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

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

Plaintiff,

v.

AVAGO TECHNOLOGIES U.S. INC., a
Delaware Corporation; BROADCOM
CORPORATION, a California Corporation; and
DOES 1 TO 50,

Defendants.

Case Number: 24CV434852

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

Date: October 14, 2026

Time: 1:30 p.m.

Dept.: 19

Judge: Hon. Theodore C. Zayner

Action Filed: April 9, 2024

FAC Filed: June 17, 2024

Trial Date: None Set

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

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

3 **PLEASE TAKE NOTICE** that on October 14, 2026, at 1:30 p.m., or as soon thereafter as the
4 matter may be heard, in Department 19 of the Santa Clara County Superior Court for the State of
5 California, located at Old Courthouse, 191 North First Street, San Jose, California 95113, before the
6 Honorable Theodore C. Zayner, Plaintiff Thoa Barcenas (“Plaintiff”), on behalf of herself, the State of
7 California, as a private attorney general, and on behalf of all others similarly situated, will and hereby
8 does move this court for entry of an order:

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

11 2. Finally appointing Plaintiff Thoa Barcenas as class representative for purposes of
12 settlement;

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

15 4. Finding that the notice of the settlement was properly provided to the class members in
16 accordance with Plaintiff’s *[Proposed] Order Granting Preliminary Approval of Class Action*
17 *Settlement* as entered into by the Court’s *Order Granting Preliminary Approval of Class Action and*
18 *PAGA Settlement* dated April 29, 2026.

19 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms
20 set forth in the parties’ *Joint Stipulation of Class and Representative Action Settlement and Release*
21 (the “Initial Agreement”) and *Amendment to Joint Stipulation of Class and Representative Action*
22 *Settlement and Release* (the “Amendment”) (the Initial Agreement and Amendment are hereafter
23 referred to together as the “Settlement Agreement”), including payment by Defendant Avago
24 Technologies U.S. Inc. and Defendant Broadcom Corporation (“Defendants”) of the non-reversionary
25 gross settlement amount of \$635,000.00 (“Gross Settlement Amount”);

26 6. Finally approving the allocation of attorneys’ fees from the Gross Settlement Amount
27 in the amount of one-third of the Gross Settlement Amount (i.e., \$211,666.67), plus necessary litigation
28 costs in the amount of \$21,070.94;

1 7. Finally approving class representative service payment to Plaintiff in the amount of
2 \$10,000.00 from the Gross Settlement Amount to compensate her for the responsibilities, time, effort,
3 and risks involved in coming forward on behalf of the proposed class;

4 8. Finally approving Apex Class Action, LLC (the “Settlement Administrator”) as the
5 settlement administrator and approving distribution of an amount not to exceed \$6,490.00 from the
6 Gross Settlement Amount to cover the Settlement Administrator’s expenses in administering the
7 settlement;

8 9. Finally approving the allocation of \$63,500.00 for penalties pursuant to the California
9 Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., \$47,625.00) shall be paid to
10 the California Labor and Workforce Development Agency (“LWDA”) from the Gross Settlement
11 Amount, with the remaining 25% (i.e., \$15,875.00) payable to the aggrieved employees;

12 10. Binding all participating class members to the terms of the Settlement Agreement,
13 including the release specified therein;

14 11. Retaining jurisdiction to enforce the Settlement Agreement; and

15 12. Granting Plaintiff leave to file the overlength brief accompanying this motion due to the
16 complex nature of this motion.

17 This motion is based on this Notice of Motion and Motion for Final Approval of Class Action
18 and PAGA Settlement; the Memorandum of Points and Authorities in support thereof; the declaration
19 of Plaintiff’s counsel Kyle D. Smith; the declaration of the Settlement Administrator; the Settlement
20 Agreement; the other records, pleadings, and papers filed in this action; and upon such other evidence
21 or argument as may be presented to the court at the hearing of this motion.

22 Dated: September 17, 2026

MELMED LAW GROUP P.C.



KYLE D. SMITH

Attorney for Plaintiff, the Preliminarily-Certified
Class, and the Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks final approval of a wage-and-hour class and representative action settlement between Plaintiff Thoa Barcenas (“Plaintiff”) and Defendants Avago Technologies U.S. Inc. and Broadcom Corporation (“Defendants”) (collectively, the “Parties”) for the Gross Settlement Amount of \$635,000.00. A true and correct copy of the *Joint Stipulation of Class and Representative Action Settlement and Release* (the “Initial Agreement”) is attached as **Exhibit 1** to the concurrently filed *Declaration of Kyle D. Smith in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement* (“Declaration of Kyle D. Smith” or “Smith FAM Decl.”). A true and correct copy of the *Amendment to Joint Stipulation of Class and Representative Action Settlement and Release* (the “Amendment”) is attached to the Declaration of Kyle D. Smith as **Exhibit 2**. The Initial Agreement and Amendment are hereafter referred to together as the “Settlement Agreement.” 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 Plaintiff represents a group of 123 aggrieved employees on behalf of the State of California as a private attorney general pursuant to PAGA. (See Declaration of Elizabeth Botero Bravo on Behalf of Apex Class Action, LLC, in Support of Motion for Final Approval of Class Action and PAGA Settlement (“Admin. Decl.”), ¶ 17.) The “Aggrieved Employees,” for these purposes, are defined as: *all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period*. The “PAGA Period” for these purposes is defined as the period from April 9, 2023, through March 29, 2025. (Initial Agreement, p. 5.)

Class Settlement: A class action settlement for which Plaintiff represents an identical group of 154 putative class members defined as: *all individuals who are or were employed by Defendants as non-exempt employees in California during the Settling Class Period*. (Admin. Decl., ¶ 5; Initial Agreement, p. 8.) As a result of a correction discussed below, the “Settling Class Period” (hereafter, the “Class Period”) is defined as the period from April 9, 2020, through March 29, 2025, for Class Members employed by Defendant Avago Technologies U.S. Inc., and the period from December 13,

2021, through March 29, 2025, for Class Members employed by Defendant Broadcom Corporation. (*Joint Stipulation and [Proposed] Order to Approve Modified Class Notice* filed June 22, 2026 (the “Class Period Stipulation”), at p. 3.) These employees are referred to herein individually as the “Class Members” or collectively as the “Class.”

On April 29, 2026, this Court entered its order granting preliminary approval of the Settlement Agreement. On July 30, 2026, Apex Class Action, LLC (the “Settlement Administrator”) mailed the *Notice of Proposed Class and PAGA Action Settlement* (the “Class Notice”) to all 154 putative Class Members contained in the data provided by Defendants. (Admin. Decl., ¶ 7.) A copy of the Class Notice is attached to the Admin. Decl. as **Exhibit A**.

If the Court grants final approval, the “Net Settlement Amount” of at least **\$385,772.39** will be distributed to participating Class Members, the California Labor and Workforce Development Agency (“LWDA”), and the Aggrieved Employees:

Gross Settlement Amount	\$635,000.00
Attorneys’ Fees	(\$211,666.67)
Litigation Costs	(\$21,070.94)
Settlement Administration Costs	(\$6,490.00)
Service Award	(\$10,000.00)
Net Settlement Amount	\$385,772.39

Net Settlement Amount	\$385,772.39
To Class Members:	\$322,272.39
PAGA Payment to LWDA (75% of \$63,500):	\$47,625.00
PAGA Payment to Aggrieved Employees:	\$15,875.00

Class Participation	
Eligible Class Members:	154
Requests for Exclusion:	2

Objectors:	0
Participating Class Members:	152
Total Participation Rate:	98.70%

Relevant Supplemental Data	
Number of Aggrieved Employees:	123
Workweeks Worked by Participating Class Members:	25,355
Workweeks Worked by Aggrieved Employees:	5,590
Highest Payment to Class Members:	\$3,304.71
Average Payment to Class Members:	\$2,120.21
Highest Payment to Aggrieved Employees:	\$147.67
Average Payment to Aggrieved Employees:	\$129.06
Class Counsel Fee Request:	⅓ of the Gross Settlement Amount
Percent of Class Payments Attributable to Unpaid Wages (W-2 Income):	20%
Percent of Class Payments Attributable to Non-Wages (1099 Income):	80%

The Settlement Agreement is an excellent result for the Class, which is demonstrated by the extraordinarily high participation rate of **98.70%**. (Admin. Decl., ¶ 14.) To date, *zero* Class Members have submitted objections to the Settlement Agreement and only *two* Class Members have requested exclusion. (Admin. Decl., ¶¶ 11–12.) These numbers evidence an overwhelmingly positive response from the Class Members regarding the substance of the Settlement Agreement, confirming that the Settlement Agreement is in the Class’s best interest. (Smith FAM Decl., ¶ 40.) Further, these numbers raise a strong presumption that the Settlement Agreement is fair, reasonable, and adequate.

Based on the foregoing, Plaintiff respectfully requests that the Court grant final approval of the Settlement Agreement.

II. BACKGROUND

A. PROCEDURAL SUMMARY

On April 9, 2024, Plaintiff submitted a letter to the LWDA to notify the LWDA, pursuant to PAGA, of Plaintiff's intent to seek civil penalties against Defendants for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and California Industrial Welfare Commission ("IWC") Wage Orders 1-2001 and/or 4-2001 (the "Applicable Wage Orders"). (Cal. Code of Regs., tit. 8, §§ 11040, 11160; Smith FAM Decl., ¶ 15.) The letter attached Plaintiff's original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court's reference, a copy of Plaintiff's letter to the LWDA is attached as **Exhibit 3** to the concurrently filed Declaration of Kyle D. Smith.

On April 9, 2024, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendants for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Orders; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Orders; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Orders; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Orders; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; and **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210) (Smith FAM Decl., ¶ 16.)

1 On June 17, 2024, Plaintiff filed a first amended complaint alleging causes of action against
2 Defendants for those described in the original Complaint and adding one cause of action for penalties
3 based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The first amended complaint
4 is the operative complaint in the action (the “Operative Complaint”). (Smith FAM Decl., ¶ 17.)

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

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

24 On January 28, 2025, the Parties participated in a full-day mediation with Louis Marlin, who is
25 a full-time mediator with extensive experience in California wage and hour class action lawsuits.
26 (Smith FAM Decl., ¶ 20.) The mediation negotiations were contentious and were not successful at first.
27 However, the Parties continued to consider the mediator’s proposal offered on January 28, 2025, and
28 on February 26, 2025, Mr. Marlin informed the Parties that both Plaintiff and Defendants had accepted

1 the mediator’s proposal and reached a settlement in principle. (Smith FAM Decl., ¶ 20; Initial
2 Agreement, p. 5.) After further negotiation, the Parties executed the longform Initial Agreement, which
3 was fully executed on August 7, 2025. (Smith FAM Decl., ¶ 20; Initial Agreement, at pp. 29–30.)

4 On September 19, 2025, Plaintiff filed her Motion for Preliminary Approval of Class Action
5 and PAGA Settlement (“Motion for Preliminary Approval”). (Smith FAM Decl., ¶ 21.) At the initial
6 hearing on March 11, 2026, the Court generally found the settlement to be fair but continued the
7 motion, instructing the Parties to designate a *cy pres* beneficiary in accordance with Code of Civil
8 Procedure section 384 and to make certain modifications to the proposed Class Notice. (Smith FAM
9 Decl., ¶ 21.)

10 Accordingly, on April 8, 2026, the Parties executed the Amendment, which modified paragraph
11 49(f) of the Initial Agreement to designate Alliance for Children’s Rights as the *cy pres* recipient of
12 any Residual Amount pursuant to Code of Civil Procedure section 384, subdivision (b). (Amendment,
13 ¶ 2.) That same day, Plaintiff filed the *Declaration of Kyle D. Smith Regarding Cy Pres Recipient and*
14 *Settlement Amendment*, which attached the executed Amendment and a revised Class Notice advising
15 Class Members that they may appear at the final approval hearing, in person or remotely, to make an
16 oral objection without filing a written objection. (Smith FAM Decl., ¶ 22.) On April 9, 2026,
17 Defendants’ counsel submitted a declaration disclosing any interest or involvement of Defendants and
18 their counsel in the governance or work of the *cy pres* recipient. (*Declaration of Adam P. KohSweeney*
19 *Regarding Cy Pres Recipient*, ¶¶ 2–6.)

20 On April 22, 2026, the Court granted Plaintiff’s Motion for Preliminary Approval and set the final
21 approval hearing for October 14, 2026, at 1:30 p.m. in Department 19. The Court’s *Order Granting*
22 *Preliminary Approval of Class Action and PAGA Settlement* (“Preliminary Approval Order” or “PAM
23 Order”) was entered on April 29, 2026. (See PAM Order, ¶¶ 2–5, 15.)

24 Following preliminary approval, the Parties determined that the Initial Agreement’s definition
25 of the Settling Class Period—April 9, 2020, through March 29, 2025, for employees of both
26 Defendants—did not reflect the release period on which the Parties’ mediation discussions, exchanged
27 data, and workweek calculations were actually based. (Class Period Stipulation, at p. 2.) Those
28 calculations used a release period beginning April 9, 2020, for Class Members employed by Defendant

1 Avago Technologies U.S. Inc., but beginning December 13, 2021, for Class Members employed by
2 Defendant Broadcom Corporation—the day after the release period ended in the prior settlement of
3 *DeCarolis v. Broadcom Corp. et al.*, Santa Clara County Superior Court Case No. 21CV384293. (*Id.*
4 at pp. 2–3.) Applying the April 9, 2020 start date to both Defendants would have resulted in up to
5 30,542 workweeks, exceeding the 29,342.5-workweek cushion in the Initial Agreement’s escalator
6 provision, whereas the corrected Class Period results in no more than 26,365 workweeks, which is
7 within that cushion. (*Id.* at p. 3; Initial Agreement, pp. 7–8.) Accordingly, on June 22, 2026, the Parties
8 filed the Class Period Stipulation, which defines the Class Period as set forth above and attaches a
9 modified Class Notice reflecting the corrected Class Period. (Class Period Stipulation, at p. 3 & Exh.
10 A.) On June 23, 2026, the Court entered the stipulated order approving the modified Class Notice.

11 The matter is now before this court for final approval.

12 **B. THE CLAIMS AND DEFENSES**

13 Plaintiff alleged several categories of wage-and-hour violations on behalf of the Class and
14 Aggrieved Employees. The details and settlement value of each of these claims, and their
15 corresponding defenses, were discussed extensively in Plaintiff’s Motion for Preliminary Approval and
16 its accompanying papers, the discussion of which is incorporated by reference herein, and which, for
17 the sake of brevity, Plaintiff will avoid belaboring in this motion. (Motion for Preliminary Approval,
18 at pp. 4–11.)

19 Defendants have persistently denied all liability of any kind associated with the claims and
20 allegations, and further denied that the Class Members are entitled to any relief. Defendants also denied
21 that these allegations are appropriate for class or representative treatment for any purpose other than
22 the settlement. Defendants maintain, among other things, that they have complied with California law
23 in all respects. (Smith FAM Decl., ¶ 31.)

24 **C. SUMMARY OF THE SETTLEMENT AGREEMENT**

25 Under the terms of the Settlement Agreement, Defendants will be released of all claims asserted
26 in the Complaint in exchange for Defendants’ agreement to pay a non-reversionary Gross Settlement
27 Amount of \$635,000.00. (See generally, Settlement Agreement.)
28

1 The amount to be paid by Defendants includes: **(1)** the fees and expenses of the Settlement
2 Administrator, currently estimated at \$6,490.00 (Initial Agreement, pp. 9, 18; Admin. Decl., ¶ 19); **(2)**
3 Plaintiff's counsel's attorneys' fees of one-third of the Gross Settlement Amount, i.e., \$211,666.67
4 (Initial Agreement, p. 16); **(3)** litigation expenses and costs of \$21,070.94 (Initial Agreement, p. 16;
5 Smith FAM Decl., Exh. 4); **(4)** a service award of \$10,000.00 (Initial Agreement, pp. 16–17); **(5)**
6 payment to the LWDA of \$47,625.00 for its 75% share of the \$63,500.00 allocated to civil penalties
7 pursuant to PAGA (Initial Agreement, pp. 6–7, 18); and **(6)** \$15,875.00 for the Aggrieved Employees'
8 25% share of the PAGA allocation (Initial Agreement, pp. 6–7, 18; Admin. Decl., ¶ 17). The remaining
9 amount, which consists of approximately \$322,272.39, less applicable taxes, will be distributed to the
10 participating Class Members. (Initial Agreement, pp. 18, 21; Admin. Decl., ¶ 15.)

11 Individual payments to the Class Members from the class-portion of the settlement will be
12 calculated and apportioned based on the number of weeks worked as an eligible Class Member in
13 California by the participating Class Member during the Class Period. (Initial Agreement, p. 21;
14 Admin. Decl., ¶ 15.) Individual payments to the Aggrieved Employees from the PAGA-portion of the
15 settlement (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on
16 the number of workweeks worked by each Aggrieved Employee during the PAGA Period compared to
17 the total number of workweeks worked by all Aggrieved Employees during the PAGA Period,
18 regardless of whether the Aggrieved Employee requested exclusion from the class portion of the
19 settlement. (Initial Agreement, pp. 8, 12–13; Admin. Decl., ¶ 17.)

20 For tax purposes, the Settlement Agreement provides that 20% of each individual settlement
21 payment will be allocated to wages for which IRS Forms W-2 will issue, and 80% will be allocated to
22 ordinary income and penalties for which IRS Forms 1099 will issue. (Initial Agreement, p. 19.) All
23 monies associated with the PAGA allocation, as well as Plaintiff's service award, will be reported on
24 IRS Form 1099. (*Ibid.*)

25 Any settlement checks that are not cashed by participating Class Members, as well as any
26 portion of the Gross Settlement Amount not otherwise allocated under the Settlement Agreement,
27 constitute the "Residual Amount." (Amendment, ¶ 2.) To the extent approved by the Court, the
28 Residual Amount shall be paid as a *cy pres* payment to Alliance for Children's Rights pursuant to Code

1 of Civil Procedure section 384, subdivision (b). (*Ibid.*) The Court designated Alliance for Children’s
2 Rights as the *cy pres* recipient in the Preliminary Approval Order. (PAM Order, ¶ 12.)

3 **III. NOTICE TO THE CLASS MEMBERS**

4 The Settlement Administrator was tasked with, among other things: **(1)** printing and mailing
5 the Class Notice in English; **(2)** receiving and processing Requests for Exclusion; **(3)** resolving disputes
6 among Class Members regarding the number of workweeks recorded by Defendants during the Class
7 Period, as stated on their individualized Class Notice; **(4)** calculating individual settlement award
8 amounts; **(5)** processing and mailing settlement award checks; **(6)** handling tax withholdings as
9 required by the Settlement Agreement and the law; **(7)** preparing, issuing, and filing tax returns and
10 other applicable tax forms; **(8)** managing the distribution of any unclaimed funds pursuant to the terms
11 of the Settlement Agreement; and **(9)** undertaking additional tasks as mutually agreed upon by the
12 Parties or as ordered by the Court. (Admin. Decl., ¶ 3; see also Initial Agreement, p. 9.)

13 On April 29, 2026, Plaintiff’s counsel provided the Settlement Administrator with the Court-
14 approved content for the Class Notice, and the Settlement Administrator prepared a formatted Class
15 Notice that counsel for the Parties approved prior to mailing. (Admin. Decl., ¶ 4.) On May 20, 2026,
16 the Settlement Administrator received the class data list for 154 individuals from Defendants’ counsel,
17 which it reviewed for duplicates, discrepancies, and missing information. (Admin. Decl., ¶ 5.) On July
18 30, 2026, the Settlement Administrator mailed the Class Notice, as modified to reflect the corrected
19 Class Period, to all 154 Class Members via first-class mail. (Admin. Decl., ¶ 7 & Exh. A; Class Period
20 Stipulation, Exh. A.) Five Class Notices were returned as undeliverable; after conducting a skip trace,
21 the Settlement Administrator obtained four updated addresses, to which the Class Notices were
22 promptly re-mailed. (Admin. Decl., ¶ 8.) Only one Class Notice remains undeliverable. (Admin. Decl.,
23 ¶ 9.) The deadline for Class Members to submit a Request for Exclusion, objection, or workweek
24 dispute was August 31, 2026. (Admin. Decl., ¶¶ 10–13; PAM Order, ¶¶ 15–16.)

25 The Settlement Administrator has received **zero** objections from the Class Members, and only
26 **two** Class Members requested exclusion. (Admin. Decl., ¶¶ 11–12.) Moreover, **zero** Class Members
27 disputed their workweeks. (Admin. Decl., ¶ 13.) Thus, the Settlement Administrator is reporting a
28 **98.70% participation rate**—an overwhelmingly favorable response to a Settlement. “[T]he absence

1 of a large number of objections to a proposed class action settlement raises a strong presumption that
2 the terms of a proposed class settlement action are favorable to the class members.” (*In re Omnivision*
3 *Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043, quoting *National Rural*
4 *Telecommunications Cooperative v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529; *Moore v.*
5 *PetSmart, Inc.* (N.D. Cal., Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000, at *7, *aff’d* (9th
6 Cir. 2018) 728 Fed. Appx. 671 [finding that where “less than one percent either opted out or objected,
7 the reaction of the putative class has been very positive. Therefore, this factor strongly favors
8 settlement.”].)

9 **IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AGREEMENT**

10 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW**
11 **AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT.**

12 The law favors settlements. (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1382.) This
13 is particularly true in class actions where substantial resources can be conserved by avoiding the time,
14 cost, and risk of formal litigation. (See *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30
15 Cal.4th 1037, 1054 [“Public policy favoring settlement is especially weighty for class actions.
16 [Citations]. Settlement of class actions is encouraged precisely because they ‘consume substantial
17 judicial resources and present unusually large risks for the litigants.’”], quoting *In re General Motors*
18 *Corp. Pick-Up Truck Fuel Tank Products Liability Litigation* (3d Cir. 1995) 55 F.3d 768, 805.)
19 However, a class action may not be dismissed, compromised, or settled without the Court’s approval.
20 (Cal. Rules of Court, rule 3.769(a).) This requirement exists to prevent fraud, collusion, or unfairness
21 to the class and to ensure that their rights are given due regard by the negotiating parties. (*Malibu*
22 *Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578–579; *Officers for*
23 *Justice v. Civil Service Com’n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624.)
24 The California Rules of Court set forth the procedures for court approval of a class action settlement:
25 **(1)** the Court preliminarily approves the settlement; **(2)** class members receive notice as directed by the
26 Court; and **(3)** the Court conducts a final approval hearing to inquire into the fairness of the proposed
27 settlement. (See Cal. Rules of Court, rule 3.769(c), (e)–(g).)
28

1 The trial court enjoys broad discretion to determine whether a proposed class action settlement
2 is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The decision to approve or reject a
3 proposed settlement lies within the Court’s sound discretion. (*Wershba v. Apple Computer, Inc.* (2001)
4 91 Cal.App.4th 224, 234–235.) In deciding whether to grant final approval, the Court’s ultimate duty
5 is to determine whether the settlement is fair, adequate, and reasonable. (See *Dunk v. Ford Motor Co.*
6 (1996) 48 Cal.App.4th 1794, 1801 [setting forth the “fair, adequate, and reasonable” standard], citing
7 *Officers for Justice v. Civil Service Com’n of City and County of San Francisco, supra*, 688 F.2d 615,
8 625; see also *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742–743 [a trial
9 court must approve a class action settlement agreement, but only after determining that it is ““fair,
10 adequate and reasonable,”” considering factors such as the ““risk, expense, [and] complexity”” of
11 continued litigation], citations omitted.) The Court should consider several factors including, but not
12 limited to:

13 “[T]he strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of
14 further litigation, the risk of maintaining class action status through trial, the amount
15 offered in settlement, the extent of discovery completed and the stage of the
16 proceedings, the experience and views of counsel, . . . and the reaction of the class
17 members to the proposed settlement.” (*Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th
18 at p. 1801.)
19

20 The above factors are not exclusive, “the court is free to engage in a balancing and weighing of
21 factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91
22 Cal.App.4th 224, 245.) In doing so, the Court must give due “regard to what is otherwise a private
23 consensual agreement between the parties.” (*Ibid.*; see also *In re Microsoft I-V Cases* (2006) 135
24 Cal.App.4th 706, 723.) The inquiry is limited “to the extent necessary to reach a reasoned judgment
25 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
26 parties” (*Officers for Justice v. Civil Service Com’n of City and County of San Francisco, supra*,
27 688 F.2d 615, 625.)
28

1 As will be explained by applying the above factors, the proposed settlement embodies all key
2 features of a settlement that is fair, reasonable, adequate, and in the best interests of the members of
3 the class, and, as such, meets all the criteria necessary for final approval.

4 **B. THE SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS**

5 A presumption of fairness exists where, as here: “(1) the settlement is reached through arm’s-
6 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
7 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
8 small.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th 1794, 1802; see also *In re Microsoft I-V Cases*,
9 *supra*, 135 Cal.App.4th 706, 723.)

10 Here, the Settlement Agreement was negotiated at arm’s length between counsel using a
11 professional and well-respected third-party neutral. (Smith FAM Decl., ¶ 35.) Counsel for all parties
12 were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Smith
13 FAM Decl., ¶ 35.) The Settlement Agreement is a product of intensive negotiations, supported by
14 investigation and direct exchanges of information through informal discovery, during settlement
15 negotiations, including a full-day mediation, and significant post-mediation negotiations. (Smith FAM
16 Decl., ¶ 35.) Though cordial and professional, the settlement negotiations were adversarial and non-
17 collusive in nature. (Smith FAM Decl., ¶ 35.)

18 The Parties thoroughly investigated and evaluated the factual and legal strengths and
19 weaknesses of this case before reaching the settlement. (Smith FAM Decl., ¶ 36.) As described above
20 and in the Motion for Preliminary Approval, the Settlement Agreement was reached after extensive
21 informal discovery, investigation, research, thorough calculations, risk evaluation, substantial
22 exchanges of documents, and an exchange of other information required to evaluate the claims at issue.
23 (Smith FAM Decl., ¶ 36.) The settlement came only after the case was thoroughly investigated by
24 Plaintiff’s counsel. (Smith FAM Decl., ¶ 36.)

25 The settlement reached is the product of substantial effort by the parties and their counsel.
26 (Smith FAM Decl., ¶ 37.) Plaintiff and Plaintiff’s counsel agree with the Court’s preliminary approval
27 order that the Settlement Agreement falls within the range of reasonableness and is presumptively
28 valid. (Smith FAM Decl., ¶ 34; PAM Order, ¶ 4.)

Moreover, Plaintiff's Counsel are experienced in similar class actions. (Smith FAM Decl., ¶¶ 6–14.) Additionally, the percentage of valid objectors and disputes is not only small, but *zero*. (Admin. Decl., ¶¶ 12–13.) The presumption of fairness of this settlement applies with full force.

C. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED

This Court found that the “resolution set forth in the Amended Settlement Agreement appears to be fair, adequate, and reasonable to the Class, including the payment of the non-reversionary gross settlement amount of \$635,000.00 by Defendants.” (PAM Order, ¶ 3.) The relevant analysis thus remains unchanged with one exception: the Court now has adequate information to know “the reaction of the class members to the proposed settlement.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) Because the reaction has been overwhelmingly positive, with *zero* objections to the Settlement Agreement, the justifications for approving the Settlement Agreement have only been bolstered since the time of this Court's original analysis. (Admin. Decl., ¶ 12.) This Court can thus proceed secure in the knowledge that the factors mentioned above, including arm's length bargaining, sufficient investigation and discovery, experienced counsel, and percentage of objectors, weigh heavily in favor of granting final approval.

V. PLAINTIFF'S SERVICE AWARD IS FAIR, REASONABLE, AND APPROPRIATE

The Settlement Agreement provides for Plaintiff to receive a service award from the non-reversionary Gross Settlement Amount in the amount of \$10,000.00, in addition to whatever payment she is otherwise entitled to receive as a Class Member and/or Aggrieved Employee. (Smith FAM Decl., ¶ 41; Initial Agreement, pp. 16–17.) The proposed service award is intended to recognize the time, effort, and risk that Plaintiff undertook in bringing this case and helping to secure the relief obtained for the members of the Class. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding “service payment” to named plaintiff for his efforts in bringing class case]; *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959 [stating that service awards are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”].) To determine the propriety of a service award, courts consider the actions protecting class interests, the benefit provided to the class based on those actions, and the

1 amount of time and effort expended by the plaintiff. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d
2 938, 976–977.)

3 The proposed service award is reasonable compensation given the time and effort that Plaintiff
4 devoted to this case and the valuable assistance she provided to counsel. (Smith FAM Decl., ¶ 41;
5 Supplemental Declaration of Thoa Barcenas in Support of Plaintiff’s Motion for Final Approval of
6 Class Action and PAGA Settlement (“Barcenas Supp. Decl.”), ¶¶ 5–6.) Plaintiff provided invaluable
7 assistance to Plaintiff’s counsel and the Class Members in this case, including providing factual
8 background for mediation and the operative complaint, reviewing the relevant documents, participating
9 in phone calls with Plaintiff’s counsel, gathering highly relevant documents, discussing settlement
10 strategy with counsel, providing valuable information about the Class Members and their experiences
11 working for Defendants, and reviewing the settlement documents. (Smith FAM Decl., ¶ 42; Barcenas
12 Supp. Decl., ¶¶ 4–5.)

13 Based on her best recollection, Plaintiff estimates that she has spent approximately 16 hours
14 working on this action, including time spent providing information to her counsel, gathering and
15 sending documents, participating in telephone calls, remaining available during the mediation, and
16 reviewing and signing the Settlement Agreement and her declarations. (Barcenas Supp. Decl., ¶ 6.)
17 Throughout the case, Plaintiff gave her counsel information and records concerning her job duties, pay,
18 timekeeping, and meal and rest periods, which counsel used to prepare the complaint, the notice to the
19 LWDA, the mediation brief, the Settlement Agreement, and the other key materials in this case, and
20 she has remained actively involved in the litigation, including after the settlement was reached.
21 (Barcenas Supp. Decl., ¶ 5; Smith FAM Decl., ¶ 42.)

22 Plaintiff agreed to participate in this case with no guarantee of personal benefit. (Smith FAM
23 Decl., ¶ 43.) To the contrary, Plaintiff agreed to undertake the financial risk of serving as class
24 representative and exposed herself to the risk of negative publicity by anyone who opposed this case.
25 (Smith FAM Decl., ¶ 43.) Plaintiff also faced the risk of reputational harm of having her name affiliated
26 with an employment lawsuit and the potential resulting stigma from future prospective employers.
27 (Smith FAM Decl., ¶ 43.) Disregarding these risks, Plaintiff pursued this case on behalf of the Class to
28 a successful resolution and settlement.

1 Finally, apart from the service award, Plaintiff's share of the class and PAGA settlement will
2 be calculated using the same formula that applies to every other participating Class Member and
3 Aggrieved Employee, and Plaintiff's support for the Settlement Agreement is not contingent on her
4 receipt of a service award. (Barcenas Supp. Decl., ¶ 8.) Plaintiff believes the Settlement Agreement is
5 fair, reasonable, and adequate, and she respectfully requests that the Court approve the \$10,000.00
6 service award. (*Ibid.*)

7 Moreover, the requested service award for Plaintiff falls within the range of service payments
8 typically awarded to class representatives in similar cases. (See, e.g., *Bond v. Ferguson Enterprises,*
9 *Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 [approving **\$11,250**
10 service awards]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI,
11 2010 WL 3833922, at *2 [approving **\$20,000** service awards]; *Vasquez v. Coast Valley Roofing, Inc.*
12 (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving **\$10,000** service awards]; *West v. Circle K Stores,*
13 *Inc.* (E.D. Cal., Oct. 20, 2006, No. CIV. S-04-0438 WBS GGH) 2006 WL 8458679, at *8 [approving
14 **\$15,000** service award]; *Glass v. UBS Financial Services, Inc.* (N.D. Cal., Jan. 26, 2007, No. C-06-
15 4068 MMC) 2007 WL 221862, at *17 [approving **\$25,000** service awards]; *Louie v. Kaiser Foundation*
16 *Health Plan, Inc.* (S.D. Cal., Oct. 6, 2008, No. 08CV0795 IEG RBB) 2008 WL 4473183, at *7
17 [approving **\$25,000** service award]; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal., Apr. 22,
18 2010, No. CV 08 1365 CW EMC) 2010 WL 1687832, at *17 n.8 ["Numerous courts in the Ninth
19 Circuit and elsewhere have approved incentive awards of **\$20,000 or more** where, as here, the class
20 representative has demonstrated a strong commitment to the class."], emphasis added.)

21 **VI. THE PROPOSED ATTORNEYS' FEE ALLOCATION IS FAIR, REASONABLE,**
22 **AND APPROPRIATE**

23 Where a lawsuit results in the recovery of a fund or property benefiting others, as well as the
24 plaintiffs—as in a class action—the court has inherent equitable power to order the plaintiff's attorney
25 fees to be paid out of the common fund or property. (See *Serrano v. Priest* (1977) 20 Cal.3d 25, 35;
26 *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 25 ["when a number of persons are
27 entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit
28 of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded

1 attorney's fees out of the fund"]; *Quinn v. State of California* (1975) 15 Cal.3d 162, 168; *In re Stauffer's*
2 *Estate* (1959) 53 Cal.2d 124, 132.) This "fee spreading" is premised on assuring that all those benefitted
3 by the litigation pay their fair share of obtaining the recovery. (See *Lealao v. Beneficial California,*
4 *Inc.* (2000) 82 Cal.App.4th 19, 26; *Cziraki v. Thunder Cats, Inc.* (2003) 111 Cal.App.4th 552, 558.)

5 Here, Plaintiff's counsel seek a fee award under the "common fund" doctrine. (See *Laffitte v.*
6 *Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [reaffirming its approval of the use of a percentage
7 of the common fund to compensate counsel]; Smith FAM Decl., ¶ 45.) Plaintiff's counsel are also
8 entitled to fees under various statutes at issue here, including, among others, Labor Code sections 218.5,
9 226, subdivision (e)(1), 1194, and former section 2699, subdivision (g)(1), all of which provide for
10 reasonable attorneys' fees to be recovered by the prevailing party.

11 Specifically, Plaintiff's counsel request attorneys' fees in the amount of one-third of the Gross
12 Settlement Amount (i.e., \$211,666.67), as provided in the Settlement Agreement. (Initial Agreement,
13 p. 16.) As will be explained, this request is reasonable and appropriate under the common fund theory
14 and is supported by: (1) case law, (2) Plaintiff's counsel's high quality of work, (3) the excellent results
15 achieved for the Class Members, (4) the risks inherent in the contingent nature of Plaintiff's counsel's
16 representation in this case, and (5) public policy considerations.

17 **A. PLAINTIFF'S COUNSEL ARE ENTITLED TO A FEE FROM THE**
18 **COMMON FUND CREATED**

19 The California Supreme Court has made clear that one-third of the common fund is a reasonable
20 percentage for a trial court to award as attorneys' fees in a class action where a common fund was
21 generated because of the case. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506
22 ["We therefore agree with the Court of Appeal below that '[t]he percentage of fund method survives
23 in California class action cases, and the trial court did not abuse its discretion in using it, in part, to
24 approve the fee request [of one-third of the common fund] in this class action"].) The California
25 Supreme Court further clarified that trial courts "have discretion to conduct a lodestar cross-check on
26 a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check
27 and use other means to evaluate the reasonableness of a requested percentage fee." (*Ibid.*)
28

1 As mentioned above, Plaintiff’s counsel are seeking a fee award under the “common fund”
2 doctrine. The common fund doctrine provides that “a litigant or a lawyer who recovers a common fund
3 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from
4 the fund as a whole.” (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; see also *Vincent v. Hughes*
5 *Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Class Plaintiffs v. Jaffe & Schlesinger, P.A.* (9th Cir.
6 1994) 19 F.3d 1306, 1308.) The doctrine is founded on the understanding that attorneys should
7 normally be paid by their clients, and that unless attorneys’ fees are paid out of the common fund where
8 the attorneys’ unnamed class member “clients” have no express retainer agreement, those who
9 benefited from the fund without contributing to those who created it would be unjustly enriched.
10 (*Boeing Co. v. Van Gemert, supra*, 444 U.S. 472, 478.)

11 In *Laffitte v. Robert Half Internat., Inc., supra*, 1 Cal.5th 480, the California Supreme Court
12 unequivocally held “that when class action litigation establishes a monetary fund for the benefit of the
13 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
14 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
15 fund created” without considering the amount of hours expended on the case. (*Id.* at p. 503.) The court
16 further held that “[t]he recognized advantages of the percentage method—including relative ease of
17 calculation, alignment of incentives between counsel and the class, a better approximation of market
18 conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement
19 and avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a
20 valuable tool that should not be denied our trial courts.” (*Ibid.*)

21 Plaintiff’s counsel’s diligent litigation of this action resulted in the creation of an ascertainable
22 common fund that will substantially benefit the Class. Plaintiff’s counsel’s request for an award of one-
23 third of the Gross Settlement Amount is well within the range awarded to counsel under similar
24 circumstances in litigation of this type and is abundantly reasonable in light of the excellent results
25 achieved for the Class Members.

26 This requested amount has not been objected to by any Class Member. (Admin. Decl., ¶ 12.)
27 As this Settlement Agreement will result in the recovery of a substantial fund benefiting all
28

1 participating Class Members, this Court has inherent equitable power to order Plaintiff's counsel's fees
2 and costs to be paid out of the Gross Settlement Amount, pursuant to the common fund theory.

3 **B. COURTS ROUTINELY AWARD ATTORNEYS' FEES AT OR ABOVE**
4 **THOSE REQUESTED HERE**

5 The negotiated and unopposed fee should also be approved because it is within the approved
6 range of appropriate awards of attorneys' fees in similar wage-and-hour class action cases in California.
7 (See, e.g., *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–492 [explaining
8 that “[t]he typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total
9 settlement value”]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG
10 (BLM)) 2010 WL 2196104, at *8 [approving attorney fee award of 33.33% of the common fund and
11 noting that award was similar to awards in three other wage-and-hour class action cases where fees
12 ranged from 30.3% to 50%]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008,
13 No. C 06-6883 VRW) 2008 WL 5478576, at *8 [meal break class action where the federal district court
14 approved attorneys’ fees of one-third of common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D.
15 Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [approving fees at one-third of
16 the common fund in a missed meal break class action and noting that fee awards in class actions average
17 around one-third of the recovery]; *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499
18 EMC) 2010 WL 3155645, at *6 [noting that a fee award of one-third of the settlement was “well within
19 the range of percentages which courts have upheld as reasonable in other class action lawsuits”];
20 *McCrary v. Elations Company, LLC* (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL
21 769703, at *10 [noting that most fee awards are 33%]; *Boyd v. Bank of America Corp.* (C.D. Cal., Nov.
22 18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804, at *12 [finally approving a one-third fee
23 award on a \$5,800,000 settlement].)

24 Thus, a fee in the amount of one-third of the common fund is fair and reasonable as it falls
25 squarely within the range of fee awards approved by courts in similar wage-and-hour matters. (See
26 *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6
27 [approving fee award of one-third of the total maximum settlement amount of \$4.5 million and noting
28 that the fee award of one-third of the total settlement was “well within the range of percentages which

1 courts have upheld as reasonable in other class action lawsuits”]; *Monterrubio v. Best Buy Stores, L.P.*
2 (E.D. Cal., Nov. 20, 2013, No. 2:11-CV-03270-MCE-AC) 2013 WL 12432761, at *12 [finally
3 approving fee award of 30%]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-
4 CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving fee award of 33.33% of the common fund];
5 *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL
6 3492841, at *4 [awarding fees of one-third of common fund in a wage-and-hour class action, noting:
7 “[f]ee awards in class actions average around one-third of the recovery”]; *Martin v. FedEx Ground*
8 *Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8
9 [approving attorneys’ fees of one-third of common fund].)

10 **C. THE HIGH QUALITY OF WORK AND EXCELLENT RESULT OBTAINED**
11 **SUPPORT THE AWARD**

12 In addition to the fact that a class benefit was created with a significant common fund, the
13 fairness of the requested fee award of one-third of that common fund is supported by the high quality
14 of work performed by Plaintiff’s counsel and the favorable result obtained for the Class Members given
15 the significant challenges faced by Plaintiff in this action.

16 Plaintiff’s counsel diligently, efficiently, and creatively pursued this case and promptly reached
17 a successful settlement for the benefit of the Class Members. Despite the numerous risks and obstacles
18 afflicting Plaintiff’s claims as detailed in the Motion for Preliminary Approval and its accompanying
19 papers, Plaintiff’s counsel crafted and negotiated a fair and reasonable Settlement Agreement for the
20 benefit of the Class Members. The fact that the settlement has been embraced and supported by the
21 Class Members, as evidenced by the absence of any objections and the minimal number of opt-outs to
22 date, demonstrates that the Class Members support the Settlement Agreement and results achieved by
23 Plaintiff’s counsel through the litigation of this matter. (Admin. Decl., ¶¶ 11–12.)

24 As a result of this litigation, the Class Members, Aggrieved Employees, and the LWDA stand
25 to receive a significant Net Settlement Amount of **\$385,772.39**.

26 **D. THE CONTINGENT NATURE OF PLAINTIFF’S COUNSEL’S**
27 **REPRESENTATION OF PLAINTIFF AND THE CLASS FURTHER**
28

1 **SUPPORTS THE FEE AWARD AT ONE-THIRD OF THE MAXIMUM**
2 **COMMON FUND**

3 An additional factor militating in favor of granting the requested fee award is the fact that this
4 case was both legally and financially risky for Plaintiff’s counsel, who accepted this representation on
5 a contingency basis. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1049
6 [noting that “[r]isk is a relevant circumstance” when considering attorneys’ fees].) Specifically, there
7 was the prospect of enormous cost inherent in class action litigation, and the many additional risks,
8 discussed at length in Plaintiff’s Motion for Preliminary Approval and its accompanying papers. Those
9 risks included Defendants’ contention that any timekeeping issues ended after September 2021 and that
10 employees thereafter recorded all hours worked; the difficulty of proving off-the-clock work and
11 missed meal periods where Class Members were responsible for logging their own hours; Defendants’
12 contention that they maintained compliant meal and rest period and expense reimbursement policies;
13 the overlap between certain Class Members’ claims and the prior *DeCarolis* settlement; the risk of the
14 Court not certifying the class based on commonality and individualized inquiry grounds; difficulties in
15 establishing that Defendants’ alleged wage statement errors were knowing and intentional or caused
16 injury to the Class Members; and the risk of the Court reducing PAGA penalties. In light of these risks,
17 the chances of recovery were far from certain.

18 This risk further justifies the requested fee award. As explained by the California Supreme
19 Court, “[a] lawyer who both bears the risk of not being paid and provides legal services is not receiving
20 the fair market value of his work if he is paid only for the second of these functions. If he is paid no
21 more, competent counsel will be reluctant to accept fee award cases.” (*Ketchum v. Moses* (2001) 24
22 Cal.4th 1122, 1133, quotation marks omitted; see also *Crommie v. State of Cal., Public Utilities Com’n*
23 (N.D. Cal. 1994) 840 F.Supp. 719, 725 [“The purpose of contingent risk inquiry is to determine a fee
24 that is likely to entice competent counsel to undertake difficult public interest cases.”].)

25 Finally, the absence of any valid objections to the requested fee award as of the Settlement
26 Administrator’s latest report, coupled with the 98.70% Class Member participation rate, also supports
27 the appropriateness and reasonableness of the requested attorneys’ fees. (Admin. Decl., ¶ 14; *In re*
28 *Heritage Bond Litigation* (C.D. Cal., June 10, 2005,) No. 02-ML-1475 DT) 2005 WL 1594403, at *21

1 ["The absence of objections or disapproval by class members to Class Counsel's fee request further
2 supports finding the fee request reasonable."].)

3 **E. PUBLIC POLICY CONSIDERATIONS REQUIRE THE AWARD OF**
4 **ADEQUATE FEES SO COMPETENT AND EXPERIENCED COUNSEL WILL**
5 **UNDERTAKE SUCH REPRESENTATIONS**

6 In many complex actions such as this one, able counsel for plaintiffs can be retained only on a
7 contingent basis. A large segment of the public would be denied a remedy and the ability to retain
8 counsel to pursue low-value individual claims in actions such as the current case if fees awarded by the
9 courts in successful cases did not fairly and adequately compensate counsel for the services provided,
10 the serious risks undertaken, and the delay before any compensation is received.

11 Fair fee awards in successful cases ensure that competent legal services will be available. The
12 complexity and societal importance of this type of litigation calls for the most able counsel obtainable
13 for plaintiffs. To encourage first-rate attorneys to represent plaintiffs on a contingent basis in this type
14 of important litigation, attorneys' fees awarded should reflect this goal. In its landmark decision,
15 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, a unanimous California Supreme Court noted:

16 "Thirty years ago commentators, in urging the utility of the class suit to vindicate the
17 rights of stockholders, made this incisive observation: 'Modern society seems
18 increasingly to expose men to . . . group injuries for which individually they are in a
19 poor position to seek legal redress, either because they do not know enough or because
20 such redress is disproportionately expensive. If each is left to assert his rights alone if
21 and when he can, there will at best be a random and fragmentary enforcement, if there
22 is any at all. This result is not only unfortunate in the particular case, but it will operate
23 seriously to impair the deterrent effect of the sanctions which underlie much
24 contemporary law. The problem of fashioning an effective and inclusive group remedy
25 is thus a major one.' [Citation.]" (*Vasquez v. Superior Court, supra*, 4 Cal.3d 800, 807.)
26

27 The same rationale applies to this litigation. The express judicial policy of California is to favor
28 the maintenance of these types of representative actions. (See, e.g., *Sav-On Drug Stores, Inc. v.*

1 *Superior Court* (2004) 34 Cal.4th 319, 340; *Pearce v. Superior Court* (1983) 149 Cal.App.3d 1058,
2 1065; *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 126.) As recognized by the
3 California Supreme Court in *Sav-On Drug Stores, Inc.*:

4 “Considerations of sound public policy buttress our conclusion. Labor Code section
5 1194 confirms ‘a clear public policy . . . that is specifically directed at the enforcement
6 of California’s minimum wage and overtime laws for the benefit of workers.’ [Citation.]
7 As defendant’s own authority reminds us, California’s overtime laws are remedial and
8 are to be construed so as to promote employee protection. [Citation.] And, as we have
9 recognized, ‘this state has a public policy which encourages the use of the class action
10 device.’ [Citation.] “‘By establishing a technique whereby the claims of many
11 individuals can be resolved at the same time, the class suit both eliminates the possibility
12 of repetitious litigation and provides small claimants with a method of obtaining redress
13 for claims which would otherwise be too small to warrant individual litigation.’”
14 [Citation.]” (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th 319, 340.)
15

16 One of the purposes for awarding fees in such situations is:

17 “[E]ncouragement of the attorney for the successful litigant, who will be more willing
18 to undertake and diligently prosecute proper litigation for the protection or recovery of
19 the fund if he is assured that he will be promptly and directly compensated should his
20 efforts be successful.” (*In re Stauffer’s Estate* (1959) 53 Cal.2d 124, 132.)
21

22 Conversely, a reduction in attorneys’ fees due to the size of the settlement in this case would
23 create perverse incentives for class action attorneys—effectively penalizing them for obtaining more
24 favorable results on behalf of the class. Public policy would be best served by encouraging class action
25 attorneys to recover the greatest amount reasonably possible on behalf of the injured class members.
26 The award of attorneys’ fees as requested by Plaintiff’s counsel would properly reward Plaintiff’s
27 counsel’s efforts in advancing a clear public policy and would encourage additional such efforts.

28 These important public policy considerations support the Court’s approval of the fee requested.

1 **F. THE LODESTAR MULTIPLIER APPROACH CONFIRMS THE**
2 **REASONABLENESS OF THE FEE REQUEST**

3 A lodestar cross-check further confirms that the percentage requested is patently reasonable.
4 The “lodestar-multiplier” is an alternative accepted approach of evaluating the reasonableness of
5 attorneys’ fees whereby the court computes the “lodestar” amount by multiplying the number of hours
6 reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances
7 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty or difficulty
8 of the case, its contingent nature, and the degree of success achieved. (See *PLCM Group v. Drexler*
9 (2000) 22 Cal.4th 1084, 1095–1096; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Serrano v.*
10 *Priest, supra*, 20 Cal.3d 25, 48–49.) As noted, using the loadstar approach, the court first computes the
11 reasonable market value of the service rendered. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138, fn.
12 3.) The first step is to calculate the lodestar, which is determined by multiplying the time spent by the
13 attorneys and other timekeepers by their reasonable hourly rates. (*Id.* at p. 1132.)

14 When a court adopts the “lodestar multiplier” method, after initially calculating the combined
15 total lodestar, the court may then adjust the lodestar based on several factors in order to “fix a fee at
16 the fair market value for the particular action.” (*Id.* at p. 1132; *Graham v. DaimlerChrysler Corp.*
17 (2004) 34 Cal.4th 553, 574.) As noted, these additional factors include the contingent risk of the
18 litigation, the novelty and complexity of the issues, and exceptional results obtained. (*Ketchum v.*
19 *Moses, supra*, 24 Cal.4th at p. 1132; *Serrano v. Priest, supra*, 20 Cal.3d at p. 48.)

20 A lodestar calculation need not be supported by detailed time records. (*Wershba v. Apple*
21 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [“California case law permits fee awards in the absence
22 of detailed time sheets”], disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*
23 (2018) 4 Cal.5th 260.) Declarations by counsel as to time spent, even if only estimates, are enough.
24 (See *Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 254–255 [“Here plaintiff’s
25 attorneys submitted declarations evidencing the reasonable hourly rate for their services and
26 establishing the number of hours spent working on the case”]; see also *Dunk v. Ford Motor Co.* (1996)
27 48 Cal.App.4th 1794, 1810 [stating that lodestar calculation could be based on counsel’s estimate of
28 time spent]; *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698 [“It is well established

1 that ‘California courts do not require detailed time records, and trial courts have discretion to award
2 fees based on declarations of counsel describing the work they have done and the court’s own view of
3 the number of hours reasonably spent. [Citations]’”).)

4 As set forth above, Plaintiff’s counsel are not requesting attorneys’ fees under the lodestar
5 multiplier approach. Nevertheless, Plaintiff’s counsel in their declaration have provided a summary of
6 the hours they expended throughout the course of the litigation, including drafting and filing of the
7 various complaints, defending the pleadings, engaging in discovery, preparing damages analyses,
8 reviewing the formal and informal discovery, preparing and negotiating the settlement agreement,
9 preparing the class notice, preparing papers for and moving for preliminary approval (including
10 supplemental briefing regarding the *cy pres* recipient and the related settlement amendment),
11 negotiating and preparing the stipulation correcting the Class Period, preparing papers and moving for
12 final approval, amongst other things.

13 To date, Plaintiff’s counsel’s lodestar is **\$88,682.30** after expending **111.3 hours** on this matter.
14 (Smith FAM Decl., ¶ 54.) Thus, the fees sought here reflect a lodestar multiplier of 2.39 (i.e.,
15 $\$211,666.67 \div \$88,682.30$). Moreover, it is anticipated that Plaintiff’s counsel will expend time which
16 cannot yet be accounted for in the hours in Plaintiff’s counsel’s declaration. (Smith FAM Decl., ¶ 58.)
17 Therefore, the unadjusted lodestar will increase and the multiplier will decrease by the conclusion of
18 this matter.

19 Historically, courts in California have commonly approved multipliers between two and four.
20 (See, e.g., *Steiner v. American Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed.Appx. 780, 783
21 [multiplier of 6.85 “falls well within the range of multipliers that courts have allowed”]; *Sternwest*
22 *Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 [directing the trial court “to enhance the lodestar award by
23 such factor (two, three, four or otherwise) that the court, in its discretion shall deem proper”]; *Van*
24 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298 [“Multipliers in the 3–4 range
25 are common in lodestar awards for lengthy and complex class action litigation.”]; *Vizcaino v. Microsoft*
26 *Corp.* (9th Cir. 2002) 290 F.3d 1043, 1052 [appendix listing numerous cases with multipliers exceeding
27 the multiplier at issue here, and even up to a multiplier of 19.6]; *Wershba v. Apple Computer, Inc.*
28 (2001) 91 Cal.App.4th 224, 255 [“Multipliers can range from 2 to 4 or even higher.”].) The fact that

1 Plaintiff's counsel's lodestar multiplier falls within those approved by Courts further confirms the
2 reasonableness of the fee request.

3 **VII. PLAINTIFF'S COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES**

4 Under the common fund method, the attorneys representing the class members are permitted to
5 recover their litigation costs and expenses from the common fund. (See *Serrano v. Priest* (1977) 20
6 Cal.3d 25, 35 [common fund doctrine permits recovery of fees and costs from the fund]; *Rider v.*
7 *County of San Diego* (1992) 11 Cal.App.4th 1410, 1424, fn. 6 [costs are recoverable from the common
8 fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery
9 of attorney fees by . . . [Plaintiffs'] attorneys"]; *Melendres v. City of Los Angeles* (1975) 45 Cal.App.3d
10 267, 277.) In fact, this is true for whatever method is chosen by the Court to calculate attorneys' fees:
11 Plaintiff's counsel is entitled to recover "those out-of-pocket expenses that would normally be charged
12 to a fee-paying client." (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19, internal quotation and
13 citation omitted.)

14 Plaintiff's counsel further requests that, in addition to awarding them reasonable attorneys' fees,
15 the Court grant their application for reimbursement of the reasonable out-of-pocket expenses advanced,
16 incurred and expected to be incurred by the law firm representing Plaintiff in connection with the
17 prosecution of this litigation, in the amount of \$21,070.94. (Smith FAM Decl., ¶ 44, Exh. 4.) Plaintiff's
18 counsel has documented and verified these costs and expenses for which counsel seeks reimbursement.
19 (Smith FAM Decl., ¶ 44, Exh. 4.) This amount is less than the \$25,000.00 maximum disclosed to Class
20 Members in the Class Notice. (Admin. Decl., Exh. A, § 3.)

21 **VIII. SETTLEMENT ADMINISTRATION COSTS**

22 The Parties agreed that the Settlement Administrator, Apex Class Action, LLC, would be
23 compensated from the Gross Settlement Amount for the costs and expenses it incurs in performing its
24 duties under the Settlement Agreement. (Initial Agreement, pp. 9, 18.) The Settlement Administrator's
25 comprehensive fees and costs for administering this settlement, covering both incurred and anticipated
26 expenses, are \$6,490.00, which is less than the \$15,000.00 maximum disclosed to Class Members in
27 the Class Notice. (Admin. Decl., ¶ 19 & Exh. A, § 3.) Accordingly, Plaintiff requests that the Court
28 approve payment of \$6,490.00 to the Settlement Administrator from the Gross Settlement Amount.

1 **IX. SUBMISSION TO THE LWDA**

2 The Settlement Agreement, including the Amendment, has been submitted to the LWDA
3 pursuant to former Labor Code section 2699, subdivision (l)(2). (Smith FAM Decl., ¶ 61.)

4 **X. CONCLUSION**

5 Plaintiff respectfully submits that the Settlement Agreement is fair, adequate, and reasonable,
6 and merits final approval.

7 Dated: September 17, 2026

MELMED LAW GROUP P.C.

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10 **KYLE D. SMITH**

11 Attorneys for Plaintiff, the Preliminarily-Certified
12 Class, and the Aggrieved Employees
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