Gross Settlement
25 Amount. (Settlement Agreement, at ¶ 3.1.)

26 Because the settlement is fair and reasonable, was negotiated at arm’s length between counsel
27 following extensive investigation and discovery, was reached after participation in a full-day
28 mediation, it should be preliminarily approved. (Melmed Decl., ¶ 6.) Subject to court approval, the

“Net Settlement Amount” of at least \$113,000.00, will be distributed to Class Members who do not request exclusion from the settlement and the Aggrieved Employees. The average payment to each Class Member will be \$323.00. The Administrator has not yet calculated the highest and lowest payments.

Gross Settlement Amount	\$328,500.00
Attorneys’ Fees	(up to \$109,500.00)
Litigation Costs	(up to \$20,000.00)
Settlement Administration Costs	(up to \$9,500.00)
Service Award to Plaintiff	(up to \$7,500.00)
PAGA Payment to LWDA	(\$15,000.00)
Credit Already Paid	(\$54,000.00)
Net Settlement Amount	\$113,000.00

This settlement is an excellent result considering the number of Class Members affected. Because the Settlement is well within the zone of reasonableness, Plaintiff requests entry of an order: (1) preliminarily certifying the Settlement Class under California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769(c), for settlement purposes and preliminarily approving the settlement; (2) preliminarily appointing Plaintiff as class representative for purposes of settlement; (3) preliminarily appointing Plaintiff’s counsel as class counsel for the purposes of settlement; (4) preliminarily approving the settlement as fair, adequate, and reasonable; (5) preliminarily approving the proposed deductions from the Gross Settlement Amount, including the proposed allocation of PAGA penalties, the attorneys’ fees, litigation costs, service award to the named Plaintiff, and administration costs; (6) approving the proposed class notice attached as Exhibit 1 to the Settlement Agreement (“Class Notice”), to be distributed to Class Members pursuant to the Settlement Agreement; (7) appointing Xpand Legal to administer the settlement (“Settlement Administrator”) and directing the Settlement Administrator to distribute the Class Notice; and (8) scheduling a hearing for final approval after the completion of the settlement notice process.

1 **II. BACKGROUND**

2 **A. THE PARTIES**

3 Defendants produce and manufacture carpet padding and other floor underlayment products.
4 (Melmed Decl., ¶ 14.) On information and belief, Defendants operated in San Bernardino County,
5 California. Defendants employed non-exempt workers during the Class Period and PAGA Period. (*Id.*)

6 Plaintiff Damon Newquist was employed by Defendants in Ontario, California, primarily as a
7 maintenance apprentice (Melmed Decl., ¶ 15.) Plaintiff was employed from approximately August 12,
8 2019, to December 14, 2022. (*Id.*) Plaintiff was paid approximately \$30.00 per hour. (*Id.*)

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

12 **B. PROCEDURAL SUMMARY**

13 On September 14, 2023, Plaintiff submitted a letter to the California Labor and Workforce
14 Development Agency (“LWDA”) to notify the LWDA, pursuant to PAGA, of Plaintiff’s intent to seek
15 civil penalties against Defendants for violations of Labor Code sections 201, 202, 203, 204, 210, 226,
16 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804,
17 and others that may be applicable; and California Industrial Welfare Commission (“IWC”) Wage Order
18 4-2001 (the “Applicable Wage Order”). (Cal. Code of Regs., tit. 8, § 11040; Melmed Decl., ¶ 17.) The
19 letter attached Plaintiff’s original complaint, and incorporated the original complaint by reference, and
20 thus sought penalties for claims identical to those alleged in the case.

21 On September 14, 2023, Plaintiff commenced this action by filing a class action complaint
22 alleging causes of action against Defendants for **(1)** failure to pay minimum wage for all hours worked
23 in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to
24 pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable
25 Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in
26 violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant
27 meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512,
28 and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of

1 Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor
2 Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor
3 Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code
4 sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of
5 Labor Code sections 226 and 226.3; and **(10)** deceptive, fraudulent, or otherwise unlawful business
6 practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof.
7 Code, §§ 17200–17210). (Melmed Decl., ¶ 18.)

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

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

25 Among other key pieces of information, Plaintiff’s counsel requested in its informal discovery
26 letter the wage statements and time records for a statistically significant sample size of Class Members
27 during the Class Period. (Melmed Decl., ¶ 21.) The Parties agreed on, and Defendants produced, a 33%
28 sampling of randomly-selected employees, which Plaintiff’s counsel determined would provide a

1 statistically significant sample size with a high-degree of confidence for Plaintiff's expert's statistical
2 analysis. (*Id.*) This sampling included payroll records and timesheets for the Class Members' shifts
3 during the Class Period. (*Id.*) From these records, Plaintiff's expert was able to carefully craft a
4 damages model for each of the categories of alleged claims for which the data would reflect violations.
5 (*Id.*)

6 On October 10, 2024, the Parties participated in a full-day mediation with Brandon McKelvey
7 who is a full-time mediator with extensive experience in California wage and hour class action lawsuits.
8 (Melmed Decl., ¶ 22.) The mediation negotiations were contentious, but the Parties were eventually
9 able to reach the broad terms of an agreement. After further negotiation, the Parties executed the
10 longform Settlement Agreement now before the Court for approval. (*Id.*)

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

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

13 Plaintiff alleges several categories of wage and hour violations on behalf of the Class Members.
14 Plaintiff's primary claims stem from unpaid minimum wages, unpaid overtime wages, and
15 noncompliant rest and meal periods. As used herein for ease of reference to the reader, the term
16 "Plaintiff and the Class" shall refer to Plaintiff and the putative Class Members, and the Aggrieved
17 Employees. (Melmed Decl., ¶ 23.)

18 Defendants have persistently denied all liability of any kind associated with the claims and
19 allegations, and further denied that the Class Members are entitled to any relief. (Melmed Decl., ¶ 24.)
20 Defendants also deny that these allegations are appropriate for class or representative treatment for any
21 purpose other than the settlement. (*Id.*) Defendants maintain, among other things, that they have
22 complied with California laws in all respects. (*Id.*)

23 A summary of the legal and factual basis for each claim, the applicable defenses, and the
24 potential damages are summarized in more detail below. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
25 Cal.App.4th 116, 133; *Munoz v. BCI CocaCola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
26 399, 409.)

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

2 Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by
3 the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section
4 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a civil action
5 the unpaid balance of the full amount of this minimum wage.” (See also Lab. Code, §§ 1185 [giving
6 the Applicable Wage Order the force of law], 1198 [same].) Labor Code sections 1194, subdivision
7 (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal
8 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as
9 liquidated damages in an amount equal to the wages due and interest thereon. (See also Lab. Code, §§
10 1197.1, 1199.) Liquidated damages under this provision, however, may not be applicable where the
11 employer acted in good faith and “had reasonable grounds for believing that the act or omission was
12 not a violation of any provision of the Labor Code relating to minimum wage, or an order of the
13 commission.” (Lab. Code, § 1194.2, subd. (b).)

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

18 Labor Code section 510 requires an employer to compensate an employee who works more
19 than eight hours in one workday, 40 hours in a workweek, and for the first eight hours worked on the
20 seventh consecutive day no less than one and one-half times the regular rate of pay for the employee.
21 It further obligates employers to compensate employees at no less than twice the regular rate of pay
22 when an employee works more than 12 hours in a day or more than eight hours on the seventh
23 consecutive day of work. The “regular rate of pay” for these purposes is not the same as the employee’s
24 base hourly rate, but rather it must include “adjustments to the straight time rate, reflecting, among
25 other things, shift differentials and the per-hour value of any nonhourly compensation the employee
26 has earned.” (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

27 Plaintiff alleged that Defendants required Plaintiff and the Class Members to work off the clock.
28 (Melmed Decl., ¶ 25.) Specifically, Plaintiff argued that he and the Class Members were required to

1 begin performing work tasks prior to clocking in, and were required to continue work tasks after
2 clocking out. (Melmed Decl., ¶ 25.) Additionally, Plaintiff and the Class Members were required to
3 perform work during their unpaid meal period, and were therefore not paid for each minute work.
4 (Melmed Decl., ¶ 25.)

5 Defendants categorically denied that they underpaid regular or minimum wages to the Class
6 Members, and further denied that the Class Members' meal periods were recorded inaccurately.
7 (Melmed Decl., ¶ 26.) Defendants asserted that the Employees recorded all hours worked, without
8 completing any additional off-the-clock work, and that their pay was based precisely on this recorded
9 time. (*Id.*) Defendants further argued that any off-the-clock work was *de minimus* such that it would be
10 difficult or impossible to prove, both at trial and for the purposes of class certification. (*Id.*)

11 Plaintiff alleged that, as a result of the off-the-clock work described above, the Employees
12 incurred unpaid overtime wages because their actual hours worked were not fully reflected on their
13 time sheets. (Melmed Decl., ¶ 27.) Plaintiff argued that Defendants did not pay Plaintiff and the Class
14 Members one- and one-half times their regular rate of pay for all hours worked over eight in a day or
15 forty in a week. (*Id.*) As with Plaintiff's minimum wage claims, Defendants categorically denied that
16 Employees worked off-the-clock at any point and therefore argued that no unpaid overtime had
17 accrued. (*Id.*)

18 According to Plaintiff's analysis, Plaintiff and the Class Members were underpaid an average
19 of 30 minutes per shift by Defendants. (Melmed Decl., ¶ 28.) These underpaid hours create potential
20 damages of \$1,766,990.80 for unpaid wages that should have been paid at an overtime rate. (*Id.*)
21 However, after applying a 50% discount for Defendants' alleged defenses, Defendants' realistic
22 exposure for this claim is **\$883,499.40**. (Melmed Decl., ¶ 29.)

23 **B. REST PERIOD ALLEGATIONS**

24 Under Labor Code section 226.7 and the Applicable Wage Order, employers are required to
25 provide their non-exempt employees with compensated, duty-free rest periods of not less than ten
26 minutes for every major fraction of four hours worked. Likewise, Labor Code section 226.7 provides
27 that "[a]n employer shall not require an employee to work during a meal or rest or recovery period
28

1 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial
2 Welfare Commission” (Lab. Code, § 226.7, subd. (b).)

3 Labor Code section 226.7 also provides that employers must pay their employees one additional
4 hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery period is
5 not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes is synonymous
6 with the “regular rate” in the overtime context, which means that it must include “adjustments to the
7 straight time rate, reflecting, among other things, shift differentials and the per-hour value of any
8 nonhourly compensation the employee has earned.” (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
9 Cal.5th 858, 869; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

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

15 Here, Plaintiff alleged that Defendants failed to authorize or permit Plaintiff and the Class
16 Members to take duty-free rest periods of no less than ten minutes for every major fraction of four
17 hours worked. (Melmed Decl., ¶ 30.) Plaintiff alleged that due to the demands of the job, he and the
18 Class Members were regularly required to forgo their rest periods entirely. (*Id.*) Additionally, Plaintiff
19 alleged that he and the Class Members were not compensated with one hour’s pay at their regular rate
20 when they were not provided a compliant rest break. (*Id.*)

21 Defendants argued that Plaintiff and Class Members were authorized or permitted to take
22 compliant rest periods. (Melmed Decl., ¶ 31.) Defendants asserted that no documentary evidence
23 demonstrated that Defendants deprived Plaintiff and Class Members of timely and complete rest
24 periods. (*Id.*) Likewise, Defendants argued that Plaintiff would be unable to certify his rest period
25 claims because his theory of recovery is not based on facts common to all putative class members. (*Id.*)
26 Defendants argued that Plaintiff’s rest period claim was not “likely to prove amenable to class
27 treatment.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.). Thus, whether
28

1 Class Members missed their rest periods would turn on individualized issues and therefore present
2 significant difficulty in obtaining class certification. (Melmed Decl., ¶ 32.)

3 Based on Plaintiff's expert's analysis, Plaintiff estimates \$580,184.64 in potential exposure for
4 unpaid rest period premiums. (Melmed Decl., ¶ 33.) However, after applying a 50% discount due to
5 Defendants' alleged defenses, their realistic exposure for this claim is approximately **\$290,092.32**. (*Id.*)

6 **C. MEAL PERIOD ALLEGATIONS**

7 Employers are required to provide their nonexempt employees with a thirty-minute
8 uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd.
9 (a).) Additionally, an employee who works more than ten hours per day is entitled to receive a second
10 thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a).)

11 Labor Code section 226.7 provides that employers must pay their employees one additional
12 hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is
13 not provided." (Lab. Code, § 226.7, subd. (c).) The "regular rate" for these purposes is synonymous
14 with the "regular rate" in the overtime context, which means that it must include "adjustments to the
15 straight time rate, reflecting, among other things, shift differentials and the per-hour value of any
16 nonhourly compensation the employee has earned." (*Ferra, supra*, 11 Cal.5th at p. 869 ; *Alvarado,*
17 *supra*, 4 Cal.5th at p. 554.)

18 Plaintiff argued that due to the demands of their jobs, Defendants frequently required Plaintiff
19 and the Class Members to forgo their meal periods altogether. (Melmed Decl., ¶ 34) Additionally,
20 Plaintiff argued that when he and the Class Members were provided meal periods, they were on-duty
21 and therefore noncompliant. (*Id.*)

22 Defendants argued that Plaintiff and Class Members were provided with compliant meal breaks
23 pursuant to compliant policies. (Melmed Decl., ¶ 35.) Defendants further argued that any late or missed
24 meal periods were, at most, sporadic such that even if Plaintiff succeeded in arguing that Defendants
25 did not sufficiently inform their employees of their right to take meal and rest breaks, the resulting
26 inquiries are entirely individual and would overwhelm any class-wide questions. (*Id.*)

27 From the sampling of records, Plaintiff's expert estimated 38,735 unique meal break violations
28 during the Class Period. (Melmed Decl., ¶ 36.) These meal break violations collectively create

1 \$776,563.20 in potential exposure, not including PAGA penalties. (*Id.*) However, after applying a 75%
2 discount due to Defendants’ alleged defenses, its realistic exposure for this claim is approximately
3 **\$194,140.80.** (Melmed Decl., ¶ 37.)

4 **D. WAITING TIME PENALTY ALLEGATIONS**

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

9 Due to the violations described above, Plaintiff alleged that Defendants did not pay all wages
10 due at separation. (Melmed Decl., ¶ 38.)

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

22 There were 164 terminated employees in the waiting time period. (Melmed Decl., ¶ 40.)
23 Assuming 30 days per employee at 8.9 hours per day, per employee, Plaintiff estimates \$882,472.60 in
24 potential worst-case liability for waiting time penalties. (*Id.*) However, after applying a 75% discount
25 due to Defendants’ alleged defenses, their realistic exposure for this claim is approximately
26 **\$220,618.15.** (*Id.*)

1 **E. REIMBURSEMENT ALLEGATIONS**

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

10 Importantly, an employer may not simply place the burden on employees to request
11 reimbursement for their expenses. Employers have a “duty to exercise due diligence and take any and
12 all reasonable steps to ensure that the employee is paid” for their reimbursable expenses. (*Stuart v.*
13 *RadioShack Corp.* (N.D. Cal. 2009) 641 F.Supp.2d 901, 904.) This duty creates an obligation on the
14 part of employers to determine the scope and extent of reimbursable expenses when the employer has
15 reason to know that such expenses are being incurred.

16 Plaintiff alleged that, at the direction of Defendants and/or with Defendants’ knowledge and
17 acquiescence, he and the Class have used their personal cell phones to communicate with their
18 supervisors to perform necessary work-related duties for Defendant. (Melmed Decl., ¶ 41.) Plaintiff
19 argued that Defendants required Plaintiff and the Class to shoulder the cost associated with business
20 use of their personal cell phones and personal devices. (*Id.*)

21 Defendants contended that Plaintiff and the Class Members were not required to use their
22 personal cell phones for work-related purposes, that other communication devices were provided, and
23 this claim was entirely without merit. (Melmed Decl., ¶ 42.) Defendants also argued that there were
24 multiple individualized liability issues related to the expense reimbursement claims. (*Id.*) Defendants,
25 relying on *Dugan v. Ashley Furniture Industries, Inc.* (C.D. Cal., Nov. 29, 2016, No.
26 SACV161125PAFFMX) 2016 WL 9173459, and *Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th
27 1341, contended that those issues included whether phones were made available, the motivation of
28 each employee who opted to use his or her own cell phone, whether any expenses claimed were

1 necessary or reasonable, and whether individual Class Members chose not to seek reimbursement.
2 (Melmed Decl., ¶ 43.) Plaintiff estimates \$5.00 in unreimbursed business-related cell phone use per
3 employee per workweek. (Melmed Decl., ¶ 44.) This creates \$126,330.00 in liability for unreimbursed
4 business expenses.

5 **F. WAGE STATEMENT ALLEGATIONS**

6 Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of
7 each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail
8 to provide their employees with accurate, itemized wage statements may be subject to penalties under
9 Labor Code section 226, subdivision (e). Plaintiff alleged that, by virtue of the allegations that
10 Defendants failed to properly pay the Class Members their wages as described above, Defendants had
11 likewise failed to provide the Class Members with compliant wage statements reflecting their gross
12 wages earned and their net wages earned. (Melmed Decl., ¶ 45.)

13 As with Plaintiff's other claims, Defendants argued that the Class Members were fully
14 compensated and that such violations were rare and nominal in value, if they occurred at all. Defendants
15 thus concluded that Plaintiff could not claim wage statement penalties because there were no wage
16 statement violations. (Melmed Decl., ¶ 46.)

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

24 In terms of Defendants' exposure for this claim, Plaintiff estimated 7,545 pay periods in the
25 wage statement period. (Melmed Decl., ¶ 48.) Defendants' estimated exposure is \$595,950 using
26 \$50.00 for the first violation and \$100.00 for subsequent violations, with a \$4,000.00 per employee
27 maximum. (*Id.*) However, after applying a 50% discount due to Defendants' alleged defenses, their
28 realistic exposure for this claim is approximately **\$297,975.00**. (Melmed Decl., ¶ 49.)

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

2 Labor Code section 1174 states, “[e]very person employing labor in this state shall... [k]eep, at
3 a central location in the state or at the plants or establishments at which employees are employed,
4 payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at
5 the respective plants or establishments.” (Melmed Decl., ¶ 50.) The “Records” section of the applicable
6 IWC Wage Order states that every employer shall keep accurate information with respect to each one
7 of its employees, including time records showing when the employee begins and ends each work period
8 and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages
9 paid each payroll period. *Id.*

10 Further, Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure
11 to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100
12 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699
13 for a violation of Labor Code section 1174(d). (Melmed Decl., ¶ 51.)

14 Here, Plaintiff argued that Defendants violated these requirements by failing to accurately
15 record employee hours worked including, but not limited to, Defendants’ failure to record the proper
16 beginning and end of each work period and each meal period taken, the applicable rates of pay, and the
17 wages paid. (Melmed Decl., ¶ 52.) Under Labor Code section 1174.5, Defendants’ estimated exposure
18 is \$147,500.00. However, after applying a 50% discount due to Defendants’ alleged defenses, their
19 realistic exposure for this claim is approximately **\$73,750.00**. *Id.*

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

21 Labor Code § 204 expressly requires employers who pay employees on a weekly, biweekly, or
22 semimonthly basis to pay all wages “not more than seven calendar days following the close of the
23 payroll period.” (Melmed Decl., ¶ 53.)

24 Here, Plaintiff alleged that due to Defendants’ failure to pay to Plaintiff and the Class minimum
25 wage and overtime compensation and meal and rest period premiums as described above, Defendants
26 failed to timely pay its employees within seven calendar days following the close of payroll in
27 accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC,*
28 *LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after

1 *Ling vs. P.F. Chang's China Bistro, Inc.* that a failure to pay rest period premiums can support claims
2 under Labor Code §§ 203 and 204). (Melmed Decl., ¶ 54.)

3 Due to Defendants' faulty policies described above, Plaintiff argued that he and the Class
4 Members were not compensated for each and every hour worked or at the appropriate rate. (Melmed
5 Decl., ¶ 52.) Based on 174 estimated employees in the waiting time penalty period, Defendants'
6 estimated exposure is \$696,000.00 for this claim. However, after applying a 50% discount due to
7 Defendants' alleged defenses, their realistic exposure for this claim is approximately **\$348,000.00**.

8 **I. UNFAIR COMPETITION ALLEGATIONS**

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

17 Here, Plaintiff alleged that, by virtue of the allegations that Defendants failed to properly pay
18 the Class Members their wages as described above, Defendants were liable for restitution in the same
19 amount of the unlawfully withheld wages described above. Because the relief sought under Plaintiff's
20 UCL claims—namely, in the form of restitution for unpaid wages—was coterminous with Plaintiff's
21 other claims, Plaintiff's UCL allegations did not materially change Plaintiff's analysis of Defendants'
22 exposure. (Melmed Decl., ¶ 56.)

23 **J. PAGA ALLEGATIONS**

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

- 26 1. \$100.00 for the initial violation per employee per pay period; and
- 27 2. \$200.00 for each subsequent violation per employee per pay period.

1 These penalties must be allocated seventy-five percent (75%) to the LWDA and twenty-five
2 percent (25%) to the affected employees. (Lab. Code, § 2699, subd. (i).) Plaintiff alleged that, because
3 of the violations described above, Defendants were liable for these penalties for each applicable pay
4 period during the applicable PAGA Period.

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

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

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

27 3. There are 10,986 total PAGA pay periods. (Melmed Decl., ¶ 60.) At \$100.00 per pay
28 period, this results in **\$1,098,600.00** in liability *without stacking*. (*Id.*) However, after Plaintiff

1 calculated Defendants’ realistic exposure at \$25.00 per pay period due to Defendants’ alleged defenses,
2 resulting in **\$274,650.00** in realistic exposure. (Melmed Decl., ¶ 60.) The allocation of \$20,000 in the
3 Settlement Agreement to PAGA is fair to those affected because it is a reasonable recovery of
4 Defendant’s realistic exposure. Under *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 75-77,
5 this Court must determine whether the allocation is “is fair, reasonable, and adequate in view of
6 PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize
7 enforcement of state labor laws.” (Melmed Decl., ¶ 60.)

8 **IV. SUMMARY OF THE PROPOSED SETTLEMENT**

9 Under the terms of the Settlement Agreement, Defendants will be released of all claims asserted
10 in the Complaint in exchange for Defendants’ agreement to pay a non-reversionary settlement Gross
11 Settlement Amount of \$328,500.00, including a credit of \$54,000.00 already paid. (See generally,
12 Settlement Agreement.)

13 **A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT**

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

25 Defendants also asserted that any violations of the Labor Code were unintentional, and that
26 Plaintiff would have difficulty proving willfulness or intentionality for penalty purposes, including
27 claims for civil penalties under PAGA and claims for waiting time penalties. Defendants further argued
28

1 that Plaintiff would be unable to prove “injury” for purposes of recovering penalties under Labor Code
2 226(e). (Melmed Decl., ¶ 62.)

3 As explained above, the issues in this case were hotly contested—both legally and factually.
4 (Melmed Decl., ¶ 63.) While Plaintiff continues to believe in the merits of the case, Defendants argued
5 that they fully complied with California’s wage and hour laws, and thus faced minimal exposure, if
6 any. (*Ibid.*) Therefore, the Gross Settlement Amount of \$328,500.00 is an excellent result and within
7 the zone of reasonableness for all parties. (*Ibid.*) If preliminary approval is granted, Plaintiff will have
8 recovered a significant portion of the estimated settlement value for the Class Members in this case—
9 a fair compromise of the claims, by any measure. (*Ibid.*)

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

21 These documents, along with the other investigation and discovery described above, were
22 sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining
23 that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
24 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiff’s counsel have
25 concluded that the Gross Settlement Amount represents an excellent result for the Class. (Melmed
26 Decl., ¶ 65.)
27
28

1 **B. SETTLEMENT CONSIDERATION AND ALLOCATION**

2 The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement
3 Administrator, currently estimated to not exceed \$9,500.00; **(2)** Plaintiff’s counsel’s attorney fees not
4 to exceed one-third of the Gross Settlement Amount, i.e., \$109,500.00; **(3)** litigation expenses and costs
5 not to exceed \$20,000.00; **(4)** a service award to the named Plaintiff of up to \$7,500.00; and
6 **(5)** payment to the LWDA of \$15,000.00 for its 75% share of the settlement for civil penalties pursuant
7 to PAGA. (Settlement Agreement, at ¶ 3.2.)

8 After all Court-approved deductions from the Gross Settlement Amount, the Net Settlement
9 Amount, which consists of at least \$113,000.00, will be distributed to all Class Members who do not
10 request exclusion from the settlement and the Aggrieved Employees. (Settlement Agreement, at ¶
11 8.5.3) Applicable employer-side payroll taxes will be paid by Defendants outside and separate from
12 the Gross Settlement Amount. (Settlement Agreement, at ¶ 3.1.)

13 **C. THE RELEASE**

14 Under the Settlement Agreement, the “Released Claims” are divided into two categories: **(1)** the
15 released claims for the purposes of the class action portion of the Settlement Agreement, and **(2)** the
16 released claims for the purposes of the PAGA portion of the Settlement Agreement. (Settlement
17 Agreement, at ¶ 6.) The Released Claims for the purposes of the class action portion of the settlement
18 agreement include all claims, rights, demands, liabilities, damages, penalties, attorneys’ fees, costs, and
19 causes of action of every nature and description, arising from any and all claims which were asserted
20 in the Action or reasonably could have been asserted based on the facts alleged in the Action, including
21 statutory, constitutional or common law claims for wages, damages, unpaid costs, liquidated damages,
22 penalties, interest, attorneys’ fees, litigation costs, restitution, equitable relief, or other relief based on
23 the following claims: (1) Failure to Pay All Minimum Wages; (2) Failure to Pay All Overtime Wages;
24 (3) Failure to Provide Rest Periods and Pay Missed Rest Period Premiums; (4) Failure to Provide Meal
25 Periods and Pay Missed Meal Period Premiums; (5) Failure to Maintain Accurate Employment
26 Records; (6) Failure to Pay Wages Timely during Employment; (7) Failure to Pay All Wages Earned
27 and Unpaid at Separation; (8) Failure to Indemnify All Necessary Business Expenditures; (9) Failure
28

1 to Furnish Accurate Itemized Wage Statements; and (10) Violations of California’s Unfair Competition
2 Law (Bus. & Prof. Code, §§ 17200–17210). (Settlement Agreement, at ¶ 6.2.)

3 The Released Claims for the purposes of the PAGA portion of the settlement agreement include
4 all claims, theories, and causes of action alleged or that could have been alleged or otherwise raised
5 based on the factual allegations set forth in Plaintiff’s Complaint, letter to LWDA dated August 28,
6 2023 and FAC. This includes theories under Labor Code sections 201-204, 210, 226, 226.3, 226.7,
7 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084 and
8 corresponding Wage Orders, including theories for (1) Failure to Pay All Minimum Wages; (2) Failure
9 to Pay All Overtime Wages; (3) Failure to Provide Rest Periods and Pay Missed Rest Period Premiums;
10 (4) Failure to Provide Meal Periods and Pay Missed Meal Period Premiums; (5) Failure to Maintain
11 Accurate Employment Records; (6) Failure to Pay Wages Timely during Employment; (7) Failure to
12 Pay All Wages Earned and Unpaid at Separation; (8) Failure to Indemnify All Necessary Business
13 Expenditures; and (9) Failure to Furnish Accurate Itemized Wage Statements. (Settlement Agreement,
14 at ¶ 6.3.)

15 These releases will become effective on the effective date. The effective date is the date by
16 when both of the following have occurred: **(a)** the Court enters a Judgment on its Order Granting Final
17 Approval of the Settlement; and **(b)** the Judgment is final. The Judgment is final as of the latest of the
18 following occurrences: **(a)** if no Participating Class Member objects to the Settlement, the day the Court
19 enters Judgment; **(b)** if one or more Participating Class Members objects to the Settlement, the day
20 after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the
21 Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
22 (Settlement Agreement, at ¶ 1.18.)

23 **D. SETTLEMENT ALLOCATION FORMULA**

24 Individual payments to the Class Members from the class-portion of the settlement will be
25 calculated and apportioned based on the number of weeks worked as an eligible Class Member in
26 California by the participating Class Member during the Class Period (the “Individual Settlement
27 Payments”). (Settlement Agreement, at ¶ 3.2.4.) Specific calculations of Individual Settlement
28 Payments will be determined by: **(a)** dividing the Net Settlement Amount by the total number of

workweeks worked by all participating Class Members during the Class Period, and **(b)** multiplying the result by each participating Class Member's workweeks. (Settlement Agreement, at ¶ 3.2.4.)

If the amounts allocated to attorney's fees, litigation costs, service awards, or the Settlement Administrator are approved at a lesser amount than provided in the Settlement Agreement, the remaining funds will be returned to the Net Settlement Amount and distributed proportionately to the participating Class Members based on their total workweeks worked. (Settlement Agreement, at ¶ 1.2.8.) Those Class Members who already signed releases will have their workweek value weighted at .25. (Settlement Agreement, at ¶ 1.2.8.)

Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period compared to the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement, at ¶ 3.2.5.1.)

E. SELECTION OF THE SETTLEMENT ADMINISTRATOR

Plaintiff, through counsel, has obtained bids from several settlement administration companies for the settlement administration of this case. Of those, Xpand Legal presented the most qualified and agreeable bid. Accordingly, Plaintiff proposes to use Xpand Legal as the settlement administrator. (Melmed Decl., ¶ 74; Settlement Agreement, at ¶ 8.1.) The settlement administrator will be responsible for processing the settlement payments and providing notice to the Class Members as outlined in the Settlement Agreement. (Settlement Agreement, at ¶ 8.7.)

F. NOTICE PROCEDURES

Within 15 days of the Court granting preliminary approval of the Settlement Agreement, Defendants shall provide the Settlement Administrator with an updated list of Class Members and Aggrieved Employees containing names, number of Class Period workweeks, number of PAGA Period pay periods, addresses, and social security numbers to the extent they have such information through reasonable diligence, and the parties and Settlement Administrator shall use other reasonable efforts to attempt to secure this information (the "Class Data"). (Settlement Agreement, at ¶ 4.2.)

1 Within 14 days of receiving the Class Data, the Settlement Administrator shall send the Class
2 Notice by bulk first class mail, forwarding requested, to the Class Members at the addresses identified
3 through the process described above. (Settlement Agreement, at ¶ 8.4.2.) The Class Notice will be
4 substantially the form as the one attached as **Exhibit 1** to Settlement Agreement. The release language
5 of the Class Notice matches the release language of the Settlement Agreement. (Compare Settlement
6 Agreement, Exh. 1, at p. 9, with Settlement Agreement, at ¶ 6.)

7 The Class Notice also informs Class Members that the location, date, and time of the final
8 approval hearing may be changed. (Settlement Agreement, Exh. 1, at p. 10.)

9 Additionally, the Class Notice will inform each Class Member of his or her estimated share of
10 the settlement, as well as an easily understood statement alerting the Class Members that, unless they
11 elect to opt out of the Settlement Agreement, the Class Member is releasing and waiving all “Released
12 Claims” (as that term is defined in the Settlement Agreement and explained in the Class Notice).
13 (Settlement Agreement, Exh. 1, at p. 1–3.)

14 The Class Notice will also inform the Class Members of their right to object to the Settlement
15 Agreement. (Settlement Agreement, Exh. 1, at p. 9.) Any Class Member who wishes to object to the
16 Class Settlement may submit a written objection to the Settlement Administrator no later than 45 days
17 following the date on which the Settlement Administrator first mails the Class Notice to the Class
18 Members (“Response Deadline”). (Settlement Agreement, at ¶ 8.7.2.) Alternatively, Class Members
19 may also object to the Settlement Agreement by appearing at the final approval hearing, either on their
20 own or through an attorney. (Settlement Agreement, at ¶ 8.7.2; Settlement Agreement, Exh. 1, at p. 9–
21 10.)

22 Class Members who do not timely request exclusion from the Settlement Agreement will be
23 deemed to be a participating Class Member without having to submit a claim form or take any other
24 action. (Settlement Agreement, at ¶ 8.5.3.) To request exclusion from the Settlement Agreement, the
25 Class Member must submit a written request for exclusion from the Settlement Agreement to the
26 Settlement Administrator (“Request for Exclusion”), postmarked no later than the Response Deadline.
27 (Settlement Agreement, at ¶ 8.5.) The Settlement Agreement and Class Notice both permit Class
28

1 Members to use any language of their choosing to request exclusion, so long as their intent to be
2 excluded is made clear. (Settlement Agreement, at ¶ 8.5; Settlement Agreement, Exh. 1, at p. 9.)

3 Before mailing Class Notices, the Settlement Administrator will update Class Member
4 addresses using the National Change of Address database. (Settlement Agreement, at ¶ 8.4.3.) If any
5 Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal
6 Service, the Settlement Administrator shall re-mail the Class Notice to the forwarding address affixed
7 thereto, if one is provided. (Settlement Agreement, at ¶ 8.4.3.) If no forwarding address is provided,
8 the Settlement Administrator will conduct an address search and remail the Class Notice to the most
9 current address of that Class Member. (Settlement Agreement, at ¶ 8.4.3.)

10 Class Members to whom the Class Notice is re-mailed are given an extension of up to 14
11 calendar days for disputes, objections, or to request exclusion. (Settlement Agreement, at ¶ 8.4.4.)

12 The Settlement Administrator will set up a settlement website that includes information about
13 the settlement and how to opt-out. A URL has not been provided yet. (Exhibit B.) The Class Notice
14 will be sent in Spanish and English and translation has not yet been completed by the Administrator.
15 *Id.*

16 **G. TIMING OF SETTLEMENT DISBURSEMENTS**

17 Defendants shall fully fund the Gross Settlement Amount within 30 days of the entry of the
18 order granting final approval. (Settlement Agreement, at ¶ 4.3.) At that time, the settlement will be
19 fully funded. The Settlement Administrator will then distribute the Individual Settlement Payments
20 within 14 days of the date Defendants funds the Gross Settlement Amount. (Settlement Agreement, at
21 ¶ 4.4.) The Settlement Agreement further provides that disbursement of Plaintiff's counsel's attorneys'
22 fees, the litigation costs, and Plaintiff's service award shall not precede disbursement of the Individual
23 Settlement Payments. (Settlement Agreement, at ¶ 4.4.) The Administrator will issue checks for the
24 Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members
25 via First Class U.S. Mail, postage prepaid. (Settlement Agreement, at ¶ 4.4.1.) The face of each check
26 shall prominently state the date (not less than one hundred eighty (180) days after the date of mailing)
27 when the check will be voided.. (Settlement Agreement, at ¶ 4.4.1.)
28

1 **H. CY PRES DISTRIBUTION**

2 Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at
3 ¶ 4.4.1.) If a Class Member fails to cash his/her check by the deadline, then the Settlement
4 Administrator shall distribute such funds to the San Diego County Bar Foundation, which provides
5 services to over 50 legal aid and public interest organizations. (Settlement Agreement, at ¶ 4.4.3.)

6 Because all funds and interest under the Settlement Agreement are to be completely distributed
7 to the class participants, or to *cy pres* beneficiary, the Parties agree that this disposition results in no
8 “unpaid residue” or “unclaimed or abandoned class member funds” under Code of Civil Procedure
9 Section 384. (Settlement Agreement, at ¶ 4.4.3.) The Settlement Agreement therefore proactively
10 complies with the Court’s Omnibus Trailer Bill of 2018 by eliminating the need for the Court to re-
11 open the judgment following final distribution. (Settlement Agreement, at ¶ 4.4.3.)

12 **I. TAX TREATMENT**

13 The Settlement Agreement provides that 10% of each individual settlement payment from the
14 class-portion of the Settlement Agreement shall constitute wages (for which each participating Class
15 Member will be issued an IRS Form W-2 for such payment), and the remaining 90% shall constitute
16 interest, reimbursement, and penalties (for which each participating Class Member will be issued an
17 IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at ¶ 3.2.4.1.)

18 With respect to the individual payments made under the PAGA-portion of the Settlement
19 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which
20 each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation).
21 (Settlement Agreement, at ¶ 3.2.5.2.)

22 Defendants will separately and additionally pay their share of employer payroll taxes on the
23 sum allocated to wages. (Settlement Agreement, at ¶ 3.1.)

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

25 **A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
26 **CONSIDERATION IS APPROPRIATE**

27 California Rules of Court, rule 3.769, subdivision (d), provides that the Court may make an
28 order approving certification of a provisional settlement class at the preliminary approval stage. It is

1 well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
2 of certifying a settlement class, as opposed to a litigation class. (*Dunk, supra*, 48 Cal.App.4th at p.
3 1807, fn. 19.) Since no trial is anticipated in a class-based settlement, the case management issues
4 inherent in determining if the class should be certified need not be confronted, and the Court’s fairness
5 review of the settlement focuses on protecting the interests of the non-representative class members.
6 (*Ibid.*; see also *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th
7 Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620 [117 S.Ct.
8 2231, 2248] [“Confronted with a request for settlement-only class certification, a district court need
9 not inquire whether the case, if tried, would present intractable management problems . . . for the
10 proposal is that there be no trial.”].)

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

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

14 Numerosity is met if a proposed class is so large that joinder of all members would be
15 impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class
16 members can be objectively identified and given notice of the litigation without unreasonable time or
17 expense. (See *Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendants
18 have represented that the proposed Class consists of approximately 349 Class Members ascertained
19 through Defendants’ records. As such, the numerosity requirement is met.

20 **C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED**
21 **COMMUNITY OF INTEREST**

22 **1. Commonality**

23 To justify certification, the class proponent must show that questions of law or fact common to
24 the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito*
25 *Restaurants, Inc.* (2010) 183 Cal.App.4th 723 [citing *Washington Mutual Bank, FA v. Superior Court*
26 (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal and
27 factual questions exist, such as **(a)** whether individuals working for Defendants were subject to
28 unlawful wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these

1 violations triggered derivative claims for penalties; and (c) whether Defendants' violations were
2 knowing or willful.

3 **2. Typicality**

4 Typicality focuses on: (1) whether other members of the proposed class have the same or
5 similar injury to the named plaintiff(s), (2) whether the action is based on conduct which is not unique
6 to the named plaintiff(s), and (3) whether other class members have been injured by the same course
7 of conduct. (*Seastrom v. Newways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe's Crab*
8 *Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiff's claims are typical of the Class
9 Members because he was subject to Defendants' policies and practices described above in Plaintiff's
10 analysis of the claims and defenses, which were consistently applied to class-wide to all Class
11 Members. (Declaration of Damon Newquist in Support of Plaintiff's Motion for Preliminary Approval
12 of Class Action Settlement ("Newquist Decl."), ¶ 4.)

13 **3. Adequacy of Representation**

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

21 Plaintiff also provided counsel with information that was crucial to initiating the action and
22 preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable
23 information about the Class Members and their experiences working for Defendant. (Melmed Decl., ¶
24 76; Newquist Decl., ¶ 6.)

25 Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local*
26 *Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244
27 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour
28

1 class actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this
2 action, and who have the financial resources to handle this case. (Melmed Decl., ¶ 77.)

3 **4. Superiority**

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

8 **5. Predominance**

9 The common issues here, concerning the uniform deficiencies to Defendants' wage-and-hour
10 policies and practices raise predominating factual and legal issues supporting certification of a
11 settlement class.

12 **VI. PRELIMINARY APPROVAL SHOULD BE GRANTED**

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

15 The Settlement Agreement was negotiated at arm's length between counsel using a professional
16 and well-respected third-party neutral. (Melmed Decl., ¶ 66.) Counsel for both parties were thoroughly
17 familiar with the complex legal and factual questions at issue in this litigation. (*Id.*) The Settlement
18 Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of
19 information through informal discovery, during the course of settlement negotiations, including a full-
20 day mediation. (*Id.*) Although Plaintiff and his counsel believed the class claims had merit and there
21 was a possibility of certifying the class and claims, they recognized the potential risk, expense, and
22 complexity posed by litigation, such as unfavorable decisions on class certification, summary
23 judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years
24 to litigate. (*Id.*) The resulting Settlement Agreement was based on calculations, risk assessment, and
25 non-collusive negotiation. (*Id.*) It takes the risks identified above and others into account in arriving at
26 the non-reversionary Gross Settlement Amount. (*Id.*)

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

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

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

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

19 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
20 should also consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration
21 of further litigation, [and] the risk of maintaining class action status." (*Dunk, supra*, 48 Cal.App.4th at
22 p. 1801.) As described above, Defendants had strong defenses to Plaintiff's claims, which create a real
23 possibility that the claims might not be certified or might fail on the merits. (Melmed Decl., ¶ 69.)
24 Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial
25 additional expenditures of time and resources. If settlement were not achieved, continued litigation of
26 the claims would take a substantial amount time and possibly confer no benefit on Class Members. By
27 contrast, the settlement will yield a prompt, certain, and substantial recovery for the Class Members,
28

1 which also benefits the Parties and the Court. In considering these risks, the choice was
2 overwhelmingly in favor of settlement. (*Id.*)

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

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

10 **E. PLAINTIFF'S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-
11 HOUR LITIGATION**

12 Plaintiff's counsel are experienced in wage-and-hour class actions. (Melmed Decl., ¶ 71.)
13 Numerous state and federal courts have certified Mr. Melmed as adequate and competent class counsel
14 in wage and hour class actions. (*Id.*) Mr. Melmed devotes the vast majority of his law practice to
15 plaintiff-side class and representative employment-law cases. (*Id.*)

16 The Parties' counsel agree that this settlement is fair, adequate, and reasonable in light of the
17 nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of
18 the law, and uncertainties of class certification and litigation. (Melmed Decl., ¶ 72.) Given the risks
19 inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and
20 in the best interests of Class Members and should be preliminarily approved. (*Id.*) The Settlement
21 Agreement is also consistent with other settlements that received approval of the Courts. (*Id.*)

22 Experienced counsel, operating at arm's length, have weighed the strengths and risks of the
23 case, and endorse the proposed settlement. (Melmed Decl., ¶ 73.) The view of the attorneys actively
24 conducting the litigation is entitled to significant weight in deciding whether to approve the settlement.
25 (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff'd* (9th Cir. 1981) 661 F.2d
26 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-
27 fought negotiations is entitled to considerable weight."]; *Kullar, supra*, 168 Cal.App.4th at p. 133.
28 [court must take into account the experience and view of counsel].)

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

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

8 The Court has wide discretion in approving the means of providing notice, so long as the class
9 representative “provide(s) meaningful notice in a form that should have a reasonable chance of reaching
10 a substantial percentage of class members.” (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860,
11 quotation marks omitted.) Here, the Parties’ notice plan is that notice of the Settlement Agreement will
12 be disseminated directly to the class members by first class mail by the settlement administrator within
13 14 days of the date on which the Settlement Administrator receives the Class Data from Defendants.
14 (Settlement Agreement, at ¶ 8.4.2.)

15 The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California
16 Rules of Court and afford the Class Members with all due process protections required by the United
17 States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766,
18 subdivision (d), of the California Rules of Court, because the Class Notice includes, among other
19 things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties;
20 **(2)** a statement that the court will exclude the member from the class if the member so requests by a
21 specified date; **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a
22 statement that the judgment, whether favorable or not, will bind all members who do not request
23 exclusion; and **(5)** a statement that any member who does not request exclusion may, if the member so
24 desires, enter an appearance through counsel. (Settlement Agreement, Exh. 1.) The 45-day deadline for
25 Class Members to exclude themselves or challenge the number of workweeks worked during the Class
26 Period is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose,
27 to seek independent legal advice in the interim.
28

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

3 In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees of up
4 to one-third of the Gross Settlement Amount, (i.e., \$109,500.00), plus reimbursement of litigation
5 expenses and costs of up to \$20,000.00. (Settlement Agreement, at ¶ 3.2.2.) As the California Supreme
6 Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to
7 award as attorneys' fees in a class action where a common fund was generated as a result of the case.
8 (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion
9 where trial court approved a fee request of one-third of the common fund].) The California Supreme
10 Court further clarified that trial courts "have discretion to conduct a lodestar cross check on a
11 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and
12 use other means to evaluate the reasonableness of a requested percentage fee." (*Ibid.*)

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

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

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

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

4 Plaintiff will request payment of a service award from the Gross Settlement Amount of up to
5 \$7,500.00 in addition to whatever payment he is otherwise entitled to receive as a Class Member.
6 (Melmed Decl., ¶ 78; Settlement Agreement, at ¶ 3.2.1.) The proposed service award is reasonable
7 compensation given the time and effort that Plaintiff devoted to this case, the valuable assistance he
8 provided to counsel, and the fact that he entered into a general release of claims that is broader than the
9 release of the Class. (Melmed Decl., ¶ 78; Settlement Agreement, at ¶ 6.3; Newquist Decl., ¶ 11.)

10 Plaintiff provided invaluable assistance to Plaintiff's counsel and the Class Members in this
11 case, including providing factual background for mediation and the operative complaint, reviewing the
12 relevant documents, participating in phone calls with Plaintiff's counsel, gathering highly relevant
13 documents, and reviewing the settlement documents. (Melmed Decl., ¶ 79.) Plaintiff agreed to
14 participate in this case with no guarantee of personal benefit. (*Ibid.*) Further, Plaintiff agreed to
15 undertake the financial risk of serving as a class representative and exposed himself to the risk of
16 negative publicity by anyone who opposed this case. (*Ibid.*)

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

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

9 **IX. SUBMISSION TO THE LWDA**

10 The Settlement Agreement and this motion are concurrently being submitted to the LWDA in
11 accordance with Labor Code section 2699, subdivision (l)(2). (Melmed Decl., ¶ 83.) The proof of
12 electronic submission is attached as **Exhibit D** to the Declaration of Jonathan Melmed.

13 **X. CONCLUSION**

14 For these reasons, Plaintiff’s motion for preliminary approval of the Parties’ class action
15 settlement should be granted.

16 Dated: March 17, 2025

MELMED LAW GROUP P.C.



HANNAH BECKER

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