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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**

11 JORDAN WILLEY, individually and on behalf of
12 all those similarly situated,

13 Plaintiffs,

14 vs.

15 TECHTRONIC INDUSTRIES NORTH
16 AMERICA, INC., a corporation; R&B SALES &
MARKETING INC., a corporation; and DOES
ONE through TEN inclusive,

17 Defendants.

Case No.: RG16806307

ASSIGNED FOR ALL PURPOSES TO HON.
WINIFRED Y. SMITH
DEPARTMENT 21

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS AND COLLECTIVE ACTION
SETTLEMENT, NAMED PLAINTIFF
SERVICE AWARD, AND ATTORNEYS'
FEES AND COSTS**

Date: July 28, 2017
Time: 10:00 a.m.
Dept: 21
Res. No: R-1841677

Complaint Filed: March 3, 2016

1 NOTICE IS HEREBY GIVEN that, on July 28, 2017, at 10:00 a.m., or as soon thereafter as the
2 matter may be heard, in Department 21 of this Court, located at 1225 Fallon Street, Oakland,
3 California 94612, Class Representative Plaintiff Jordan Willey will and hereby does move this Court
4 for entry of the proposed Order filed herewith: (1) granting final approval to the parties' class and
5 collective action settlement, (2) approving the requested service award to named Plaintiff Jordan
6 Willey, (3) approving the requested attorneys' fee award and reimbursement of actual litigation costs
7 to Class Counsel, and (4) approving the payment of the costs of settlement administration.

8 Final approval is warranted because the Settlement is fair, adequate, and reasonable. The Class
9 received adequate notice of the Settlement and its terms, and no Class Member has objected to the
10 Settlement. Only one recipient excluded himself from the Settlement, and he did so because he had
11 not actually worked in California, and therefore was not a Class Member. In addition to the Class's
12 overwhelmingly positive reaction, the fairness and reasonableness of the Settlement are also supported
13 by: (1) the total non-reversionary settlement sum of \$3,500,000, with a maximum pre-tax award of
14 approximately \$46,000; (2) the significant risks of continued litigation; (3) the thoroughness of Class
15 Counsel's investigation and informal discovery, as well as the involvement of an experienced
16 mediator; and (4) the endorsement of the Settlement by experienced Class Counsel. Based on these
17 factors, the Court should conclude that the Settlement is fair, reasonable, and adequate, and should
18 grant final approval.

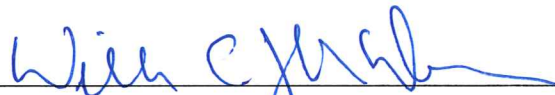
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1 This motion is based on this Notice of Motion and Motion; the Memorandum of Points and
2 Authorities in support thereof, the Declarations of Laura L. Ho, Esq., Jordan Willey, and Claims
3 Administrator Representative Andy Morrison in support thereof, the proposed Order, the other
4 pleadings and papers filed in this action, and such other documentary or oral evidence or argument as
5 the Court may consider at the hearing on this motion or otherwise.

6
7 Dated: July 18, 2017

Respectfully submitted,

8 GOLDSTEIN, BORGAN, DARDARIAN & HO

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11 _____
12 Laura L. Ho
13 William C. Jhaveri-Weeks
14 Byron Goldstein

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ONE through TEN inclusive

18 Defendants.

Case No.: RG16806307

ASSIGNED FOR ALL PURPOSES TO HON.
WINIFRED Y. SMITH
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**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS AND
COLLECTIVE ACTION SETTLEMENT,
NAMED PLAINTIFF SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS**

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1 **I. INTRODUCTION**

2 Plaintiff Jordan Willey seeks final approval of a \$3.5 million non-reversionary, checks-mailed
3 class action settlement of state and federal wage and hour claims against Defendants Techtronic
4 Industries North America Inc. (“TTI”) and R & B Sales and Marketing, Inc. (“R&B”) (separately,
5 “Defendant” and collectively, “Defendants”).¹ The settlement includes all individuals, numbering
6 approximately 343, employed by Defendants as “Field Representatives” (who went by a variety of
7 similar job titles) in California from March 3, 2012 through January 31, 2017.

8 The Court granted preliminary approval of the Settlement on April 4, 2017, certified a
9 settlement class for notice purposes, and approved a schedule and procedure for providing notice of the
10 settlement to the class members. Notice was issued in accordance with the Preliminary Approval
11 Order. Of the 344 employees to whom notice was mailed, only one opted out, and he did so because
12 he had not actually worked in California during the relevant period. No employees objected. This
13 level of support from the class confirms the outstanding result that the Settlement represents, and the
14 significant relief that it provides to class members.

15 For his work in bringing about the excellent settlement and for the general release he is
16 providing that other settlement class members are not, Plaintiff asks the Court to award the requested
17 service award of \$10,000 to the Representative Plaintiff. In light of the excellent and efficient outcome
18 obtained for the class, Plaintiff asks the Court to approve an award of attorneys’ fees equal to one-third
19 of the settlement, as well as actual out of pocket costs of \$15,000.

20 **II. OVERVIEW OF THE SETTLEMENT AND NOTICE RESULTS**

21 **A. Overview of the Litigation and Settlement.**

22 As set forth in detail in the Preliminary Approval Motion, the Settlement Class consists of
23 “Field Representatives” whom Defendants assign to one or more Home Depot stores, where they assist
24 with the merchandising of TTI’s and its related companies’ products (primarily power tools). Plaintiff
25 alleges that, among other things, Defendants required him and other Field Representatives to perform

26 _____
27 ¹ Plaintiff contends that both R&B and TTI were and are employers of the Settlement Class Members.
28 Defendants deny that there was any joint employer relationship between R&B and TTI. Plaintiff
refers to both Defendants as the employer throughout this brief – Defendants’ position is that R&B is
the sole employer.

1 overtime work “off the clock” without compensation, failed to reimburse them for business expenses
2 including mandatory home internet expenses, failed to provide them with meal periods, failed to
3 provide them with accurate wage statements, and failed to pay them all wages owed at discharge.
4 Plaintiff also brought a claim under the Unfair Competition Law, California Business and Professions
5 Code section 17200 *et seq.* (“UCL”), as well as representative claims under the Private Attorneys
6 General Act, California Labor Code section 2698 *et seq.* (“PAGA”).

7 Approximately one year after the case was filed, and after a full-day mediation session, the
8 parties entered into a Stipulation and Agreement to Settle Class and Collective Action (“Settlement
9 Agreement” or “Settlement”). *See* Ex. A to Ho Decl. in Supp. of Final Approval, submitted herewith
10 (“Ho Final Appr. Decl.”) (Settlement Agreement cited hereafter as “Ex. A”). Under the Settlement,
11 Field Representatives who have worked the full class period in the “multi-store representative”
12 position will receive approximately \$46,000 (pre-tax) – significantly more than a typical year’s pay.
13 *See* Ho Decl. in Supp. of Prelim. Appr. (“Ho Prelim. Appr. Decl.”) ¶ 21. If Final Approval is granted,
14 participating Settlement Class Members should receive their settlement awards less than two years
15 after the Complaint was filed. *Id.* ¶ 36. In addition, after the Complaint was filed, Defendants
16 implemented new policies addressing violations alleged in the Complaint. *See* Ho Prelim. Appr. Decl.
17 ¶ 9, Mar. 2, 2017.

18 The Settlement resolves the claims of Plaintiff and the proposed Class against Defendants. The
19 basic terms of the Settlement are:

20 1. Settlement Fund – Defendants will pay the Settlement Sum of \$3.5 million. *See* Ex. A
21 § III.E.1. This is a fixed common fund settlement amount and none of the Settlement Fund shall revert
22 back to Defendants. *Id.* § III.E.1, 5, 7.

23 2. Reserve Fund – A Reserve Fund of \$10,000 was set aside from the Settlement Fund to
24 pay any Class Members who were not initially located, or to pay additional amounts determined to be
25 due to Participating Settlement Class Members. *Id.* § I.R. Now that the Notice period has closed and
26 any disputes have been resolved, these funds will be added back into the Class Member Settlement
27 Fund before the Final Individual Payment Amounts are calculated.

1 3. Attorneys’ Fees, Costs, and Named Plaintiff’s Enhancement – The Settlement provides
2 for payment of up to one-third of the Settlement amount, or \$1,166,666.67, to Class Counsel as
3 attorneys’ fees, and \$15,000 to Class Counsel to reimburse litigation costs. *Id.* § III.E.3. It also
4 specifies that \$10,000 shall be paid to the Named Plaintiff Class Representative as a Service Award
5 payment. *Id.* § III.E.4.

6 4. PAGA Allocation – The Settlement allocates \$20,000 to PAGA penalties, with 75% of
7 that amount (\$15,000) to be paid to the LWDA. *See* Ex. A § III.E.6.²

8 5. Class Member Settlement Fund – The Class Member Settlement Fund – *i.e.*, the amount
9 remaining of the Settlement Fund after deductions for attorneys’ fees and costs, settlement
10 administration expenses, and the Class Representative service award (but not the Reserve Fund, which
11 will be distributed to the Class) – will total approximately \$2,268,333.33. *See* Decl. of KCC Rep.
12 Andy Morrison (“KCC Decl.”) ¶ 8. This amount will be distributed pro rata based on the number of
13 work-weeks that each Settlement Class Member worked during the class period, with work-weeks
14 during which Settlement Class Members held a “multi-store” Field Representative position valued at
15 three times the work-weeks in which Settlement Class Members held a “single-store” Field
16 Representative position, for the reasons set forth in the Preliminary Approval Motion. Ex. A
17 § III.E.10; Prelim. Appr. Mot. § IV.D.

18 6. Tax Consequences of Settlement Payments – All Individual Settlement Payments will
19 be paid in a net amount after applicable state and federal tax withholdings, including payroll taxes,
20 have been deducted. The \$3.5 million settlement includes the employer’s share of payroll taxes.
21 Ex. A § III.E.1. For tax purposes, 50% of the payment made to each Settlement Class Member will be
22 allocated to wages and 50% will be allocated to non-wage income. *Id.* § III.E.5.

23 7. Scope of Release and Final Judgment – The release contemplated by the proposed
24 Settlement corresponds to the claims made against Defendants in the Complaint (as well as a claim for
25 rest period violations identified in Plaintiff’s PAGA notice, which Plaintiff ultimately decided not to
26

27 _____
28 ² Prior to serving the motion for final approval, Plaintiff’s Counsel notified the LWDA of the date, time, and location of the final approval hearing, as required by the Settlement Agreement. *See* Ho Final Appr. Decl. ¶ 17.

1 assert as a cause of action). *Id.* § IV. The Released Claims include all claims arising from or based on
2 “facts alleged in the litigation.” *Id.* §§ II.O; *see also id.* § V. The Named Plaintiff, unlike other
3 Settlement Class Members, will give a general release of all potential claims against Defendants as part
4 of the consideration for his proposed service award of \$10,000. *Id.* § V.

5 **B. The Class Received Adequate Notice of the Settlement and No Class Member Indicated**
6 **Any Opposition to the Settlement Terms.**

7 On April 4, 2017, the Court granted preliminary approval of the Settlement and directed the
8 Settlement Administrator to send notice and administer the receipt of objections. Order at 3 ¶ 1; 5
9 ¶ 10, Apr. 4, 2017.

10 On April 24, 2017, Defendant provided the class list to Claims Administrator KCC. *See* KCC
11 Decl. ¶ 2. The list identified 344 names, along with addresses, social security numbers, and
12 employment data indicating weeks worked during the class period (and dates during which each
13 employee held the Single-Store Representative position or the Multi-Store Representative position).
14 *Id.* KCC updated the addresses using the National Change of Address Database. *Id.* On May 3, 2017,
15 KCC mailed the Notice and Statement of Weeks Worked forms, approved by the Court, to the 344
16 Settlement Class members. *Id.* ¶ 3. The Weeks Worked form specified the recipient’s individualized
17 estimated Settlement award. *Id.* at Exh. A. Through credit bureau and other public source documents,
18 and with the assistance of defendants’ counsel, KCC was able to identify updated addresses for all
19 twenty-eight individuals whose notices were initially returned as undeliverable, such that a current
20 address was identified for every class member. *Id.* KCC also established a toll-free telephone number,
21 and fielded 23 inquiries from class members. *Id.* ¶ 5.

22 In addition, in accordance with the Preliminary Approval Order, Class Counsel posted the
23 Notice, Settlement Agreement, and other key case information on their website. *See* Ho Final Appr.
24 Decl. ¶ 4.

25 The deadline to object to the settlement was July 3, 2017, and as of the date of this filing (July
26 18, 2017), neither KCC nor Class Counsel has received any objections. *See* KCC Decl. ¶ 7; Ho Final
27 Appr. Decl. ¶ 5. The deadline to opt out of the settlement was July 3, 2017, and as of July 18, 2017,
28 KCC had received only a single opt-out, and the opt-out letter stated that the individual was excluding

1 himself because he had not actually worked in California during the relevant time period (*i.e.*, he did
2 not opt out as a result of any dissatisfaction with the Settlement). KCC ¶ 6. Other than this individual,
3 Class Counsel is not aware of any opt-outs. *See* Ho Final Appr. Decl. ¶ 5. Three class members, after
4 receiving their Notice, contacted Class Representative Jordan Willey by telephone to thank him for
5 making this case and Settlement possible. *See* Willey Decl. In Supp. Mot. for Final Approval
6 (“Second Willey Decl.”) ¶ 2. In addition, Class Counsel have heard from approximately seven Class
7 Members who conveyed their enthusiasm about the settlement, and Class Counsel have not heard from
8 any Class Member who was dissatisfied with the Settlement. *See* Ho Final Appr. Decl. ¶ 6.

9 **III. THE COURT SHOULD GRANT FINAL APPROVAL TO THE SETTLEMENT,**
10 **WHICH IS REASONABLE AND FAIR**

11 **A. The Two-Step Settlement Approval Process and Legal Standard for Approval.**

12 A class action settlement requires approval of the court after a hearing. Cal. Rule of Court
13 3.769(a). Court approval is a two-step process. At the first phase, this Court conducted a preliminary
14 review of the settlement, approved the proposed notice to class members, and certified a settlement
15 class. *Id.* at 3.769(c), (d); *In re Cellphone Term. Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009).
16 The Court made a “preliminary determination on the fairness, reasonableness, and adequacy of the
17 settlement terms.” *See* Manual for Complex Litig. § 21.632 (4th ed.) (“Manual for Complex Lit.”).

18 After notice of the settlement has been distributed, the court takes into account any objections
19 by class members and the extent to which class members have elected to opt out of the settlement, and
20 makes a final determination whether to approve the settlement. Cal. Rule of Court 3.769(f), (g);
21 *Cellphone Term. Fee Cases*, 180 Cal. App. 4th at 1118. In deciding whether a settlement is reasonable
22 at the final fairness stage, courts consider a number of factors: (1) the strength of plaintiff’s case
23 balanced against the settlement amount; (2) “the risk, expense, complexity and likely duration of
24 further litigation, including the risk of maintaining class action status through trial;” (3) “the extent of
25 discovery completed and the stage of the proceedings;” (4) “the experience and view of counsel;” and
26 (5) “the reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*,
27 168 Cal. App. 4th 116, 128 (2008) (citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801
28 (1996)) (quotations omitted).

1 A “presumption of fairness” exists when: (1) a settlement is reached through arm’s length
2 bargaining; (2) investigation and discovery are sufficient to allow counsel and the Court to act
3 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
4 small. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

5 California public policy “generally favors the compromise of complex class action litigation,”
6 and therefore supports approval of settlements when possible. *Cellphone Term. Fee Cases*, 180 Cal.
7 App. 4th at 1118.

8 **B. The Settlement Merits a Final Finding of Reasonableness.**

9 As the Court preliminarily concluded, and should now finally conclude, the Settlement is
10 reasonable and fair.

11 **1. The Settlement Amount Is Favorable in Light of the Strength of Plaintiff’s Case
12 and the Potential Recovery at Trial.**

13 The amount of the settlement in light of the strength of the plaintiff’s case is the most important
14 “reasonableness” factor. *See Kullar*, 168 Cal. App. 4th at 130. The \$3.5 million non-reversionary
15 Settlement will provide Settlement Class Members with significant payments. As explained in the
16 Preliminary Approval Motion, Settlement Class Members’ work-weeks are valued differently
17 depending on whether they were working as “multi-store” Sales Representatives – *i.e.*, covering a
18 territory of approximately three to five stores – or “single-store” Sales Representatives – *i.e.*, covering
19 a single store. *See* Prelim. Appr. Mot. § IV.D (explaining that multi-store work-weeks are valued at
20 three-times single-store work-weeks because the multi-store role is alleged to have required more off-
21 the-clock work, more missed meal periods, and more unreimbursed business expenses). Many Sales
22 Representatives worked in both the single-store position and the multi-store position, so their awards
23 will be calculated according to the number of work-weeks they spent in each position. As shown in
24 the following chart, the awards are significant. For example, a Settlement Class Member who worked
25 exclusively as a Multi-Store Rep and who worked for the entire class period is expected to receive
26 (pre-tax) approximately \$46,000 – more than a full year’s pay for these workers.³

27 _____
28 ³ The numbers in this chart are higher than the chart submitted with the preliminary approval papers
because one employee who received the Notice did not work in California, and accordingly opted out.
In addition, the prior chart used a conservative estimate of the work-weeks at issue.

	Multi-Store Work-Weeks	Single-Store Work-Weeks
Class Work-Weeks	7,001	16,732
Award/Week	\$ 181	\$ 60
Average Award	\$6,613	
Maximum Award	\$45,986	

KCC Decl. ¶ 9.

Because the Settlement is non-reversionary, Defendants will be paying the full Settlement amount. *See* Ex. A § III.E.1. Checks will be mailed to all Settlement Class Members who have not opted out. *Id.*

The settlement monetary relief compares favorably with Plaintiff’s counsel’s estimated full relief for the class. In accordance with this Court’s “Procedural Guidelines for Preliminary Approval of Class Action Settlements,” Plaintiff provided the Court with a detailed Preliminary Approval Motion (and supporting declaration) setting forth “the value of each claim that is being settled, as well as the value of other forms of relief, such as interest, penalties, and injunctive relief,” broken out “by claims, injuries, and recoverable costs and attorneys’ fees.” In sum, Plaintiff’s counsel estimated that success at trial would result in a realistic recovery of \$8,564,440, including overtime, meal premium, and expense reimbursement claims, wage statement penalties, waiting time penalties, and FLSA liquidated damages, but not including interest, PAGA penalties, and recoverable fees and costs, such that the gross settlement of \$3.5 million amounts to 41% of such a potential recovery. Although Plaintiff believes that he and the class have strong claims, each claim faces significant challenges at both the class certification and merits stages. The risks of each claim were addressed in Plaintiff’s Preliminary Approval Motion, along with a comparison of the estimated potential recovery at trial on each claim, as compared to the discounted settlement amount attributable to each claim. *See* Mot. Prelim. App. Mot. §§ IV.B.1-2.

1 **2. The Risk and Delay Plaintiff and the Class Would Face Absent Settlement Are**
2 **Considerable.**

3 As Plaintiff set forth in the Preliminary Approval motion, absent settlement, Plaintiff and the
4 class would face real risks on both the merits and class certification. In addition, they would face a
5 lengthy delay before receiving any potential recovery. Absent settlement, Plaintiff would have to
6 prevail on a motion for class certification, complete classwide merits discovery, defeat a likely motion
7 for summary adjudication, and prepare for and prevail at trial. Ho Prelim. Appr. Decl. ¶ 36. If
8 Plaintiff and the class prevailed on some or all of their claims at trial, they would almost certainly face
9 an appeal. *Id.* Class Counsel estimates that even if the class was 100% successful at every stage, they
10 would not receive any relief until approximately 2020. *Id.* By contrast, if the settlement is approved,
11 Plaintiff and the class will receive substantial relief within less than two years of the filing of the
12 Complaint. *Id.* Thus, this settlement confers an advantage on the Class by ensuring significant and
13 timely relief for their claims. *Id.*

14 **3. The Settlement Is Well-Informed Based on Plaintiff's Investigation and**
15 **Information Produced by Defendants.**

16 As a condition for engaging in mediation, Plaintiff demanded, and Defendants produced,
17 information that would be needed to assess the value of Plaintiff's and the class's claims, including
18 information detailing the number of class members, the number of class work-weeks in the multi-store
19 Rep and single-store Rep positions, detailed pay and bonus information, detailed information
20 pertaining to clock-in and clock-out and time-keeping records, records pertaining to resets and Sales
21 Representative meetings, and key policy documents related to the claims at issue. *See* Ho Prelim.
22 Appr. Decl. ¶ 8.

23 In addition, Plaintiff and his counsel conducted an in-depth investigation of the case before
24 filing it, with additional fact investigation and development after the filing of the case, including in
25 preparation for the mediation. *See* Ho Prelim. Appr. Decl. ¶¶ 3-4. Plaintiff's counsel interviewed in
26 detail approximately ten Settlement Class Members, in addition to the named Plaintiff, to determine
27 the nature of their duties, the amount of off-the-clock work they performed, and the costs they
28 expended for work purposes that were not reimbursed, and to confirm the allegations in Plaintiff's
29 Complaint. *See* Ho Prelim. Appr. Decl. ¶ 4. Plaintiff's counsel described in detail the information

1 they required from Defendants in order to engage in mediation, carefully analyzed the materials
2 provided by Defendants, demanded and received additional materials as needed to accurately assess
3 the value of the claims, and prepared a detailed mediation submission that the mediator probed for
4 weaknesses. *Id.* ¶¶ 8, 10.

5 Thus, despite the early stage in the litigation, Plaintiff has quickly and efficiently obtained
6 substantial, adequate information upon which to base the decision to settle this case. *Cf. Laffitte v.*
7 *Robert Half Int’l Inc.*, 1 Cal. 5th 480, 503 (2016) (approving “encouragement” of plaintiffs’ “counsel
8 to seek an early settlement and avoid unnecessarily prolonging the litigation”); *Lealao v. Beneficial*
9 *Cal., Inc.*, 82 Cal. App. 4th 19, 29 & n.4 (2000) (noting that “early settlement” and how “efficiently
10 [resolving] the matter” are “desirable objective[s]” to be promoted). Given the nature of the claims
11 alleged, with which Plaintiff’s counsel has extensive experience, the foregoing documentary and
12 witness information was sufficient to arrive at a reliable estimate of the risk facing Plaintiff’s claims
13 and the approximate exposure that Defendants faced. *Id.*

14 **4. Experienced Counsel Support the Reasonableness of the Settlement.**

15 Class Counsel have been appointed to represent employees as class counsel in many class-
16 action lawsuits involving wage-and-hour violations in California. *See* Ho Prelim. Appr. Decl. ¶ 37.
17 The firm has extensive experience in class action litigation, and, in particular, wage-and-hour class
18 actions alleging the type of overtime, expense reimbursement, and wage statement claims at issue here.
19 *Id.*

20 The view of “qualified and well-informed counsel” that a class action settlement is fair,
21 adequate, and reasonable “is entitled to significant weight.” *Richison v. Am. Cemwood Corp.*, No.
22 CIV.A 005532, 2003 WL 23190948, at *5 (San Joaquin Cnty. Super. Ct. Nov. 18, 2003); *see also*
23 *Kullar*, 168 Cal. App. 4th at 133 (trial court “may and undoubtedly should continue to place reliance
24 on the competence and integrity of counsel”); *Dunk*, 48 Cal. App. 4th at 1802.

25 Class Counsel consider the settlement to be an excellent result for the class, and to be a fair,
26 reasonable, and adequate resolution of the class’s claims. *See* Ho Final Appr. Decl. ¶ 2. As stated
27 above, the gross settlement amount constitutes about 41% of Defendants’ realistic exposure at trial.
28 The substantial relief that Settlement Class Members will receive from the settlement of this case

1 compares favorably with other settlements in similar cases which have obtained preliminary and final
2 approval of settlements of similar claims. *See, e.g., Cabrera v. Advantage Sale & Mktg., LLC*, No.
3 BC485259, 2013 WL 1182822 (L.A. Cnty. Super. Ct. Mar. 12, 2013) (preliminarily approving
4 settlement of off-the-clock overtime, missed meal and rest period, waiting time, and wage statement
5 claims for nearly 3,000 employees in the net amount of \$550,000, resulting in an average pre-tax
6 payment of \$184 per class member); *Martinez v. Chatham Carlsbad HS LLC*, No. 37-2012-96221,
7 2013 WL 12140597, at *2 (San Diego Cnty. Super. Ct. Oct. 25, 2013) (preliminarily approving
8 settlement of off-the-clock, meal and rest period, and derivative claims for a *gross class* pre-tax total of
9 \$50,000 – approximately the same as the *net* pre-tax total received by *individual class members* in this
10 case).

11 **5. The Reaction of the Class Could Not Have Been More Positive.**

12 With zero objections and only a single opt-out (which was based on the fact that the employee
13 in question had not actually worked in California), the Class’s reaction strongly supports the
14 reasonableness of the Settlement. In addition, class members have approached Class Counsel and the
15 Representative Plaintiff to express their enthusiasm for the Settlement, their gratitude to the Named
16 Plaintiff. *See supra* § II.B.

17 **C. The Settlement Merits a Finding of Fairness.**

18 The requirements giving rise to a “presumption of fairness” exist here, justifying a final
19 determination that the Settlement is fair. As noted above, this presumption applies when: (1) a
20 settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to
21 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and
22 (4) the percentage of objectors is small. *Wershba*, 91 Cal. App. 4th at 245. The second and third
23 factors have been satisfied, as described above.

24 The first factor is satisfied, as well, because the settlement is the result of arm’s-length
25 negotiations between the parties. Ho Prelim. Appr. Decl. ¶ 37. After Plaintiff filed suit, Defendants
26 voluntarily changed certain policies relating to the allegations in the complaint. Defendants agreed to
27 produce substantial information in connection with mediation. Plaintiff detailed the factual and legal
28 support for his and the class’s claims in an 18-page mediation brief supported by exhibits documenting

1 Defendants’ policies. Defendants likewise detailed their positions in a mediation brief, and the Parties
2 exchanged briefs. *Id.* ¶ 11. Prior to the mediation, counsel for the Parties discussed the analysis in
3 their respective mediation briefs, which led to further factual and legal refinement of both Parties’
4 positions at the mediation. *Id.* The mediation lasted approximately 11 hours, and resulted in a
5 settlement with the assistance of Hunter Hughes, who is a skilled and well-respected mediator with
6 extensive experience mediating wage-and-hour cases.

7 The fourth factor is satisfied because the percentage of objectors is zero.

8 Nothing in the record calls into question the presumption of fairness, and Class Counsel are
9 aware of no facts that would do so. *See* Ho Final Appr. Decl. ¶ 2.

10 **D. The Scope of the Proposed Release Is Appropriate.**

11 As this Court has already preliminarily found, the release is appropriate. When the judgment
12 becomes final, Plaintiff and each Settlement Class Member who does not opt out will release all wage
13 and hour claims through the settlement date that relate to the claims asserted in the lawsuit – except for
14 the FLSA claims of any Settlement Class Member who does not deposit his check. *See* Ex. A § V.
15 This release is narrowly tailored to the facts alleged in the Litigation. As noted above, the release
16 includes a rest period claim that Plaintiff identified in his PAGA letter but ultimately decided not to
17 assert in the Complaint. *See* Ho Prelim. Appr. Decl. ¶ 5. The named Plaintiff will also execute a
18 general release of his claims against Defendants, along with a waiver of the protection of Civil Code
19 section 1542 – a greater release that also supports Plaintiff’s claim for a service award for the named
20 Plaintiff. *See infra* § III.E.

21 **E. The Requested Service Award to the Class Representative Is Reasonable.**

22 As a named Plaintiff, Mr. Willey is eligible for a service award that reasonably compensates
23 him for undertaking and fulfilling a fiduciary duty to represent absent class members, and that will
24 incentivize plaintiffs to bring representative cases. *See Clark v. Am. Residential Servs. LLC*, 175 Cal.
25 App. 4th 785, 804 (2009); *Cellphone Term. Fee Cases*, 186 Cal. App. 4th at 1393-94; *Bell v. Farmers*
26 *Ins. Exch.*, 115 Cal. App. 4th 715, 725-26 (2004) (affirming service payments to class representatives);
27 Manual for Complex Lit. § 21.62, n.971 (service awards are warranted). In accordance with the
28 Court’s Procedural Guidelines for Final Approval of Class Action Settlements (at ¶ 4), Plaintiff has

1 filed a declaration in support of the Preliminary Approval Motion describing the role he has played in
2 this case. Under the factors identified in *Clark*, and in light of service awards approved in similar
3 circumstances, the requested award of \$10,000 for Mr. Willey is reasonable.

4 **1. The Actions Plaintiff Has Taken to Protect the Interests of the Class, and the**
5 **Amount of Time Spent on Those Actions.**

6 The *Clark* factors take into account the degree to which Plaintiff has taken actions to protect the
7 interests of the class, and the amount of time and effort he has put forth. 175 Cal. App. 4th at 804. As
8 the sole named Plaintiff, Mr. Willey's actions were indispensable to protecting the interests of the
9 class. In terms of the amount of his own time he devoted to the case, Mr. Willey estimated that as of
10 the date of Plaintiff's Preliminary Approval motion, he had spent approximately 110 hours on this
11 case. See Willey Decl., Feb. 1, 2017, submitted with Preliminary Approval Mot. ("First Willey Decl.")
12 at ¶ 2. His declaration breaks down various actions he took that benefitted the Class, including:
13 researching class counsel's firm to select a firm that would adequately represent the class; reviewing
14 and entering into a retainer agreement and duties-of-class-counsel agreement; locating and searching
15 through paper and electronic documents that would support his and the class's claims, transmitting
16 them to class counsel, and explaining their significance; assisting class counsel in preparing a PAGA
17 letter and reviewing the facts of the letter for accuracy; providing class counsel with an understanding
18 of Sales Representatives' job duties, compensation, and hours, and continuing to advise counsel about
19 these facts as counsel developed the case; assisting class counsel in preparing the complaint and
20 reviewing the facts in it for accuracy; traveling from Fresno to Oakland, California to meet with class
21 counsel in person; assisting class counsel as they prepared for mediation; traveling from Fresno to San
22 Francisco to attend an all-day mediation; answering questions from the mediator about the Sales
23 Representative job and the allegations in the Complaint; reviewing and signing the memorandum of
24 understanding that resulted from the mediation; reviewing and signing the Settlement Agreement;
25 preparing a declaration in support of Preliminary Approval of the Settlement; and, throughout all of the
26 foregoing steps, engaging in many telephone and email communications with class counsel. See First
27 Willey Decl. ¶¶ 3-14. Without Mr. Willey's willingness to take the foregoing actions and devote his
28 own time to them, the interests of the Class would not have been protected.

1 **2. The Degree to Which the Class Has Benefitted from Mr. Willey’s Actions.**

2 The *Clark* factors take into account the degree to which the class has benefited from the named
3 plaintiff’s actions. 175 Cal. App. 4th at 804. Here, 343 individuals will receive a settlement payment,
4 amounting to as much as a year’s pay for longer-serving multi-store representatives, due to the actions
5 that Mr. Willey has taken. The overwhelmingly positive response from the class in response to the
6 Notice, including direct contact with Mr. Willey, confirms that the Class has benefited from Mr.
7 Willey’s actions. In addition, current and future Sales Representatives will benefit from the change in
8 employee policies that Defendants implemented after Mr. Willey brought this case.

9 **3. The Risk and Difficulties Experienced by the Class Representative.**

10 The *Clark* factors take into account the reputational or financial risk the named Plaintiff has
11 incurred, as well as any personal difficulties resulting from fulfilling the Class Representative role.
12 Here, Mr. Willey states in his declaration: “Putting myself in the spotlight to represent the class in this
13 case has been a source of stress for me. In particular, the knowledge that I have served as a named
14 plaintiff in a class action raises a concern for me that when I am looking for work in the future, I will
15 be passed over due to my role in this case.” *See* First Willey Decl. ¶ 15; *see also id.* ¶ 16 (describing
16 difficulties experienced).

17 **4. Duration of Litigation.**

18 This litigation has now lasted for approximately a year and a half. Throughout that time, Mr.
19 Willey states that he has “felt strongly that pursuing this case was the right thing to do, but it was
20 always there in [his] mind as something that could harm [him] or [his] former colleagues.” *See* First
21 Willey Decl. ¶ 18.

22 **5. Personal Benefit (or Lack Thereof) Enjoyed by Class Representative.**

23 Because he is a former employee, and is not eligible for relief for as long as some current
24 employees, Mr. Willey’s Settlement payment (setting aside any class representative award) would be
25 smaller than that of many of his colleagues. It is therefore equitable to provide him with an additional
26 award to recognize the contributions he made that allowed his colleagues to reap such significant
27 settlement payments.

28

1 Under the *Clark* factors, the requested award of \$10,000 is justified. In addition, Mr. Willey
2 executed a broader release than the rest of the Settlement Class. As the sole Class Representative, his
3 role was particularly critical. Class Counsel believes that \$10,000 is a small and reasonable incentive
4 for employees in Mr. Willey’s position to step forward and serve as class representatives in cases like
5 this one. Ho Final Appr. Decl. ¶ 7. Class Counsel confirm that Mr. Willey did an excellent job in his
6 role as class representative. *Id.* The requested award is also in line with awards in similar cases.
7 *Rogers v. Kindred Healthcare, Inc.*, No. RG14729507, Order Granting Final Approval (Alameda Cnty.
8 Super. Ct. Oct. 7, 2016) (Smith, J) (granting \$10,000 service awards to named plaintiffs in similar
9 wage and hour case); *Castellanos v. Pepsi Bottling Grp.*, No. RG07332684 (Alameda Cnty. Super. Ct.
10 Mar. 11, 2010) (approving service award of \$12,500 in a wage and hour class action settlement); *Novak v.*
11 *Retail Brand Alliance, Inc.*, No. RG 05223254 (Alameda Cnty. Super. Ct. Sept. 22, 2009) (approving
12 service award of \$12,500 each to four class representatives in wage and hour class action).⁴

13 **IV. PLAINTIFF’S REQUEST FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF**
14 **LITIGATION COSTS IS REASONABLE**

15 Plaintiff and the class, having reached a favorable settlement of this wage and hour class action,
16 are “prevailing parties” entitled to recover reasonable attorneys’ fees and costs. *See* Cal. Lab. Code
17 §§ 218.5, 226, 1194, & 2699(g)(1); Cal. Civ. Proc. Code § 1021.5(a) (awarding reasonable attorneys’
18 fees and costs where plaintiff’s action resulted in the enforcement of an important right, conferred a
19 significant benefit to a large class of persons, and private enforcement was necessary); *Maria P. v.*
20 *Riles*, 43 Cal. 3d 1281, 1290-91 (1987) (fee award justified when legal action produced its benefits by
21 way of voluntary settlement); *Farrar v. Hobby*, 506 U.S. 103, 111 (1992) (plaintiff is prevailing party
22 when he obtains a successful settlement). Here, Plaintiff’s Counsel seek final approval of an award of
23 attorneys’ fees of \$1,166,666.67, which amounts to one-third of the Total Settlement, and
24 reimbursement of litigation costs of \$15,000. In addition, Plaintiff seeks approval of payment of the
25 actual claims administration fees of up to \$25,000 (those fees are currently estimated to be only
26 \$16,609.76, and any excess portion of the \$25,000 will be distributed to the Class). For the following
27 reasons, the requested fee and cost awards are reasonable and supported by applicable authority.

28 ⁴ Authority not available on Westlaw is submitted in the Appendix of Authority, filed herewith.

1 **A. The Requested Attorneys’ Fees Award Is Reasonable.**

2 The California Supreme Court recently confirmed that trial courts may award attorneys’ fees
3 from a common fund in a class action pursuant to either the “percentage” method or the “lodestar-
4 multiplier” method. *Laffitte*, 1 Cal. 5th at 489; *id.* at 503 (“[W]hen class action litigation establishes a
5 monetary fund for the benefit of the class members, and the trial court in its equitable powers awards
6 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by
7 choosing an appropriate percentage of the fund created.”).

8 When a settlement results in both monetary and non-monetary relief for the class, courts
9 recognize the appropriateness of awarding fees of up to one-third of the fund to account for the benefit
10 conferred by the non-monetary relief. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 61, 66
11 n.11 (2008) (noting that fee awards of one-third are average, and that for purposes of assessing the
12 reasonableness of a fee award, “success achieved ... could include changes in company policies that
13 were not part of the settlement”). Here, Plaintiff, through Class Counsel, achieved a high level of
14 success both in monetary and non-monetary results on behalf of the Settlement Class, which justifies
15 the requested fee award. After this lawsuit was filed – and, Plaintiff contends, as a result of this
16 lawsuit – Defendants voluntarily implemented changes to their definition of compensable time and
17 adopted a meal period policy. *See Ho Prelim. Appr. Decl.* ¶ 9. These changes will benefit hundreds of
18 Defendants’ employees going forward in a meaningful way – a benefit that is over and above the
19 substantial monetary recovery. Courts take such additional non-monetary relief into account when
20 assessing the reasonableness of attorneys’ fee requests. *See Chavez* at 61; *see also, e.g., Laguna v.*
21 *Coverall N. Am., Inc.*, 753 F.3d 918, 922-23 (9th Cir. 2014) *later vacated as moot by settlement*
22 (approving requested fee award as a reasonable percentage of the constructive common fund that
23 included the monetary value of the settlement’s injunctive relief).

24 **1. An Award of One-Third of the Common Fund Is Justified.**

25 Under the percentage method, fee awards of one-third of the common fund (or more) are
26 common in class actions. *See Chavez*, 162 Cal. App. 4th 43 at n.11 (“Empirical studies show that,
27 regardless whether the percentage method or the lodestar method is used, fee awards in class actions
28 average around one-third of the recovery.” (*quoting Shaw v. Toshiba Info. Sys., Inc.*, 91 F. Supp. 2d

1 942, 972 (1st D. Tex. 2000)); Newberg on Class Actions § 15:73 (5th ed.) (“[F]ee awards in class
2 actions average around one-third of the recovery.”). A review of the state case law provides many
3 examples of fee awards of one-third (or more) of a common fund in wage and hour class actions of a
4 similar magnitude. *See, e.g., Parker v. City of L.A.*, 44 Cal. App. 3d 556, 567-68 (1974) (affirming fee
5 award to counsel of one-third of recovery achieved); *Longstreth v. PAQ, Inc.*, 15-cv-0206, 2016 WL
6 7163981, at *2 (San Luis Obispo Cnty. Oct. 20, 2016) (awarding one-third of \$6 million common fund
7 in wage-and-hour case); *Penaloza v. PPG Indus. Inc.*, No. BC471369, 2013 WL 2917624 (L.A. Cnty.
8 Super. Ct. May 20, 2013) (approving fee of 33.3% of \$1.3 million common fund in wage and hour
9 action); *Saberi v. BFS Retail & Commercial Operations, LLC*, No. RG0806555, 2010 WL 5172447
10 (Alameda Cnty. Super. Ct. Sept. 19, 2010) (approving fee of one-third of \$14 million common fund in
11 wage and hour class action); *Barrett v. St. John Cos.*, No. BC 354278 (L.A. Cnty. Super. Ct. July 10,
12 2008) (33% award in wage and hour class action); *Tokar v. GEICO*, No. GIC 810166 (San Diego
13 Cnty. Super. Ct. July 9, 2004) (same); *Davis v. Money Store, Inc.*, No. 99AS01716 (Sacramento Cnty.
14 Super. Ct. Dec. 26, 2000) (same, in \$6,000,000 settlement).

15 The same is true of recent California federal court decisions. *See, e.g., Bennett v.*
16 *SimplexGrinnell LP*, No. 11-cv-1854-JST, ECF No. 278 (N.D. Cal. Sept. 3, 2015) at 11 (order
17 approving attorneys’ fees of 38.8% of \$4.9 million settlement in prevailing wage case); *Lee v.*
18 *JPMorgan Chase & Co.*, No. 13-cv-511-JLS, ECF No. 95 (C.D. Cal. Apr. 28, 2015) at 14-18
19 (approving attorneys’ fee of one-third of \$2.4 million settlement in misclassification case); *Boyd v.*
20 *Bank of Am.*, No. 13-cv-561-DOC, 2014 WL 6473804, at *10-11 (C.D. Cal. Nov. 18, 2014) (awarding
21 one-third of \$5.8 million settlement in misclassification case); *Stuart v. Radioshack Corp.*, No. C-07-
22 4499 EMC, 2010 WL 3155645, at *8 (N.D. Cal. Aug. 9, 2010) (awarding one-third of \$4.5 million
23 settlement in employee expense reimbursement case); *Fernandez v. Victoria’s Secret Stores, LLC*, No.
24 CV 06-04149 MMM (SHx), 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (awarding 34% of
25 \$8.5 million common fund); *Birch v. Office Depot, Inc.*, No. 06-cv-1690-DMS (WMC), ECF No. 48
26 (S.D. Cal. Sept. 28, 2007) ¶ 13 (awarding a 40% fee on a \$16 million wage and hour class action
27 settlement); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing
28

1 five recent wage and hour class actions where federal district courts approved attorney fee awards
2 ranging from 30% to 33%).

3 Here, Plaintiff's retainer agreement with Class Counsel specified attorneys' fees of one-third of
4 an eventual recovery. See Ho Final Appr. Decl. ¶ 14. The California Supreme Court recently
5 confirmed that "in general, the parties' initial bargain should be given substantial weight in
6 determining the reasonableness of a fee award." See *Laffitte*, 1 Cal. 5th at 507. Agreeing on an
7 attorney's fee *ex ante* allows "both counsel and class members [to] decide whether it is worthwhile to
8 proceed with that compensation system in place," and avoids "the conflict of interest that inherently
9 arises" if a fee agreement is not made until after a recovery has been obtained. *Id.* at 508. Consistent
10 with the parties' bargain and the weight of the case law, a fee award of one-third of the recovery is
11 reasonable.

12 **2. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**
13 **Award.**

14 When a court begins by using the percentage method, the court may, in its discretion, choose to
15 "conduct a lodestar cross-check," and if the effective "multiplier" of the attorneys' hourly rate, as
16 "calculated by means of a lodestar cross-check" is "extraordinarily high or low, the trial court should
17 consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a
18 justifiable range, but the court is not necessarily required to make such an adjustment." *Laffitte*, 1 Cal.
19 5th at 505-06.

20 A "lodestar-multiplier" cross-check confirms that the requested fee award justifies approval.
21 Plaintiff's Counsel have expended 584 hours in this litigation to date, as documented by detailed and
22 contemporaneous billing records maintained by Counsel. Attached as Exhibit B to the Final Approval
23 Declaration of Laura L. Ho is a chart showing the number of hours billed by each time-keeper, each
24 time-keeper's billing rate and position, and the total number of hours and fees incurred. Plaintiff's
25 counsel expects to incur approximately 50 additional hours of time to see this case through completion,
26 including: finalizing and filing these final approval papers; preparing for and appearing at the hearing
27 on the final approval motion; working with Defendants and the Settlement Administrator on the
28 distribution of awards to the Class; monitoring the award distributions to the Class and responding to

1 Class Member inquiries; ensuring that any residual is paid to the *cy pres* beneficiaries set forth in the
2 Settlement;⁵ and preparing and filing a report to the Court that the distribution of settlement funds has
3 been completed. *See* Ho Final Appr. Decl. ¶ 9. The hours spent to date (and to be spent) reflect time
4 spent reasonably litigating this case, in which Class Counsel sought to manage and staff efficiently. *Id.*
5 ¶ 10. This 634 hours of work (including the estimated additional 50 hours) amounts to an estimated
6 final lodestar of \$343,272.

7 The applied hourly rates are commensurate with the rates of practitioners with similar
8 experience within the California legal market. *See* Ho Prelim. Appr. Decl. ¶ 47. Class Counsel’s
9 hourly rates have been previously approved by numerous courts, including the Alameda County
10 Superior Court. *See, e.g., Barnes v. Sprig, Inc.*, No. CGC-15-548154 (S.F. Cnty. Super. Ct. Dec. 20,
11 2016) ¶ 7.c (in final approval order, finding “that [GBDH’s] 2016 hourly rates are reasonable and
12 commensurate with the prevailing rates for wage and hour class actions”); *Mayton, et al. v. Konica*
13 *Minolta Business Solutions, U.S.A., Inc.*, No. RG12657116 (Alameda Cnty. Super. Ct. June 22, 2015) ¶
14 5.d. Class Counsel have also been paid at prevailing hourly rates for work done on a non-contingent
15 basis for work outside of this matter. Ho. Prelim. Appr. Decl. ¶ 47.

16 The requested fee award represents a multiplier of 3.4 times Plaintiff’s Counsel’s anticipated
17 final lodestar. This multiplier is justified by the outstanding result obtain by Class Counsel for the
18 Class, as well as by recent case law.

19 **a. Case Law Supports the Requested Multiplier.**

20 The requested multiplier is in line with guidance from recent decisions. *See, e.g., Steiner v.*
21 *Am. Broad. Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) (multiplier of 6.85 “falls well within the range
22 of multipliers that courts have allowed”); *Buckingham v. Bank of Am.*, 15-cv-6344-RS (N.D. Cal. July
23 11, 2017) at 7-8 (approving multiplier of 5.31 in similar wage-and-hour case, where “counsel has
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25 ⁵ The Settlement designates two *cy pres* beneficiaries who will share any *cy pres* award 50/50. *See* Ex.
26 A § III.E.7. The first is the “child advocacy program” at Valley Children’s Hospital, located at 9300
27 Valley Children’s Place, Madera, CA 93636, which advocates for children’s health interests. *See*
28 www.valleychildrens.org/patients-and-families/childrens-advocacy-network. The second is City of
Hope cancer hospital, located at 1500 Duarte Road, Duarte, CA 91010, which provides treatment of
pediatric cancer. *See* www.cityofhope.org/clinical-program/pediatric-cancers. Both qualify as “child
advocacy programs,” and both support projects that are geared to families in California, and will
therefore benefit the class. *See* Civ. P. Code § 384(b).

1 achieved a substantial recovery for the class, and the lack of objections and opt-outs indicates the class
2 is pleased with the results”); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 WL
3 2438274, at *7 (N.D. Cal. May 21, 2015) (“Accordingly, this order allows a multiplier of 5.5 mainly
4 on account of the fine results achieved on behalf of the class, the risk of non-payment they accepted,
5 the superior quality of their efforts, and the delay in payment.”); *Buccellato v. AT&T Operations, Inc.*,
6 No. C10-00463-LHK, 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011) (approving multiplier of
7 4.3); *Wershba*, 91 Cal. App. 4th at 255 (“Multipliers can range from 2 to 4 or even higher.”); *Vizcaino*
8 *v. Microsoft Corp.*, 290 F.3d 1043, 1051 & n.6 (9th Cir. 2002) (affirming lodestar multiplier of 3.65
9 and surveying 34 class common fund settlements to find that 83% of multipliers were in the 1x- to 4x-
10 range); *see also Zeltser v. Merrill Lynch & Co., Inc.*, No. 13 Civ. 1531 (FM), 2014 WL 4816134, at
11 *10 (S.D.N.Y. Sept. 23, 2014) (awarding multiplier of 5.1, because “[w]hile this multiplier is near the
12 high end of the range of multipliers that courts have allowed, this should not result in penalizing
13 Plaintiff’s counsel for achieving an early settlement, particularly where, as here, the settlement amount
14 is substantial”); *In re Xcel Energy, Inc., Secs., Derivative & “ERISA” Litig.*, 364 F. Supp. 2d 980, 998-
15 99 (D. Minn. 2005) (4.7 multiplier); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371
16 (S.D.N.Y. 2002) (“modest multiplier of 4.65”).

17 **b. The Outstanding Result for the Class Supports the Requested Multiplier.**

18 In addition, the multiplier is justified due to the outstanding result obtained for the class. In
19 considering whether a multiplier is justified, courts take into account the results obtained for the class,
20 the quality of representation, the novelty and complexity of issues, and the contingent risk presented.
21 *Lealao*, 82 Cal. App. 4th at 26. Here, these factors support the multiplier.

22 First, the outcome for the Class is outstanding, as reflected by the maximum awards of
23 approximately \$46,000 (pre-tax), which equal over a year’s pay for these workers, and by the Class’s
24 overwhelmingly positive reaction to the Settlement. In addition, Defendants’ voluntary changes to
25 their policies will inure to the benefit of the Class and future employees of Defendants; this benefit is
26 not captured within the Settlement amount.

27 Second, the quality of representation was high, as indicated by Class Counsel’s ability to
28 achieve this outstanding result quickly and efficiently, thereby minimizing the delay in relief to the

1 Class. The quality of the Settlement is also high, given that it is a non-reversionary settlement with no
2 need to submit a claim, and given that no Class Member objected and only one opted out.

3 Third, this case required counsel who could prosecute a complex wage case for a class of 343
4 people. The case involves a host of Labor Code violations, PAGA violations, and novel claims, such
5 as the claim for reimbursement based on the employer’s alleged requirement that workers devote space
6 in their homes to storing work materials. The fact that Class Counsel were experienced and
7 knowledgeable wage-and-hour practitioners enabled the Class to enjoy the high-quality Settlement that
8 has been reached. Ho Final Appr. Decl. ¶ 13.

9 Fourth, the litigation resulted in Class Counsel foregoing other employment. *Serrano v. Priest*,
10 20 Cal. 3d 25, 49 (1977) (finding that one of the factors that weighs in favor of granting a request for
11 attorneys’ fees is the “the extent to which the nature of the litigation precluded other employment by
12 the attorneys”). Because Class Counsel must maintain appropriate attorney and staff-to-case ratios,
13 taking this case required that Class Counsel turn away other potential fee-generating work. Ho Final
14 Appr. Decl. ¶ 14.

15 Fourth, Class Counsel took this case on a contingent basis. Providing attorneys who represent
16 clients under fee agreements a larger fee than the market value of their services helps to assure
17 adequate representation for plaintiffs unable to afford accomplished attorney hourly rates. *Graham v.*
18 *DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (2004) (“[A] lawyer who both bears the risk of not being
19 paid and provides legal services is not receiving the fair market value of his work if he is paid only for
20 the second of these functions.”) (internal citation omitted); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132
21 (2001) (“[A] contingent fee contract, since it involves a gamble on the result, may properly provide for
22 a larger compensation than would otherwise be reasonable.”) (citation and internal quotation marks
23 omitted). Unlike attorneys who are paid on a monthly basis and have the ability to withdraw from a
24 case if they go unpaid, Class Counsel committed themselves to prosecuting the case despite the risk
25 that they would neither recoup their advanced costs nor be paid for their time and resources. California
26 courts thus recognize that “the experience of the marketplace indicates that lawyers generally will not
27 provide legal representation on a contingent basis unless they receive a premium for taking that risk.”
28 *Ketchum*, 24 Cal. 4th at 1136 (internal citation omitted). If this bonus methodology did not exist,

1 “very few lawyers could take on the representation of a class client given the investment of substantial
2 time, effort, and money, especially in light of the risks of recovering nothing.” *In re Wash. Pub.*
3 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (internal citation omitted).

4 Therefore, Plaintiff submits that the requested fee award of \$1,166,666.67, which is one-third
5 of the settlement fund, is reasonable. In accordance with the Court’s rules governing final approval of
6 class actions, the attached proposed order requires that 10% of the fee award be held back until a final
7 accounting of the distribution is reviewed by the Court.

8 **B. The Requested Reimbursement of Costs Is Reasonable.**

9 Class Counsel have incurred over \$15,000 in litigation costs to date, but are seeking
10 reimbursement of only \$15,000. *See* Ho Final Appr. Decl. ¶ 15 (actual costs to date are \$17,422.62).
11 These costs include court-filing and process-serving fees, mediation costs (\$6,750), travel and meal
12 expenses related to the mediation, online research costs, postage and federal express costs, and copying
13 costs. *Id.* This amount of costs is modest and reflects efficient litigation of the case. Attached as
14 Exhibit C to the Final Approval Declaration of Laura L. Ho is a chart showing Plaintiff’s costs actually
15 incurred, broken down by category.

16 **C. The Requested Payment of Claims Administration Costs Is Reasonable.**

17 Plaintiff also seeks approval of the requested Settlement Administrator’s fees in the amount of
18 up to \$25,000. *See* Ex. A § III.E.2. KCC currently estimates that its fees will total only \$16,609.76.
19 KCC Decl. ¶ 9. Given the size of the class and the fact that the administration costs cover provision of
20 notice as well as distribution of checks to 343 individuals, the claims administration costs are
21 reasonable in Class Counsel’s experience. *See* Ho Final Appr. Decl. ¶ 16. To the extent that the
22 actual, final costs charged by KCC are less than \$25,000, as anticipated, the excess will be distributed
23 to the Class. *Id.*

24 **V. THE SETTLEMENT OF FLSA CLAIMS SHOULD BE APPROVED AS FAIR AND**
25 **REASONABLE.**

26 Similar to the requirement that courts approve class action settlements, when an employee
27 brings a private action for wages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b),
28 the parties must present any proposed settlement to the Court for approval. *Lynn’s Food Stores, Inc. v.*

1 U.S., 679 F.2d 1350, 1353 (11th Cir. 1982). If the settlement is a “fair and reasonable resolution of a
2 bona fide dispute over FLSA provisions,” a stipulated judgment is appropriate. *Id.* at 1355.
3 Settlements of FLSA claims are permissible because initiation of the action “provides some assurance
4 of an adversarial context.” *Id.* at 1354. In such instances, the employees are likely to be represented
5 by an attorney who can protect their rights, and thus, “the settlement is more likely to reflect a
6 reasonable compromise of disputed issues than a mere waiver of statutory rights brought about by an
7 employer’s overreaching.” *Id.* If the settlement reflects a reasonable compromise over issues that are
8 actually in dispute, approval is permissible. *Id.*

9 In a case like this one, where FLSA overtime claims are brought in conjunction state overtime
10 claims, courts typically engage in the same, overlapping analysis as to both claims. *See, e.g.,*
11 *Talamantes v. PPG Indus., Inc.*, 13-cv-4062 (N.D. Cal. Jan. 6, 2016) § 4 (finding that wage-and-hour
12 settlement in case asserting state and FLSA overtime claims was a fair and reasonable resolution of the
13 dispute). Here, for all of the reasons set forth above, the settlement is an outstanding result on the
14 class’s FLSA claims, which are duplicative of their state law overtime claims, except that the FLSA
15 claims give rise to liquidated damages, as discussed in the preliminary approval motion (at § 18). Each
16 Settlement Class Member will release his or her FLSA claim only if he or she deposits the settlement
17 check, as the back of the check will explain. *See Ex. A § V.* This Settlement of FLSA claims is fair
18 and reasonable and should be approved at the Final Approval Hearing.

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VI. CONCLUSION

The settlement is reasonable and fair, with substantial monetary relief to the Settlement Class Members. Plaintiff respectfully requests that the Court grant final approval of the settlement; approve the requested Class Representative award and attorneys' fees and costs award; approve the request of payment of costs to the claims administrator; and enter the accompanying proposed order of final judgment.

Dated: July 18, 2017

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO



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