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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JESUS MANUEL CAZAREZ GONZALEZ and
AUGUSTIN GARCIA MADRIGAL, individuals
on behalf of themselves, the State of California,
as private attorneys general, and on behalf of all
others similarly situated,

Plaintiff,

v.

PROCIDA LANDSCAPE, INC., a California
Corporation; and DOES 1 TO 50,

Defendants.

Case Number: 23CV008331

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

Date: November 8, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Action Filed: September 1, 2023

Trial Date: None Set

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 8, 2024, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 23 of the Sacramento County Superior Court for the State of California, located at the Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, California 95814, before the Honorable Jill H. Talley, Plaintiffs Jesus Manuel Cazarez Gonzalez and Agustin Garcia Madrigal (“Plaintiffs”), on behalf of themselves, the State of California, as private attorney generals, and on behalf of all others similarly situated, will and hereby do move this court for entry of an order:

1. Preliminarily certifying the settlement class for purposes of settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;
2. Preliminarily appointing Plaintiffs Jesus Manuel Cazarez Gonzalez and Agustin Garcia Madrigal as class representatives for purposes of settlement;
3. Preliminarily appointing Jonathan Melmed and Kyle D. Smith of Melmed Law Group P.C. as class counsel for purposes of settlement;
4. Preliminarily approving the settlement as fair, adequate, and reasonable, based on the terms set forth in the Parties’ *Joint Stipulation of Class Action and PAGA Settlement and Release Between Plaintiffs and Defendant* (the “Settlement Agreement”), including payment by Defendant Procida Landscape, Inc. (“Defendant”) of the non-reversionary gross settlement amount of \$825,000.00 (“Gross Settlement Amount”);
5. Preliminarily approving payment of reasonable attorneys’ fees and costs from the Gross Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to \$275,000.00), plus necessary litigation costs not to exceed \$25,000.00;
6. Preliminarily approving class representative incentive payments to Plaintiffs in the amount of \$7,500.00 each from the Gross Settlement Amount to compensate them for

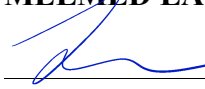
the responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

7. Appointing Simpluris, Inc. (the “Settlement Administrator”) as the settlement administrator to handle the notice and administration process and preliminarily approving settlement administration costs estimated to not exceed \$7,344.00;
8. Preliminarily approving the allocation of \$25,000.00 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$18,750.00) shall be paid to the California Labor and Workforce Development Agency (“LWDA”) from the Gross Settlement Amount, with the remaining 25% (i.e., \$6,250.00) payable to the aggrieved employees;
9. Approving the proposed class notice and ordering it be disseminated to the class members as provided in the Settlement Agreement;
10. Directing the Settlement Administrator to mail the class notice to the proposed class;
11. Approving the proposed deadlines for the notice and administration process as reflected herein and in the Settlement Agreement; and
12. Setting a date for a final fairness hearing to determine, following dissemination of the proposed class notice packet, whether to grant final approval of the settlement.

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

1 Dated: October 17, 2024

MELMED LAW GROUP P.C.



JONATHAN MELMED

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class and representative action settlement between Plaintiffs Jesus Manuel Cazarez Gonzalez and Agustin Garcia Madrigal (“Plaintiffs”) and Defendant Procida Landscape, Inc. (“Defendant”) (collectively, the “Parties”) for \$825,000.00 (the “Gross Settlement Amount”). A true and correct copy of the *Joint Stipulation of Class Action and PAGA Settlement and Release Between Plaintiffs and Defendant* (the “Settlement Agreement”) is attached as **Exhibit A** to the concurrently filed *Declaration of Jonathan Melmed in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement* (“Melmed Decl.”). The Settlement Agreement, in its entirety, is incorporated herein by reference. The Settlement Agreement contains two elements:

PAGA Settlement: A settlement pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), for which Plaintiffs represent a group of approximately 335 aggrieved employees (as of the date of mediation) on behalf of the State of California as private attorney generals pursuant to PAGA. The “Aggrieved Employees,” for these purposes, are defined as: *All individuals who are or were employed by Defendants as hourly paid or non-exempt employees in California from September 1, 2022, through August 9, 2024* (the “PAGA Period”). (Melmed Decl., ¶ 4.A.)

Class Settlement: A class action settlement for which Plaintiffs represent a group of approximately 674 putative class members (as of the date of mediation) defined as: *All individuals who are or were employed by Defendant as hourly paid or non-exempt employees in California from September 1, 2019, through August 9, 2024* (the “Class Period”). These employees are variously referred to as the “Class Members,” the “Settlement Class,” or the “Class.” (Melmed Decl., ¶ 4.B.)

The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendant. (Melmed Decl., ¶ 5; Settlement Agreement, at p. 7.) Class Members are not required to submit a claim form to receive their settlement share, none of the settlement funds will revert to Defendant, and the applicable payroll taxes are to be paid by Defendant outside the Gross Settlement Amount. (See Melmed Decl., ¶ 5; Settlement Agreement, at pp. 7, 16.).

Subject to court approval, the “Net Settlement Amount” of at least **\$502,656.00**, will be

distributed to Class Members who do not request exclusion from the settlement, the California Labor and Workforce Development Agency (“LWDA”), and the Aggrieved Employees:

Gross Settlement Amount	\$825,000.00
Attorneys’ Fees	(up to \$275,000.00)
Litigation Costs	(up to \$25,000.00)
Settlement Administration Costs	(up to \$7,344.00)
Incentive Awards	(up to \$15,000.00)
Net Settlement Amount	At Least \$502,656.00

Net Settlement Amount	At Least \$502,656.00
To Class Members:	At Least \$477,656.00
PAGA Payment to LWDA (75% of \$25,000):	\$18,750.00
PAGA Payment to Aggrieved Employees:	\$6,250.00

This settlement is an excellent result considering the strength of Plaintiffs’ claims and Defendant’s plausible defenses. Because the Settlement Agreement is well within the zone of reasonableness, Plaintiffs therefore request an order preliminarily approving the settlement in full.

II. BACKGROUND

On September 1, 2023, Plaintiff Gonzalez filed his class action complaint in Sacramento Superior Court. Plaintiff alleged claims for: **(1)** failure to pay all minimum wages; **(2)** failure to pay all overtime wages; **(3)** failure to maintain accurate employment records; **(4)** failure to pay timely wages during employment; **(5)** failure to pay all wages due and owing at separation; **(6)** failure to furnish accurate itemized wage statements; **(7)** violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(8)** unpaid wages. On the same day, Plaintiff Gonzalez notified the LWDA to of his intent to seek civil penalties against Defendant under PAGA for the same violations. (Melmed Decl., ¶¶ 16–17.)

On February 1, 2024, Plaintiff Jesus Manuel Cazarez Gonzalez filed the First Amended Class and PAGA Representative Action Complaint, which added a single cause of action seeking penalties pursuant to PAGA based on the allegations in the original complaint, and added second Plaintiff

1 Agustín García Madrigal. (Melmed Decl., ¶ 18.)

2 On or about February 21, 2024, the Parties agreed to attend a private mediation. Prior to and
3 during mediation, the Parties exchanged further information and discussed all aspects of the case,
4 including the risks and delays posed by additional litigation, the risks to both Parties for proceeding
5 with a motion for class certification, along with the evolving legal landscape and evidentiary challenges
6 to establishing respective claims and defenses. (Melmed Decl., ¶ 19.)

7 On May 10, 2024, the Parties participated in a full-day mediation with Russ J. Wunderli, who
8 is a full-time mediator with extensive experience in California wage and hour class action lawsuits.
9 (Melmed Decl., ¶ 20.) The Parties were eventually able to reach the broad terms of an agreement and
10 executed an initial Memorandum of Understanding on May 23, 2024. The Parties continued their post-
11 mediation negotiations and executed the longform Settlement Agreement on or about October 16, 2024.
12 (Melmed Decl., ¶ 21.)

13 On October 16, 2024 Plaintiffs sought leave to file a Second Amended Complaint adding three
14 causes of action for (1) failure to provide rest periods and pay missed rest period premiums, (2) failure
15 to provide meal periods and pay missed meal period premiums, and (3) failure to indemnify all
16 necessary business expenditures. (Melmed Decl., ¶ 22.)

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

18 Plaintiffs' claims stem from several categories of illegal employment practices. Most
19 importantly, Plaintiffs alleged that Defendant rounded employee's timecards to the nearest hour, did
20 not have policies for meal and rest breaks, did not allow employees to leave the location on breaks, and
21 failed to pay overtime. (Melmed Decl., ¶ 23.) Defendant has persistently denied all liability of any kind
22 associated with the claims and allegations, and further deny that Plaintiffs, the Class Members, or the
23 Aggrieved Employees are entitled to any relief. Defendant maintains, among other things, that they
24 have complied with California laws in all respects. (Melmed Decl., ¶ 24.) These claims, defenses, and
25 potential damages are summarized in more detail below.

26 **A. MINIMUM WAGE ALLEGATIONS**

27 Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by
28 the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section

1 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a civil action
2 the unpaid balance of the full amount of this minimum wage.” (See also Lab. Code, §§ 1185 [giving
3 the Applicable Wage Order the force of law], 1198 [same].) These minimum wage standards apply to
4 each hour that employees work. Therefore, an employer’s failure to pay for any particular time worked
5 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked results in
6 average pay above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

7 Defendant’s alleged exposure for unpaid wage claims is approximately \$792,581.00. Plaintiffs
8 discounted this amount by 65% due to the very real risks that this Court would agree with Defendant’s
9 good faith defense that it sometimes paid workers for more than the hours worked, and because of
10 legitimate concerns of collectability. Plaintiffs estimated Defendants’ realistic exposure for this claim
11 to be approximately \$277,403.35. (Melmed Decl., ¶ 28.)

12 **B. MEAL PERIOD ALLEGATIONS**

13 Plaintiffs alleged that the employees were regularly subjected to meal period violations.
14 (Melmed Decl., ¶ 29.) Of note, Defendant does not have a policy authorizing or permitting lunch
15 breaks. (Melmed Decl., ¶ 29.) Defendant did not allow employees to leave the worksite during any
16 lunch break that was permitted. (Melmed Decl., ¶ 29.) Plaintiffs alleged that this resulted in widespread
17 failures of the employees to take compliant meal periods, and corresponding violations of Labor Code
18 section 512. (Melmed Decl., ¶ 29.) Plaintiffs further allege that shifts involving noncompliant meal
19 periods received no meal period premium payment. (Melmed Decl., ¶ 29.)

20 Defendant argued that the employees were provided with compliant meal breaks. (Melmed
21 Decl., ¶ 30.) Defendant asserted that no documentary evidence demonstrated that Defendant had a
22 practice of interrupting, shorting, or depriving the employees of their meal breaks. (Melmed Decl., ¶
23 30.) Defendant further argued that Plaintiffs could not obtain class certification because the allegedly
24 noncompliant meal periods were not recorded in any meaningful way that would permit the damages
25 to be calculated with any reasonable degree of certainty. (Melmed Decl., ¶ 30.) Specifically, Defendant
26 argued that it did not promulgate an unlawful meal break policy. (Melmed Decl., ¶ 30.)

27 Defendant further argued that any late or missed meal periods were, at most, sporadic such that
28 even if Plaintiffs succeeded in arguing that Defendant did not sufficiently inform its employees of their

1 right to take meal and rest breaks, the resulting inquiries are entirely individual and would overwhelm
2 any class-wide questions. (Melmed Decl., ¶ 31.) Separate mini-trials would have to determine both
3 *liability* (i.e., whether Defendant prevented a particular employee from taking meal breaks they knew
4 they were entitled to take) and *damages* (i.e., how often Defendant prevented a particular employee
5 from taking a meal break). (Melmed Decl., ¶ 31.)

6 Defendant's alleged exposure for unpaid wage claims is approximately \$2,989,558.00.
7 (Melmed Decl., ¶ 32.) Plaintiffs discounted this amount by 65% due to the very real risks that this
8 Court would agree with Defendant's good faith defense that it sometimes paid workers for more than
9 the hours worked. Plaintiffs estimated Defendants' realistic exposure for this claim to be approximately
10 \$1,046,345.30. (Melmed Decl., ¶ 32.)

11 **C. REST PERIOD ALLEGATIONS**

12 Plaintiffs alleged that Defendant failed to disseminate written policies that properly informed
13 the employees of their right to take rest periods compliant with California law. (Melmed Decl., ¶ 33.)
14 Defendant argued that the employees were provided with compliant rest periods. (Melmed Decl., ¶ 34.)
15 Defendant also contended that the employees worked with different supervisors who may have
16 instructed the employees differently regarding when and how they must take rest breaks, leading to
17 serious challenges to certification and manageability as to this claim. (Melmed Decl., ¶ 34.)

18 In terms of Defendant's exposure for this claim, Plaintiffs' expert determined that there were
19 approximately \$2,989,558.00 of unpaid rest premiums owed. (Melmed Decl., ¶ 35.) However,
20 Plaintiffs ascribed an 80% discount due to the risks that this Court would agree with Defendant's good
21 faith defense, the individualized reasons for the failure to take rest breaks. (Melmed Decl., ¶ 35.)
22 Plaintiffs estimated Defendant's realistic exposure for this claim to be approximately \$597,911.60.
23 (Melmed Decl., ¶ 35.)

24 **D. DERIVATIVE WAITING TIME PENALTY ALLEGATIONS**

25 Plaintiffs alleged that, because of the violations described above, several derivative causes of
26 action arise. (Melmed Decl., ¶ 36.) First, Plaintiffs sought recovery for waiting time penalties under
27 Labor Code section 203. (Melmed Decl., ¶ 36.) As with Plaintiffs' other claims, Defendant argued that
28 the employees were fully compensated and that such violations were rare and nominal in value, if they

1 occurred at all. (Melmed Decl., ¶ 36.) Defendant thus concluded that the employees could not claim
2 waiting time penalties because the employees had been fully and timely compensated upon discharge.
3 (Melmed Decl., ¶ 36.) Defendant further argued that waiting time penalties under Labor Code section
4 203 are only triggered if the violation is determined to be willful. (Melmed Decl., ¶ 36.) Thus, even if
5 any underpayments had occurred, Defendant argued that they were inadvertent, made in good faith,
6 and could not result in waiting time penalties. (Melmed Decl., ¶ 36.)

7 Defendant further argued that Plaintiffs' claims of unpaid rest period and meal period premiums
8 cannot support a claim for waiting time penalties. (*Ling v. P.F. Chang's China Bistro, Inc.* (2016) 245
9 Cal.App.4th 1242, 1261 ["section 226.7 cannot support a section 203 penalty"].) (Melmed Decl., ¶ 37.)
10 Thus, any applicable waiting time penalties would have to be limited to those employees who
11 experienced an underpayment of the employees' actual wages. (Melmed Decl., ¶ 37.) Defendant argued
12 that any such violations were rare, if they occurred at all. Plaintiffs argued, however, that Defendant's
13 failures to reimburse the employees for necessary mileage while driving between job sites served as an
14 unlawful deduction in violation of Labor Code section 221, and effectively reduced the employees'
15 wages for overtime and minimum wage purposes and thus created an entitlement to waiting time
16 penalties. (Lab. Code, §§ 510, 1194, 1194.2, 1197, 1198.) (Melmed Decl., ¶ 37.)

17 Plaintiffs estimated 418 Employees terminated their employment during the waiting time date
18 range. Thus, the maximum value of the waiting time penalty claim was therefore derived from the
19 following formula: 418 employees × 30 days × 5.5 hours average per day × average rate of pay of
20 \$20.91 per hour (or \$1,442,162.70). (Melmed Decl., ¶ 38.) However, after ascribing an 80% discount
21 due to the very real risks that this Court would agree with Defendant's good faith defense and because
22 the claim is derivative of the underlying claims which may also fail to be certified or win on the merits,
23 Plaintiffs estimated Defendant's realistic exposure for this claim to be approximately \$288,432.54.
24 (Melmed Decl., ¶ 38.)

25 **E. DERIVATIVE WAGE STATEMENT ALLEGATIONS**

26 Plaintiffs alleged that, by virtue of the allegations that Defendant failed to properly pay the
27 employees their wages as described above, Defendant had likewise failed to provide the employees
28 with compliant wage statements reflecting their gross wages earned and their net wages earned.

(Melmed Decl., ¶ 39.) As with Plaintiffs’ other claims, Defendant argued that the employees were fully compensated and that such violations were rare and nominal in value, if they occurred at all. Defendant thus concluded that Plaintiffs could not claim wage statement penalties because there were no wage statement violations. (Melmed Decl., ¶ 39.) Defendant further argued that unpaid meal or rest period premiums do not give rise to wage statement penalties under Labor Code section 226. (Melmed Decl., ¶ 40; see *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065.)

In terms of Defendant’s exposure for this claim, Plaintiffs calculated that approximately 674 Class Members worked a total of approximately 51,030 pay periods during the applicable statutory period for this claim. (Melmed Decl., ¶ 41.) Thus, Plaintiffs determined that Defendant’s maximum exposure for this claim was \$922,100.00. (Melmed Decl., ¶ 41.) Plaintiffs then ascribed an 80% discount based on the very real risks that: **(1)** this court might find that Defendant’s alleged wage statement errors were not made knowingly and intentionally such that the penalties would not be triggered, **(2)** this court might find that Defendant’s alleged wage statement errors caused little or no injury to the Class Members, and **(3)** that this court might find that there were no errors made on the wage statements. (Melmed Decl., ¶ 41.) Plaintiffs calculated that Defendant’s realistic exposure for this claim was \$184,420.00. (Melmed Decl., ¶ 41.)

F. PAGA PENALTIES

Plaintiffs alleged that, because of the violations described above, Defendant was liable for PAGA penalties for each applicable pay period during the applicable PAGA period. (Melmed Decl., ¶ 42.) In ascertaining Defendant’s exposure for this claim, Plaintiffs considered several important cases. First, courts to consider the issue have refused to “stack” PAGA penalties, severely limiting the recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [approving PAGA penalty reduction to \$5 per pay period]; accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.) Moreover, Defendant argued that Plaintiffs are not entitled to recover PAGA penalties at the subsequent violation rate of \$200 per pay period. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; Melmed Decl., ¶ 42.) Thus, Defendant argued that even if the Plaintiffs were able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the \$100 rate, as opposed to the \$100 per pay period rate at maximum,

1 and there is a likelihood that a further reduction of the penalty to \$5 per pay period as approved in
2 *Carrington* would apply given Defendant's compliance with the Labor Code as discussed above.
3 (Melmed Decl., ¶ 43.)

4 Here, there were approximately 51,030 workweeks within the applicable PAGA period.
5 (Melmed Decl., ¶ 44.) Applying PAGA's maximum penalties would yield a maximum exposure for
6 Defendant of \$4,835,500.00. (Melmed Decl., ¶ 44.) However, considering Defendant's defenses to the
7 PAGA claim, Plaintiffs ascribed a 95% discount due to the very real risk of a court reducing the amount
8 of awarded PAGA penalties, especially considering that the PAGA penalties themselves rival the
9 amount of wages actually owed. (Melmed Decl., ¶ 44.) Plaintiffs calculated that the Defendant's
10 realistic exposure for this claim was \$241,775.00. (Melmed Decl., ¶ 44.)

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

12 Under the Settlement Agreement, Defendant will be released of all claims set forth in the action
13 in exchange for paying \$825,000.00. (See generally, Settlement Agreement.) The Gross Settlement
14 Amount includes: (1) the fees and expenses of the Settlement Administrator; (2) attorneys' fees not to
15 exceed one-third of the Gross Settlement Amount, i.e., \$275,000.00; (3) litigation costs not to exceed
16 \$25,000.00; and (4) service awards to the Plaintiffs of up to \$15,000.00. (Settlement Agreement, at pp.
17 7–9.) After all Court-approved deductions from the Gross Settlement Amount, the remaining amount
18 (i.e., the Net Settlement Amount), which consists of at least \$502,656.00, will be distributed as follows:
19 \$25,000 as a PAGA payment, with 75% (i.e., \$18,750) going to the LWDA and 25% (i.e., \$6,250.00)
20 going to the Aggrieved Employees; and the remainder being distributed to all participating Class
21 Members. (Settlement Agreement, at p. 8; Lab. Code, § 2699, subd. (i).)

22 **A. SETTLEMENT ALLOCATION FORMULA**

23 Individual payments to the Class Members from the class-portion of the settlement will be
24 calculated and apportioned based on the number of weeks worked as an eligible Class Member in
25 California by the participating Class Member during the Class Period (the "Individual Settlement
26 Payments"). (Settlement Agreement, at p. 8.) Specific calculations of Individual Settlement Payments
27 will be determined by dividing the number of shifts in which a participating Class Member worked for
28 Defendant during the Class Period based on Defendant's available records by all weeks in which Class

1 Members worked during the Class Period, multiplied by the class-portion of the Net Settlement
2 Amount. (Settlement Agreement, at p. 8.)

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

7 **B. NOTICE PROCEDURES**

8 Within 30 days of the court granting preliminary approval of the Settlement Agreement (the
9 “Preliminary Approval Date”), Defendant shall provide the Settlement Administrator with an updated
10 list of Class Members and Aggrieved Employees containing names, dates of employment, addresses,
11 and social security numbers (the “Class Data”). (Settlement Agreement, at p. 13.)

12 Within 45 days of the Preliminary Approval Date, the Settlement Administrator shall send the
13 *Notice of Proposed Class Action Settlement* (“Class Notice”) by bulk first class mail, forwarding
14 requested, to the Class Members at the addresses identified through the process described above.
15 (Settlement Agreement, at p. 14.) The Class Notice will be substantially the form as the one attached
16 as **Exhibit 1** to Settlement Agreement. (Settlement Agreement, at p. 13.)

17 Class Members who do not timely request exclusion from the Settlement Agreement will be
18 deemed to be a participating Class Member without having to submit a claim form or take any other
19 action. (Settlement Agreement, at p. 8.) To request exclusion from the Settlement Agreement, the Class
20 Member must submit a written request for exclusion from the Settlement Agreement to the Settlement
21 Administrator (“Request for Exclusion”), no later than 45 calendar days after the Settlement
22 Administrator mails the Class Notice to the Class Members. (Settlement Agreement, at p. 16.)

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

24 **A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENTS APPLIES**

25 California Rules of Court, rule 3.769, subdivision (d), provides that the court may make an
26 order approving certification of a provisional settlement class at the preliminary approval stage. It is
27 well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
28 of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48

1 Cal.App.4th 1794, 1807, fn.19.) Since no trial is anticipated in a settlement class, the case management
2 issues inherent in determining if a class should be certified need not be confronted, and the trial court’s
3 fairness review of the settlement protects the interests of the non-representative class members. (*Ibid.*;
4 see also *Officers for Justice v. Civil Service Com’n of City and County of San Francisco* (9th Cir. 1982)
5 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620 [“Confronted with a
6 request for settlement-only class certification, a district court need not inquire whether the case, if tried,
7 would present intractable management problems . . . for the proposal is that there be no trial.”].)

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

9 Numerosity is met if a proposed class is so large that joinder of all members would be
10 impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class
11 members can be objectively identified and given notice of the litigation without unreasonable time or
12 expense. (See *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendant has
13 represented that the proposed Class consisted of approximately 674 Class Members ascertained through
14 Defendant’s records. As such, these requirements are met.

15 **C. THERE EXISTS A WELL-DEFINED COMMUNITY OF INTEREST**

16 **1. Commonality**

17 To justify certification, the class proponent must show that questions of law or fact common to
18 the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito*
19 *Restaurants, Inc.* (2010) 183 Cal.App.4th 723.) The commonality element is satisfied here because
20 common legal and factual questions exist, such as whether Defendant failed to properly reimburse all
21 Class Members for the costs associated with their business-related use of their personal cell phones.

22 **2. Typicality**

23 Typicality focuses on whether there exists a relationship between the Plaintiff’s claims and the
24 claims alleged on behalf of the class. Plaintiffs’ claims are typical of the Settlement Class because she
25 was subject to Defendant’s practices of failing to provide meal periods, failing to provide rest breaks,
26 failing to overtime, and failing to reimburse, which were consistently applied to all Class Members.
27 (Melmed Decl., ¶¶ 26–44.)

28 **3. Adequacy of Representation**

1 The proposed class representatives must establish that they will adequately represent the
2 proposed class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.)
3 Plaintiffs are adequate as class representatives since they are members of the Settlement Class,
4 experienced the same business practices as the rest of the Settlement Class, are committed to
5 representing the interests of the Settlement Class, has no interests that are adverse to members of the
6 Settlement Class, and understands and accepts their duties to represent the best interests of the
7 Settlement Class. Plaintiffs are committed to the Settlement Class and they are adequate to represent
8 the interests of the Class in this litigation. (Gonzalez Decl., ¶¶ 5–6; Madrigal Decl., ¶¶ 5–6.)

9 Plaintiffs also provided counsel with information that was crucial to the initiating the action and
10 mediation brief, discussed settlement strategy with counsel, and gathered information about the other
11 Class Members with regard to their experiences working for Defendant. (Melmed Decl., ¶ 74; Gonzalez
12 Decl., ¶¶ 7–9; Madrigal Decl., ¶¶ 7–9.)

13 Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local*
14 *Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244
15 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour
16 class actions, who have no interests adverse to Plaintiffs or the Settlement Class, who vigorously
17 prosecuted this action, and who have the financial resources to handle this case. (Melmed Decl., ¶¶ 8–
18 13.)

19 4. Superiority

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

24 5. Predominance

25 The common issues here, concerning uniform deficiencies to Defendant’s wage and hour
26 policies raise predominating factual and legal issues supporting certification of a settlement class.

27 VI. PRELIMINARY APPROVAL SHOULD BE GRANTED

28 The Settlement Agreement was negotiated at arm’s length between counsel using a professional

1 and well-respected third-party neutral. (Melmed Decl., ¶ 47.) Counsel for both parties were thoroughly
2 familiar with the complex legal and factual questions at issue in this litigation. (*Id.*) The Settlement
3 Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of
4 information through informal discovery, during the course of settlement negotiations, including a full-
5 day mediation, and confirmatory investigation by Plaintiffs' counsel. (*Id.*) Although Plaintiffs and their
6 counsel believed the class claims had merit and there was a possibility of certifying the class and claims,
7 they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
8 decisions on class certification, summary judgment, at trial or on the damages awarded, or on an appeal
9 that can take several more years to litigate. (Melmed Decl., ¶¶ 45–52.)

10 Counsel spent months prior to the mediation developing the factual record for this case,
11 engaging in informal discovery and exchanges of documents and information, drafting detailed
12 mediation briefs, all of which ensured both sides were fully informed about the strengths and
13 weaknesses of their respective positions at the mediation and during subsequent settlement
14 negotiations. (Melmed Decl., ¶ 56.)

15 In addition, the parties are represented by skilled and experienced counsel with extensive
16 backgrounds in complex litigation and experience litigating similar wage and hour class actions.
17 (Melmed Decl., ¶¶ 8–13.) The Settlement Agreement was reached after extensive investigation and
18 research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiffs'
19 counsel's thorough factual investigation, which were sufficient to evaluate Defendant's defenses.
20 (Melmed Decl., ¶ 57.)

21 As described above, Defendant has strong defenses to Plaintiffs' claims, which create a real
22 possibility that the claims might not be certified or might fail on the merits. (Melmed Decl., ¶ 58.)
23 Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial
24 additional time and resources. (*Ibid.*) If settlement were not achieved, continued litigation of the claims
25 would take a substantial amount time and possibly confer no benefit on Class Members and Aggrieved
26 Employees. (*Ibid.*) By contrast, the settlement will yield a prompt, certain, and substantial recovery for
27 the Class Members and Aggrieved Employees, which also benefits the Parties and the Court. (*Ibid.*) In
28 considering these risks, the choice was overwhelmingly in favor of settlement. (*Ibid.*)

1 **A. THE CLASS NOTICE PLAN IS FAIR AND APPROPRIATE**

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

7 The Court has wide discretion in approving the means of providing notice, so long as the class
8 representative “provide(s) meaningful notice in a form that should have a reasonable chance of reaching
9 a substantial percentage of class members.” (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860,
10 quotation marks omitted.) Here, the Parties’ notice plan is that notice of the Settlement Agreement will
11 be disseminated directly to the Class Members by first class mail by the settlement administrator within
12 35 days after the Settlement Agreement becomes effective. (Settlement Agreement, p. 11.)

13 The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California
14 Rules of Court and afford the Class Members with all due process protections required by the United
15 States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766,
16 subdivision (d), of the California Rules of Court, because the Notice includes, among other things: **(1)** a
17 detailed explanation of the case, including the basic contentions or denials of the parties; **(2)** a statement
18 that the court will exclude the member from the class if the member so requests by a specified date;
19 **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a statement that
20 the judgment, whether favorable or not, will bind all members who do not request exclusion; and **(5)** a
21 statement that any member who does not request exclusion may, if the member so desires, enter an
22 appearance through counsel. (Settlement Agreement, Exh. 1.) The 45-day deadline for Class Members
23 to exclude themselves or challenge the number of workweeks worked during the Class Period is
24 reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek
25 independent legal advice in the interim. (Settlement Agreement, at pp. 14-15, 17.)

26 **B. THE ATTORNEYS’ FEE ALLOCATION IS FAIR AND APPROPRIATE**

27 In addition, at the time of final approval, Class Counsel will request attorneys’ fees of up to
28 one-third of the Gross Settlement Amount (i.e., \$275,000.00), plus reimbursement of litigation

1 expenses and costs of up to \$25,000.00. (Settlement Agreement, at p. 12.) As the California Supreme
2 Court has made clear, one third of the common fund is a reasonable percentage for a trial court to award
3 as attorneys' fees in a class action where a common fund was generated as a result of the case. (See
4 *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion where
5 trial court approved a fee request of one-third of the common fund].) The California Supreme Court
6 further clarified that trial courts "have discretion to conduct a lodestar cross check on a percentage fee,
7 as the court did here; they also retain the discretion to forgo a lodestar cross check and use other means
8 to evaluate the reasonableness of a requested percentage fee." (*Ibid.*)

9 The requested fees of one-third of the Gross Settlement Amount are also consistent with awards
10 obtained in similar wage and hour class action cases approved by various courts in California. (See
11 *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645
12 [approving fee award of one-third]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No.
13 08-CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving fee award of 33.33%]; *Romero v.*
14 *Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at
15 *4 [awarding fees of one-third]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31,
16 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [approving attorneys' fees of one-third].)

17 As part of the final approval motion, Plaintiff's counsel will request approval of attorneys' fees
18 and costs. Accordingly, the Court need not decide the fees and costs now, but only authorize the Class
19 Notice to inform class members of the requested amounts.

20 **C. THE SERVICE AWARD ALLOCATION IS FAIR AND APPROPRIATE.**

21 Plaintiffs will request payment of incentives award from the non-reversionary Gross Settlement
22 Amount in the amount of \$7,500.00 each, in addition to whatever payment they are otherwise entitled
23 to receive as a Class Members and/or Aggrieved Employees. (Melmed Decl., ¶ 61; Settlement
24 Agreement, at pp. 10.) The proposed incentive awards are reasonable compensation given the time and
25 effort that Plaintiffs devoted to this case, the valuable assistance provided to Plaintiffs' counsel, and
26 the fact that they entered into a general release of claims broader than the release of the Class. (Melmed
27 Decl., ¶ 60; Gonzalez Decl., ¶¶ 11–12; Madrigal Decl., ¶¶ 11–12; Settlement Agreement, at pp. 10.)

28 Plaintiffs provided invaluable assistance to Plaintiffs' counsel, the Class Members, the State of

1 California, and the Aggrieved Employees in this case, including providing factual background for
2 mediation and the operative complaint, reviewing the relevant documents, participating in phone calls
3 with Plaintiffs' counsel, gathering highly relevant documents, and reviewing the settlement documents.
4 (Melmed Decl., ¶ 62.) Plaintiffs agreed to participate in this case with no guarantee of personal benefit
5 and undertook the financial risk of serving as class representatives. (*Ibid.*)

6 Moreover, the requested incentive awards for Plaintiffs falls within the range of incentive
7 payments typically awarded to class representatives in similar cases. (See, e.g., *Bond v. Ferguson*
8 *Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879
9 [approving **\$11,250** service awards]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010)
10 No. C 07-02951 SI, 2010 WL 3833922, at *2 [approving **\$20,000** service awards]; *Vasquez v. Coast*
11 *Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving **\$10,000** service awards]; *West*
12 *v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist.
13 LEXIS 76558, at *28 [approving **\$15,000** service award]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26,
14 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 [approving **\$25,000** service awards];
15 *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) No. 08cv0795 IEG RBB, 2008 U.S.
16 Dist. LEXIS 78314, at *18 [approving **\$25,000** service award]; *Garner v. State Farm Mut. Auto. Ins.*
17 *Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8.)

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