

1 ROBBINS ARROYO LLP
2 BRIAN J. ROBBINS (SB# 190264)
3 GEORGE C. AGUILAR (SB# 126535)
4 DIANE E. RICHARD (SB# 204897)
5 600 B Street, Suite 1900
6 San Diego, CA 92101
7 Telephone: (619) 525-3990
8 Facsimile: (619) 525-3991
9 brobbins@robbinsarroyo.com
10 gaguilard@robbinsarroyo.com
11 drichard@robbinsarroyo.com

THE DENTE LAW FIRM
MATTHEW S. DENTE (SB# 241547)
600 B Street, Suite 1900
San Diego, CA 92101
Telephone: (619) 550-3475
Facsimile: (619) 342-9668
matt@dentelaw.com

7 MESERVY LAW, P.C.
8 LONDON D. MESERVY (SB# 216654)
9 550 West C Street, Suite 1950
10 San Diego, CA 92101
11 Telephone: (858) 779-1276
12 Facsimile: (866) 231-8132
13 london@meservylawpc.com

11 Attorneys for Plaintiff Timothy
12 Mansfield, Individually, and as
13 Representatives of Other Members of
14 the Public Similarly Situated

13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15 TIMOTHY MANSFIELD,
16 Individually, and as a Representative of
17 Other Members of the Public Similarly
18 Situated,

18 Plaintiff,

19 v.

20 SOUTHWEST AIRLINES CO.,

21 Defendant.

Case No. 3:13-CV-02337-DMS-KSC

CLASS ACTION

REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
APPLICATION FOR AWARD OF
ATTORNEYS' FEES AND COSTS,
CLASS REPRESENTATIVE'S
ENHANCEMENT PAYMENT, AND
PAYMENT TO CLAIMS
ADMINISTRATOR**

Judge: Honorable Dana M. Sabraw
Courtroom: 13A
Hearing Date: November 21, 2014
Hearing Time: 1:30 p.m.

Action Filed: August 28, 2013
Action Removed: September 27, 2013

TABLE OF CONTENTS

1

2 I. INTRODUCTION 1

3 II. LITIGATION AND SETTLEMENT HISTORY..... 2

4 A. Summary of Settlement Terms..... 4

5 1. Class Notice..... 6

6 2. Class Participation in the Settlement 7

7 III. FINAL COURT APPROVAL OF THE SETTLEMENT IS

8 APPROPRIATE..... 8

9 A. The Three-Step Class Action Settlement Approval Process..... 8

10 B. The Settlement Is Fair, Reasonable, and Adequate..... 10

11 1. The Terms of the Settlement Disclose No Grounds to Doubt

12 Its Fairness..... 11

13 2. The Parties Engaged in Extensive Investigation of Plaintiff's

14 and the Class' Claims, Which Favors Final Approval 12

15 3. Liability Is Vigorously Contested, and the Settlement

16 Provides Reasonable Compensation for the Class Members'

17 Alleged Injuries 12

18 4. The Complexity, Expense, and Likely Duration of

19 Continued Litigation in the Absence of Settlement Favors

20 Final Approval..... 13

21 5. The Experience and Views of Class Counsel Favor Final

22 Approval..... 13

23 6. Class Members' Positive Reaction to the Settlement Favors

24 Final Approval..... 13

25 7. This Court Should Approve the PAGA Penalty Portion of

26 the Settlement..... 14

27 IV. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES AWARD IS

28 FAIR AND REASONABLE AND SHOULD BE APPROVED..... 14

A. The Results Achieved..... 17

B. The Risks of Litigation..... 17

C. The Skill Required and the Quality of the Work 18

D. The Contingent Nature of the Fee 19

1 E. Awards Made in Similar Cases 20

2 V. CLASS COUNSEL'S REQUESTED REPAYMENT OF COSTS IS
FAIR AND REASONABLE AND SHOULD BE APPROVED 21

3 VI. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT
4 PAYMENT IS FAIR AND REASONABLE AND SHOULD BE
FINALLY APPROVED 22

5 VII. THE COURT SHOULD APPROVE THE PAYMENT TO CPT..... 24

6 VIII. CONCLUSION..... 25

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES	PAGES
<i>Alyeska Pipeline Serv. Co. v. Wilderness Soc'y</i> , 421 U.S. 240 (1975).....	14
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984).....	15, 16
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	14
<i>Camden I Condo. Ass'n, Inc. v. Dunkle</i> , 946 F.2d 768 (11th Cir. 1991)	15
<i>Cent. R.R. & Banking Co. v. Pettus</i> , 113 U.S. 116 (1885).....	16
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992)	8
<i>Craft v. Cnty. of San Bernadino</i> , 624 F. Supp. 2d 1113 (C.D. Cal. 2008)	20
<i>Florida v. Dunne</i> , 915 F.2d 542 (9th Cir. 1990)	16
<i>Glass v. UBS Fin. Serv., Inc.</i> , 331 F. App'x 452 (9th Cir. 2009).....	15, 20
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	10, 15, 20
<i>In re Activision Sec. Litig.</i> , 723 F. Supp. 1373 (N.D. Cal. 1989).....	16
<i>In re Mercury Interactive Corp. Sec. Litig.</i> , 618 F.3d 988 (9th Cir. 2010)	5
<i>In re Oracle Sec. Litig.</i> , 131 F.R.D 688 (N.D. Cal. 1990), <i>modified</i> , 132 F.R.D. 538 (N.D. Cal. 1990).....	16

1 *In re Pac. Enters. Sec. Litig.*,
 47 F.3d 373 (9th Cir. 1995)16, 20

2

3 *In re Traffic Exec. Ass'n E.R.R.*,
 627 F.2d 631 (2d Cir. 1980)9

4

5 *Internal Improvement Fund Trs. v. Greenough*,
 105 U.S. 527 (1881).....16

6

7 *Martin v. AmeriPride Servs., Inc.*,
 No. 08CV440-MMA (JMA), 2011 WL 2313604 (S.D. Cal. June
 9, 2011)21

8

9 *Mills v. Elec. Auto-Lite Co.*,
 396 U.S. 375 (1970).....14

10

11 *Morris v. Lifescan, Inc.*,
 54 F. App'x 663 (9th Cir. 2003).....16, 20

12

13 *Paul, Johnson, Alston & Hunt v. Grauly*,
 886 F.2d 268 (9th Cir. 1989)15

14

15 *Singer v. Becton Dickinson & Co.*,
 No. 08-CV-821-IEG (BLM), 2010 WL 2196104 (S.D. Cal. June
 1, 2010)21

16

17 *Six Mexican Workers v. Arizona Citrus Growers*,
 904 F.2d 1301 (9th Cir. 1990)15, 20

18

19 *Sprague v. Ticonic Nat'l Bank*,
 307 U.S. 161 (1939).....16

20

21 *Van Bronkhorst v. Safeco Corp.*,
 529 F.2d 943 (9th Cir.1976)8

22

23 *Vasquez v. Coast Valley Roofing, Inc.*,
 266 F.R.D. 482 (E.D. Cal. 2010)20

24

25 *Vizcaino v. Microsoft Corporation*,
 290 F.3d 1043 (9th Cir. 2002)16

26

27 *Williams v. MGM-Pathe Commc'ns Co.*,
 129 F.3d 1026 (9th Cir. 1997) 15, 16, 20

STATUTES, RULES & OTHER AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

California Labor Code Private Attorneys General Act,
 §2699(l).....14

Fed. R. Civ. P. 23(e).....8, 9

H. Newberg & A. Conte, 4 Newberg on Class Actions,
 (4th ed. 2002).....8, 9

Manual for Complex Litigation (Fourth) (2006)8

1 **I. INTRODUCTION**

2 Plaintiff Timothy Mansfield ("Plaintiff") seeks final approval of the
3 Settlement¹ reached with defendant Southwest Airlines Co. ("SWA"). This Court
4 granted preliminary approval of the Settlement on July 30, 2014, and approved the
5 Notice Packet² to be mailed to Class Members, which was duly provided.³ Not a
6 single Class Member objected to the Settlement and there is a 99.49% participation
7 rate. *See* Cunningham Decl., ¶¶12, 14.

8 Once final approval of the Settlement is granted, six thousand eighty two
9 (6,082) Class Members will receive an Individual Settlement Payment as their share
10 of the \$1,000,000 Common Fund Settlement Amount. Moreover, as a result of the
11 litigation, SWA has already made several changes to its practices to: (i) include
12 required information on itemized wage statements; and (ii) institute a program for
13 immediate payment of wages on termination. Thus, the benefits provided by the
14 Settlement are substantial on both a monetary and non-monetary basis.

15 The Settlement is fair, reasonable, and adequate and satisfies all of the criteria
16 for final approval and deserves approval. Accordingly, Plaintiff respectfully requests
17 that the Court issue an order: (i) granting final approval of the Settlement;

18
19
20 ¹ Unless otherwise noted, all capitalized terms shall have the same definition as set
21 forth in the Stipulation of Settlement ("Settlement"). A true and correct copy of the
22 Settlement is attached as Exhibit 1 to the Declaration of Matthew S. Dente in Support
23 of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement
24 filed June 27, 2014 (Dkt. Nos. 22-2 & 22-3).

25 ² "Notice Packet" collectively refers to the Notice of Pendency of Class Action
26 Settlement ("Class Notice") and the Notice of Individual Pay Periods Worked and
27 Estimated Settlement Award.

28 ³ *See* Declaration of Tim Cunningham with Respect to Notification and
Administration, ¶7 ("Cunningham Decl.") filed contemporaneously herewith.

1 (ii) approving distribution of Individual Settlement Payments to Participating Class
2 Members; (iii) approving distribution to the California Labor & Workforce
3 Development Agency ("LWDA") for the LWDA's share of the PAGA Payment in the
4 amount of \$7,500; (iv) approving the request for a Class Representative Enhancement
5 Payment of \$5,000 to Plaintiff; (v) approving payment of \$31,500 to CPT Group, Inc.
6 ("CPT") for administration fees and costs; and (vi) approving Class Counsel's
7 Attorneys' Fees of \$250,000 and reimbursement of \$10,856.02 for actual litigation
8 costs.

9 **II. LITIGATION AND SETTLEMENT HISTORY**

10 On August 28, 2013, Plaintiff filed his Complaint in the San Diego Superior
11 Court alleging that SWA had violated the California Labor Code by failing to timely
12 pay wages due at termination (i.e., by not paying final wages at the time of discharge
13 or within seventy-two hours of resignation without notice) and failing to provide
14 proper itemized wage statements to Plaintiff and its other California employees. On
15 the same date, Plaintiff provided notice to the LWDA and SWA that he intended to
16 pursue claims for civil penalties against SWA under the California Labor Code
17 Private Attorneys General Act, California Labor Code section 2698, *et seq.*
18 ("PAGA") arising out of the same statutory violations raised in his Complaint. SWA
19 answered Plaintiff's Complaint, denying Plaintiff's allegations, and then removed the
20 action to this Court under the Class Action Fairness Act of 2005 ("CAFA"), Pub. L.
21 No. 109-2, 119 Stat. 4 (codified at 28 U.S.C. §§1332(d), 1453, 1711-15). On October
22 4, 2013, Plaintiff filed his First Amended Complaint ("FAC") to add his claims for
23 civil penalties under PAGA (Dkt. No. 4). SWA then filed its answer to Plaintiff's
24 FAC on October 18, 2013 ("Answer") (Dkt. 6). SWA's Answer denied all material
25 allegations of Plaintiff's FAC and raised various affirmative defenses. Dente Decl.,
26

1 ¶¶5-8; Meservy Decl., ¶¶5-8; Richard Decl., ¶¶7-10.⁴

2 Counsel for all Parties extensively investigated Plaintiff's claims. The Parties
3 exchanged information sufficient to enable them to fully evaluate the strengths and
4 weaknesses of the claims and defenses raised by each side. Dente Decl., ¶¶9-10;
5 Meservy Decl., ¶¶9-10; Richard Decl., ¶¶11-12. After engaging in initial discovery
6 and disclosures, the Parties agreed to attempt resolution of this matter through
7 mediation. The Parties worked with a well-respected class action mediator, Mark S.
8 Rudy of Rudy, Exelrod, Zieff & Lowe, LLP, to successfully resolve this case at a
9 full-day mediation session held on March 11, 2014, in Los Angeles, California. Prior
10 to the mediation, the Parties submitted extensive mediation briefs, evidence, and legal
11 authorities to the mediator. SWA also provided evidence that, as a result of this
12 litigation, it made several changes to its practices to: (i) include required information
13 on itemized wage statements; and (ii) institute a program for immediate payment of
14 wages on termination. Dente Decl., ¶12; Meservy Decl., ¶12; Richard Decl., ¶14.

15 After serious, intense, and protracted arm's-length negotiations, the Parties
16 reached a settlement, the terms of which were negotiated and eventually
17 memorialized in the Settlement. Dente Decl., ¶13; Meservy Decl., ¶13; Richard
18

19
20 ⁴ "Dente Decl." refers to the Declaration of Matthew S. Dente in Support of Plaintiff's
21 Unopposed Motion for Final Approval of Class Action Settlement and Application
22 for Award of Attorneys' Fees and Costs, Class Representative's Enhancement
23 Payment, and Payment to Claims Administrator, "Meservy Decl." refers to the
24 Declaration of London D. Meservy in Support of Plaintiff's Unopposed Motion for
25 Final Approval of Class Action Settlement and Application for Award of Attorneys'
26 Fees and Costs, Class Representative's Enhancement Payment, and Payment to
27 Claims Administrator, and "Richard Decl." refers to the Declaration of Diane E.
28 Richard in Support of Plaintiff's Unopposed Motion for Final Approval of Class
29 Action Settlement and Application for Award of Attorneys' Fees and Costs, Class
30 Representative's Enhancement Payment, and Payment to Claims Administrator, filed
31 contemporaneously herewith.

1 Decl., ¶15. On July 30, 2014, this Court granted preliminary approval of the
2 Settlement.⁵ Notice has been sent in accordance with the Court's Preliminary
3 Approval Order. Cunningham Decl., ¶7. Moreover, Plaintiff's Motion for Attorneys'
4 Fees and Costs was filed on September 15, 2014 in accordance with the Court's
5 Preliminary Approval Order, and before the objection deadline (Dkt. No. 29). The
6 objection deadline has now passed, and there have been no objections from the Class
7 to the Settlement, including to the requested Attorneys' Fees and costs payment to
8 Class Counsel or Class Representative Enhancement Payment. Cunningham Decl.,
9 ¶12. Furthermore, only a fraction of one percent of Class Members (.51%,
10 representing 31 out of 6,113 Class Members) requested exclusion from the
11 Settlement. Cunningham Decl., ¶¶5, 11.

12 **A. Summary of Settlement Terms**

13 The Settlement provides that SWA will fund a non-reversionary one million
14 dollars (\$1,000,000) Common Fund Settlement Amount ("Settlement Amount") to
15 settle the claims of Plaintiff and the following classes:

16 Any and all persons who were employed by Southwest Airlines Co. in
17 California at any time from August 28, 2012, to July 30, 2014 of the
18 Settlement ("Wage Statement Class"); and

19 Any and all persons who were employed by Southwest Airlines Co. in
20 California whose employment with Southwest Airlines, Co. ended at any
time from August 28, 2010, to July 30, 2014 ("Waiting Time Class").

21 Settlement, ¶¶1.10, 1.35, 1.37. SWA's records show there are 6,113 Class Members.
22 Cunningham Decl., ¶5. In addition to the distributions to Participating Class
23

24 ⁵ Court's Order Granting Preliminary Approval of Class Action Settlement entered on
25 July 30, 2014 ("Preliminary Approval Order") (Dkt. No. 28).
26

1 Members, the Settlement Amount will be used to pay: (i) Plaintiff's Class
2 Representative Enhancement Payment (which Plaintiff now requests to be Five
3 Thousand Dollars (\$5,000)); (ii) Class Counsel's attorneys' fees (which Class Counsel
4 now seek an amount of Two Hundred Fifty Thousand Dollars (\$250,000)—twenty-
5 five percent (25%) of the Settlement Amount;⁶ (iii) reimbursement of Class Counsel's
6 costs, which Class Counsel now seek in the amount of \$10,856.02;⁷ (iv) a Seven
7 Thousand Five Hundred Dollar (\$7,500) payment to the LWDA for its share of the
8 PAGA Payment; and (v) Claims Administrator Fees of Thirty-One Thousand, Five
9 Hundred Dollars (\$31,500). *See Settlement*, ¶¶1.10, 1.23, 6.1, 6.3, 7.1, 8.1.

10 After deducting: (i) the Court-approved Class Counsel's fees and costs; (ii) the
11 Court-approved Class Representative Enhancement Payment; (iii) the PAGA
12 Payment to the LWDA; (iv) the Claims Administration Costs; and (v) the Total
13 Waiting Time Class Member Payments from the Settlement Amount, the remaining
14 balance available for distribution ("Net Settlement Consideration") shall be for
15 distribution to Participating Wage Statement Class Members, i.e., those Class
16 Members who do not opt out of the Settlement. *Settlement*, ¶¶1.21, 6.2.

19 ⁶ On September 15, 2014, Plaintiff filed a Motion for Attorneys' Fees and Costs (Dkt.
20 No. 29-1) ("Fee Motion") in order to ensure that all Class Members had the
21 opportunity, should they so choose, to review the basis for Class Counsel's claim for
22 Attorneys' Fees and costs during the time period in which they may object to the
23 Settlement as required by the Ninth Circuit Court of Appeals in *In re Mercury*
Interactive Corp. Sec. Litig., 618 F.3d 988 (9th Cir. 2010).

24 ⁷ In Plaintiff's Fee Motion, Plaintiff submitted that the actual litigation costs incurred
25 as of the date of the filing of the Fee Motion, September 15, 2014, was \$10,558.42,
26 and that any additional costs incurred would be included in this Motion. Fee Motion
27 at 1 n.2. As of the date of the instant Motion, November 4, 2014, the actual litigation
28 costs incurred by Class Counsel total \$10,856.02. Richard Decl., ¶28.

1 Each Participating Class Member will receive an Individual Settlement
2 Payment, which means the portion of the Net Settlement Consideration distributable
3 to each Class Member according to the terms of the Settlement. Any amounts
4 attributable to Class Members who validly and timely request exclusion will be
5 distributed to Participating Class Members in proportion to their Total Pay Periods in
6 comparison to the Total Pay Periods of all Participating Class Members. Any
7 amounts attributable to Class Members who cannot be located and provided Class
8 Notice, notwithstanding the Claims Administrator's efforts, will be donated to the
9 Public Justice Foundation. If the Court does not approve the funds to be donated to
10 the Public Justice Foundation, then the money shall be sent to the California
11 Unclaimed Property Fund in each particular missing Class Member's name.
12 Settlement, ¶6.2

13 As part of the Settlement, Plaintiff and Participating Class Members release all
14 of the Released Parties from each of Released Claims through July 30, 2014.
15 Settlement, ¶1.28. The release is narrowly tailored to encompass only those claims
16 that are specifically alleged in, or reasonably encompassed by, Plaintiff's FAC. Dente
17 Decl., ¶19; Meservy Decl., ¶19; Richard Decl., ¶21.

18 **1. Class Notice**

19 On August 10, 2014, SWA provided CPT with data files containing for each
20 Class Member, their name, last-known mailing address and telephone number, social
21 security number, termination date, and the number of individual pay periods (the
22 "Class List"). SWA identified 6,113 Class Members by examining its databases. Of
23 these 6,113 Class Member, 5,584 are Wage Statement Class Members, 228 are
24 Waiting Time Class Members, and 301 are both Wage Statement and Waiting Time
25 Class Members. Cunningham Decl., ¶5. CPT processed and updated the mailing
26

1 addresses contained in the Class List utilizing the National Change of Address
2 ("NCOA") database maintained by the U.S. Postal Service. *Id.*, ¶6. If any Class
3 Member had filed a U.S. Postal Service change of address request, CPT mailed the
4 Notice Packet to the address listed with the NCOA. *Id.*

5 Pursuant to this Court's Preliminary Approval Order, on August 20, 2014, CPT
6 mailed the Court-approved Notice Packet, which, among other items, included the
7 terms relating to Class Counsel's Attorneys' Fees and cost payment, the Class
8 Representative Enhancement Payment, PAGA Payment, Released Claims, Class
9 Members' estimated Individual Settlement Payment. Cunningham Decl., ¶7. The
10 mailed Notice Packet incorporated the changes the Court identified in its Preliminary
11 Approval Order that were to be made. Cunningham Decl., ¶4; Exhibit A.

12 The U.S. Postal Service returned twelve (12) Notice Packets to CPT, one (1) of
13 which had a forwarding address provided by the U.S. Postal Service. CPT performed
14 a skip trace on all returned mail with no forwarding address to locate a better address.
15 Cunningham Decl., ¶8. As a result of either skip trace, forwarding address provided
16 by the U.S. Postal Service, or request from counsel or Class Member themselves, a
17 total of ten (10) Notice Packets were re-mailed by CPT. Ultimately, only six (6)
18 Notice Packets were undeliverable despite CPT's attempts. Cunningham Decl., ¶9.

19 **2. Class Participation in the Settlement**

20 This Settlement has a 99.49% participation rate, and not a single Class Member
21 objected to the Settlement. Cunningham Decl., ¶¶12, 14. Only 0.51% of Class
22 Members opted-out. *Id.* at 11. Because this is non claims-made Settlement, none of
23 the Settlement Amount will revert to SWA. For the six (6) Class Members who were
24 unable to be located, their monies (a total of \$773.53) will be paid pursuant to the
25 *cypres* provision. Cunningham Decl., ¶9.

1 **III. FINAL COURT APPROVAL OF THE SETTLEMENT IS**
2 **APPROPRIATE**

3 **A. The Three-Step Class Action Settlement Approval Process**

4 A class action may not be dismissed, compromised, or settled without the
5 approval of the Court. Fed. R. Civ. P. 23(e). Before granting final approval of the
6 Settlement, the Court must find that it is fair, reasonable, and adequate. *Id.*

7 The law favors settlement, particularly in class actions and other complex cases
8 where substantial resources can be conserved by avoiding the time, cost, and rigors of
9 formal litigation. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
10 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.1976); H.
11 Newberg & A. Conte, 4 Newberg on Class Actions, §11.41 at 87-88 (4th ed. 2002)
12 (and cases cited therein).⁸ Judicial proceedings have led to a defined procedure and
13 specific criteria for settlement approval in class action settlements, as described in
14 section 21.73 of the *Manual for Complex Litigation (Fourth)* (the "Manual") (2006).
15 The Manual's settlement approval procedure describes the following steps:

- 16 1. Preliminary approval of the proposed settlement at an informal hearing;
- 17 2. Dissemination of mailed and/or published notice of the settlement to all
18 affected class members; and
- 19 3. A final settlement approval hearing, at which class members may be
20 heard regarding the settlement, and evidence and argument concerning the fairness,
21 adequacy, and reasonableness of the settlement may be presented.

22 This procedure, commonly used by courts and endorsed by the leading class
23 action commentator, Professor Newberg, safeguards Class Members' procedural due

24 ⁸ Here, as throughout, all emphasis is added and citations and footnotes are omitted
25 unless otherwise noted.

1 process rights and enables the Court to fulfill its role as the guardian of class interests.
2 See Newberg & Conte, *supra*, at §11.2. With this Motion, Plaintiff requests that the
3 Court take the final step in the settlement approval process and grant final approval of
4 the Settlement.

5 The first two steps of this process are already complete. The first step was
6 completed on July 30, 2014, when this Court granted preliminary approval of the
7 Settlement. In doing so, this Court determined that the Settlement was within the
8 range of possible final approval and that notice to the Class Members of the
9 Settlement's terms and of the scheduling of the formal fairness hearing should be
10 distributed. See, e.g., *In re Traffic Exec. Ass'n E.R.R.*, 627 F.2d 631, 633-34 (2d Cir.
11 1980); Newberg & Conte, *supra*, §11.25.

12 The second step in the class action settlement approval process, the
13 dissemination of the notice of settlement, is complete as well. In accordance with the
14 Court's Preliminary Approval Order, the Parties worked with CPT to implement the
15 Court-approved notice program, which employed the best practicable means to
16 disseminate to all Class Members notices of the Settlement's terms and of the date
17 and time of the final approval hearing. Fed. R. Civ. P. 23(e).⁹

18 The third and last step in the class action settlement approval process is the
19 final approval hearing, scheduled for November 21, 2014, at which this Court shall
20 determine whether the Settlement is fair, reasonable, and adequate. Fed. R. Civ. P.
21 23(e). At the conclusion of the final approval hearing, this Court will decide whether

22 _____
23 ⁹ In addition, the CAFA notice requirement under 28 U.S.C. §1715 has been
24 complied with. See Declaration of Sabrina Shadi Certifying Compliance with CAFA
25 Notice Requirement, in Support of Motion for Final Approval, filed
26 contemporaneously herewith pursuant to paragraph 10 of the Preliminary Approval
27 Order.

1 to grant final approval of the Settlement and whether to enter a final order and
2 judgment.

3 **B. The Settlement Is Fair, Reasonable, and Adequate**

4 Pursuant to the Settlement, SWA will pay \$1,000,000 to settle this matter. The
5 Parties negotiated the Settlement in good faith and at arm's length, following an
6 intensive investigation of the factual and legal claims, and a full-day mediation
7 session with the mediator, and ultimately agreed on a settlement. The Settling Parties
8 engaged in extensive discovery, both formal and informal, with one another before
9 arriving at a settlement, and fully appraised each other of their respective factual
10 contentions, legal theories, and defenses. Dente Decl., ¶¶9, 11, 20; Meservy Decl.,
11 ¶¶9, 11, 20; Richard Decl., ¶¶ 11, 13, 22. Class Counsel are experienced in class
12 action wage-and-hour litigation. Dente Decl., ¶¶2-4; Meservy Decl., ¶¶2-4; Richard
13 Decl., ¶¶2-6. SWA's counsel is also experienced in defending class actions of this
14 type.

15 Furthermore, courts must give "proper deference to the private consensual
16 decision of the parties," since "the court's intrusion upon what is otherwise a private
17 consensual agreement negotiated between the parties to a lawsuit must be limited to
18 the extent necessary to reach a reasoned judgment that the agreement is not the
19 product of fraud or overreaching by, or collusion between, the negotiating parties,
20 and that the settlement, taken as a whole, is fair, reasonable and adequate to all
21 concerned." *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). As
22 shown below, the Settlement is fair, reasonable, and adequate and should be granted
23 final approval.

1 **1. The Terms of the Settlement Disclose No Grounds to Doubt Its**
2 **Fairness**

3 The Settlement provides a significant recovery to the Class and clearly falls
4 within the range of reasonableness. A thorough review of the terms of the
5 Settlement, particularly the \$1,000,000 Settlement Amount, gives rise to no doubts as
6 to its fairness. The Settlement provides for immediate benefits payable to
7 Participating Class Members. The Settlement is enhanced by the fact that there are
8 no non-cash benefits to the Settlement such as paid time off or coupons, and that
9 SWA has already implemented changes to its final pay and wage statement policies.
10 The amounts for which Class Members are eligible are commensurate not only with
11 the claims released adjusted for risk but also settlements of similar scope of penalty-
12 only claims and defenses. The amounts to be paid are not nominal or symbolic.
13 Rather, these are of real benefit in relation to: (i) the penalty-only claims brought on
14 behalf of the Class; and (ii) the legal and factual grounds, SWA offered in defense of
15 this action. Moreover, the LWDA will receive a sizable payment as its share of the
16 Settlement attributable to civil penalties under PAGA. The monetary recoveries for
17 both the Class and the State of California exemplify the fairness, reasonableness, and
18 adequacy of the Settlement and justify its final approval.

19 Despite the fairness of the Settlement's terms, any Class Member, upon
20 reviewing the Class Notice, who was unsatisfied with its terms had the right to
21 request to be excluded from (i.e., opt out of) the Settlement, in which case the Class
22 Member would retain any of the released claims he or she may have against SWA.
23 Settlement, ¶9.3. Moreover, Class Members who did not opt out had the opportunity,
24 upon providing proper notice to the Parties and the Court, to attend the final fairness
25 hearing for the purpose of objecting to one or more of the Settlement's terms. *Id.* at
26 ¶9.5.

1 **2. The Parties Engaged in Extensive Investigation of Plaintiff's**
2 **and the Class' Claims, Which Favors Final Approval**

3 Class Counsel and SWA's counsel conducted an intensive investigation into
4 Plaintiff's and the Class' claims. The Parties engaged in significant discovery,
5 exchanging a considerable amount of information and fully appraising each other of
6 their respective factual contentions, legal theories, and defenses. Dente Decl., ¶¶9,
7 11, 20; Meservy Decl., ¶¶9, 11, 20; Richard Decl., ¶¶11, 13, 22. The Parties
8 negotiated the Settlement with ample knowledge of the strengths and weaknesses of
9 Plaintiff's claims and SWA's defenses and the monetary amounts necessary to
10 compensate Class Members taking into account both Settling Parties' strengths,
11 weaknesses, and the risks of going forward with this penalties-only litigation. Dente
12 Decl., ¶10; Meservy Decl., ¶10; Richard Decl., ¶12.

13 **3. Liability Is Vigorously Contested, and the Settlement Provides**
14 **Reasonable Compensation for the Class Members' Alleged**
15 **Injuries**

16 Of particular relevance to the reasonableness of the Settlement is the fact that
17 SWA has legal and factual grounds available to it for defending this action. From the
18 outset of this litigation, SWA denied each of Plaintiff's allegations as they apply to
19 Plaintiff and each Class Member. Considering SWA's defenses, there was a prospect
20 that the Class may not have obtained certification or, even with certification, would
21 have not been able to recover any penalties at all. Dente Decl., ¶¶20, 25; Meservy
22 Decl., ¶¶20, 25; Richard Decl., ¶¶22, 27. Notwithstanding SWA's arguments, the
23 Settlement commits SWA to pay \$1,000,000 for these highly disputed penalty claims.
24
25
26
27
28 *Id.*

1 **4. The Complexity, Expense, and Likely Duration of Continued**
2 **Litigation in the Absence of Settlement Favors Final Approval**

3 Employment class action cases are expensive and time consuming to prosecute.
4 Due to the size of the Class and the nature of the claims, continued litigation of this
5 action against SWA would likely be complex and expensive. The Settlement avoids
6 the need for a contested class certification motion that would be time consuming and
7 costly for Plaintiff to file, SWA to oppose, and the Court to decide. The Settlement
8 also avoids a lengthy trial or trials.

9 **5. The Experience and Views of Class Counsel Favor Final**
10 **Approval**

11 Class Counsel supports the Settlement as fair, reasonable, adequate, and in the
12 best interests of the Class. Class Counsel believes this Settlement to be a good result
13 for Class Members. Dente Decl., ¶¶14-20; Meservy Decl., ¶¶14-20; Richard Decl.,
14 ¶¶16-22.

15 **6. Class Members' Positive Reaction to the Settlement Favors**
16 **Final Approval**

17 Of great importance is the fact that not a single Class Member objected to the
18 Settlement and there is a 99.49% participation rate. Cunningham Decl., ¶¶12, 14.
19 The Court should construe the overwhelming non-opposition to the Settlement as a
20 strong indication of Class Members' support for the Settlement as being fair,
21 reasonable, and adequate and thus deserving of final approval. Further, because this
22 is a made, non-reversionary Settlement, none of the Settlement Amount will revert to
23 SWA.

7. **This Court Should Approve the PAGA Penalty Portion of the Settlement**

PAGA requires that this Court review and approve the settlement of penalties under PAGA. Cal. Lab. Code §2699(1). As a part of the Settlement, SWA agreed to pay \$7,500 to the LWDA as its share of the Settlement attributable to civil penalties under the PAGA. Settlement, ¶1.23. For all of the reasons stated above, the Settlement is fair, reasonable, and adequate and should be approved. The PAGA portion of the Settlement should likewise be approved.

The Settlement is fair, reasonable, and adequate because it provides great benefits to Class Members and the general public. The fairness, reasonableness, and adequacy of the Settlement is illustrated by the fact that not one of the 6,113 Class Members objected to the Settlement including the Class Counsel Attorneys' Fees and expenses payment, Claims Administrator fees, or Class Representative Enhancement Payment. Cunningham Decl., ¶12. In addition, the LWDA will receive \$7,500 as its share of the Settlement attributable to civil penalties under PAGA. Accordingly, final approval of the Settlement is appropriate.

IV. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES AWARD IS FAIR AND REASONABLE AND SHOULD BE APPROVED

The U.S. Supreme Court consistently has recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970). The common fund doctrine is a well-recognized exception to the general American rule that a litigant must bear his own attorney's fees. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257-58 (1975). The Ninth Circuit has held that the common fund doctrine applies when: (i) "the class of beneficiaries is

1 sufficiently identifiable; ([ii]) the benefits can be accurately traced[;] and ([iii]) the
2 fee can be shifted with some exactitude to those benefiting." *Paul, Johnson, Alston &*
3 *Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989) (hereinafter "*Paul*"). These
4 criteria are "easily met" when "each member of a certified class has an undisputed
5 and mathematically ascertainable claim to part of a lump-sum [settlement] recovered
6 on his behalf." *Id.* at 271 (citing *Van Gemert*, 444 U.S. at 479).

7 Under the three factors set forth in *Paul*, the common fund doctrine applies
8 here. First, the class of beneficiaries is identifiable. SWA identified each of the
9 5,584 eligible Wage Statement Class Members and 228 Waiting Time Class
10 Members by examining its databases. Second, the benefits consist of monetary
11 payments to the Class Members and, therefore, can be easily and accurately traced.
12 Third, the fee can be shifted with exactitude because Class Counsel are claiming a
13 specific, lump-sum percentage of the total settlement amount to be paid to Class
14 Members.

15 Under the common fund doctrine, courts typically award attorney's fees based
16 on a percentage of the total settlement. The Ninth Circuit has established that an
17 attorneys' fee award of twenty-five percent of the common fund is the "benchmark"
18 award that should be given in common fund cases such as this one. *See, e.g., Six*
19 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990);
20 *Hanlon*, 150 F.3d at 1029; *Glass v. UBS Fin. Serv., Inc.*, 331 F. App'x 452, 456-57
21 (9th Cir. 2009); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th
22 Cir. 1997). Every United States Supreme Court case that has considered the award of
23 attorney's fees under the common fund doctrine has determined those fees as a
24 percentage of the recovery. *See, e.g., Camden I Condo. Ass'n, Inc. v. Dunkle*, 946
25 F.2d 768, 773 (11th Cir. 1991) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16
26

1 (1984)) (noting that the percentage of recovery method is the appropriate method to
2 award attorney's fees in common fund cases); *Sprague v. Ticonic Nat'l Bank*, 307
3 U.S. 161, 165 n.2 (1939); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 128
4 (1885); *Internal Improvement Fund Trs. v. Greenough*, 105 U.S. 527, 532 (1881).

5 In the Ninth Circuit, district courts have the discretion to use either the
6 percentage of the fund or the lodestar method to calculate attorney's fees. *Williams*,
7 129 F.3d at 1027. Yet the Ninth Circuit has recognized a "ground swell of support
8 for mandating a percentage-of-the-fund approach in common fund cases." *Florida v.*
9 *Dunne*, 915 F.2d 542, 545 (9th Cir. 1990); *see also In re Pac. Enters. Sec. Litig.*, 47
10 F.3d 373, 378-79 (9th Cir. 1995) (affirming attorney's fee of 33% of the recovery);
11 *Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th Cir. 2003), (affirming fee award of
12 33% of the recovery). District courts in California have held that the percentage of
13 the fund method is far preferable to the lodestar method because: (i) it aligns the
14 interests of class counsel and the class; (ii) it encourages efficient resolution of the
15 litigation by providing an incentive for early, yet reasonable, settlement; and (iii) it
16 reduces the demands on judicial resources. *In re Oracle Sec. Litig.*, 131 F.R.D 688,
17 689 (N.D. Cal. 1990), *modified*, 132 F.R.D. 538 (N.D. Cal. 1990); *In re Activision*
18 *Sec. Litig.*, 723 F. Supp. 1373, 1378-79 (N.D. Cal. 1989).

19 In this case, the proposed attorneys' fees are justified under the factors
20 identified in *Vizcaino v. Microsoft Corporation*, 290 F.3d 1043, 1048-50 (9th Cir.
21 2002). In *Vizcaino*, the court discussed five factors that are relevant in determining
22 whether proposed attorneys' fees in a common fund case are reasonable: (i) the results
23 achieved; (ii) the risk of litigation; (iii) the skill required and the quality of work;
24 (iv) the contingent nature of the fee and the financial burden carried by the plaintiff;
25 and (v) awards made in similar cases. *Id.* Here, Class Counsel seeks a 25% fee.

1 Applying the *Vizcaino* analysis to this case, Class Counsel's 25% requested fee is fair,
2 reasonable, and justified.

3 **A. The Results Achieved**

4 The excellent results achieved in the Settlement support Class Counsel's
5 request for attorneys' fees. Here, Class Counsel negotiated a non-reversionary cash
6 settlement of \$1,000,000 for the Wage Statement Class Members and the Waiting
7 Time Class Members. As a part of the Settlement, the State of California will receive
8 \$7,500 for education and enforcement of labor laws. These are significant benefits
9 for the Wage Statement Class Members and the Waiting Time Class Members, as
10 well as the State of California, and support the requested fee award. Moreover, this
11 litigation resulted in several changes to policies in favor of the Wage Statement Class
12 Members and the Waiting Time Class Members, including the modification of form
13 of itemized wage statements to accurately list pay period begin and end dates, and the
14 establishment of a protocol to pay all wages owed on discharge. Dente Decl., ¶20;
15 Meservy Decl., ¶20; Richard Decl., ¶22.

16 **B. The Risks of Litigation**

17 Class action lawsuits carry a tremendous amount of risk both on certification
18 and liability. From the outset of this litigation, SWA denied each of Plaintiff's
19 allegations and offered legal and factual grounds in defense of this action.
20 Specifically, SWA claims that: (i) it issued accurate itemized wage statements
21 compliant with California Labor Code section 226; (ii) all applicable rates of pay
22 were properly itemized on its itemized wage statements; (iii) any omission of pay
23 period begin dates resulted in no injury; (iv) it timely paid all wages due and owing at
24 termination; (v) any delayed payments of wages occurring subsequent to termination
25 were lawful because the wages were not calculable at separation; (vi) penalties should
26

1 be limited to the lower, initial violation penalties; and (vii) SWA is not subject to
2 civil penalties under PAGA or that any such penalties should be significantly reduced
3 due to lack of injury. SWA also strongly contested the propriety of class treatment of
4 the claims at issue. Considering the defenses available to SWA, as well as the fact
5 that only statutory penalties were at issue in this Lawsuit, the fact that Class Counsel
6 were able to obtain the \$1,000,000 Settlement Amount for Wage Statement Class
7 Members and the Waiting Time Class Members, as well as the State of California, is
8 an outstanding achievement. Dente Decl., ¶¶9, 25; Meservy Decl., ¶¶9, 25; Richard
9 Decl., ¶¶11, 27.

10 **C. The Skill Required and the Quality of the Work**

11 Practice in the narrow area of wage-and-hour class litigation requires
12 knowledge and skill of the constantly evolving substantive law as well as the
13 procedural requirements of class action litigation. The issues presented in this case,
14 required more than just a general appreciation of wage-and-hour law and class action
15 procedure. For example, Plaintiff's claims regarding wage statements issued to
16 Plaintiff and Wage Statement Class Members required a comprehensive
17 understanding about the current case law and nuisances involved with wage statement
18 claims, including: (i) requirements for issuance of wage statements under California
19 Labor Code section 226(a); (ii) the injury component of an inaccurate wage statement
20 claim under California Labor Code section 226; and (iii) the import of the recent
21 amendments to California Labor Code section 226. Moreover, in order to
22 successfully address asserted defenses to Plaintiff's waiting time claims, prosecution
23 and settlement of this case required a thorough understanding of the law surrounding
24 delayed payment of wages to Waiting Time Class Members subsequent to
25 termination of employment under California Labor Code section 203, including
26

1 administrative guidance as to when wages are or are not "calculable" on termination.
2 Further, this case involved matters that required significant expenditure of Class
3 Counsel's time such as: (i) extensive pre-litigation investigation; (ii) extensive and
4 detailed legal research into the substantive law of the causes of action at issue;
5 (iii) developing and executing litigation strategies; (iv) reviewing and analyzing
6 extensive discovery including pay statements and employment policies;
7 (v) developing and executing mediation and settlement strategies; and (vi) analyzing
8 detailed and extensive data and information exchanged between the parties and
9 research in order to assure that the Settlement's terms are based upon objective
10 evidence that had been thoroughly considered in the context of the risks, expenses,
11 and benefits of continuing to litigate the case. Dente Decl., ¶24; Meservy Decl., ¶24;
12 Richard Decl., ¶26.

13 Class Counsel's ability to obtain a favorable settlement in the face of this
14 opposition reflects both Class Counsel's skill set as well as the superior quality of
15 Class Counsel's work, and supports the requested fee award.

16 **D. The Contingent Nature of the Fee**

17 From the outset of the case to the present, prosecution of this action has
18 involved significant financial risk for Class Counsel. Dente Decl., ¶¶23-24; Meservy
19 Decl., ¶¶23-24; Richard Decl., ¶¶25-26. Class Counsel undertook this matter solely
20 on a contingent basis with no guarantee of recovery. *Id.* Class Counsel placed their
21 own resources at risk to prosecute this action with no guarantee of success. *Id.* The
22 risks of this case are apparent in that class certification would have been a hard-
23 fought issue, especially considering the uncertainty regarding certification of cases
24 such as this. Moreover, even if class certification were granted over SWA's
25 opposition, there was no assurance that Plaintiff would succeed at trial. Dente Decl.,
26

1 ¶¶20, 25; Meservy Decl., ¶¶20, 25; Richard Decl., ¶¶22, 27. For example, there was
2 a possibility that liability would not be found, or even if liability were found that
3 penalties would be significantly reduced. *Id.* Despite such challenges, Class Counsel
4 were able to persuade SWA that it faced significant liability exposure such that it was
5 willing to pay \$1,000,000 to settle this matter. *Id.*

6 **E. Awards Made in Similar Cases**

7 Class Counsel's request for an award of attorneys' fees equal to 25% of the
8 Common Fund Settlement Amount obtained here is directly in line with the Ninth
9 Circuit's established benchmark award for common fund cases. *See, e.g., Six*
10 *Mexican Workers*, 904 F.2d at 1311; *Hanlon*, 150 F.3d at 1029; *Glass*, 331 F. App'x
11 at 456-57; *Williams*, 129 F.3d at 1027. The reasonableness of Class Counsel's
12 requested fee amount is supported by the existence of circumstances and authority
13 that justified a significant upward departure from the 25% benchmark. *See e.g., Craft*
14 *v. Cnty. of San Bernadino*, 624 F. Supp. 2d 1113, 1126-27 (C.D. Cal. 2008) (holding
15 attorneys' fees for common fund settlements below \$10,000,000 are often *more* than
16 the 25% benchmark; more particularly, a review of California cases in other districts
17 reveals that courts usually award attorneys' fees in the 30-40% range in wage and
18 hours class actions that result in recovery of a common fund under \$10 million).
19 Accordingly, the requested fee award is well within the range of reasonableness given
20 that Class Counsel's 25% fee request is much lower than attorneys' fees commonly
21 awarded in other common fund settlements. *See, e.g., Pac. Enters.*, 47 F.3d at 378-79
22 (affirming attorney's fee of 33% of the recovery); *Morris*, 54 F. App'x at 664
23 (affirming fee award of 33% of the recovery); *Vasquez v. Coast Valley Roofing, Inc.*,
24 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing to five recent wage and hour class
25 actions where federal district courts approved attorney fee awards ranging from 30 to
26

1 33%); *Martin v. AmeriPride Servs., Inc.*, No. 08CV440-MMA (JMA), 2011 WL
 2 2313604, at *8 (S.D. Cal. June 9, 2011) (noting that "courts may award attorneys fees
 3 in the 30–40% range in wage and hour class actions that result in recovery of a
 4 common fund under \$10 million"); *Singer v. Becton Dickinson & Co.*, No. 08-CV-
 5 821-IEG (BLM), 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010) (approving
 6 attorney fee award of 33.33% of the common fund and holding that award was
 7 similar to awards in three other wage and hour class action cases where fees ranged
 8 from 33.3% to 40%); *De Stefan v. Frito-Lay, Inc.*, No. SA CV10-0112-DOC
 9 (MLGx), slip op. (C.D. Cal. Oct. 29, 2012) (awarding 33% fee on a \$2 million wage
 10 and hour class action); *Ingalls v. Hallmark Mktg. Retail, Inc.*, No. CV08-04342
 11 VBF(Ex), slip op. (C.D. Cal. Oct. 16, 2009) (awarding 33.33% fee on a \$5.6 million
 12 wage and hour class action); *Birch v. Office Depot, Inc.*, Case No. 06CV1690 DMS
 13 (WMC), slip op. (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee on a \$16 million
 14 wage and hour class action); *Rippee v. Boston Mkt. Corp.*, No. 05CV1359 BTM
 15 (JMA), slip op. (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee on a \$3.75 million
 16 wage and hour class action); *Nigh v. Humphreys Pharmacal, Inc.*, No. 12cv2714
 17 MMA-DHB (S.D. Cal. Oct. 23, 2013) (awarding a 25% fee on a \$1.4 million action
 18 where claims are capped at \$50 or \$100 per claimant). Despite the existence of
 19 circumstances and authority justifying a fee award of 30% or more, Class Counsel
 20 seeks 25% of the Common Fund Settlement Amount. Attorney fee awards made in
 21 similar cases more than justify Class Counsel's requested fees.

22 **V. CLASS COUNSEL'S REQUESTED REPAYMENT OF COSTS IS FAIR**
 23 **AND REASONABLE AND SHOULD BE APPROVED**

24 In the course of this litigation, Class Counsel has incurred out-of-pocket costs
 25 totaling \$10,856.02 to date. Richard Decl., ¶28. As demonstrated in the Richard
 26

1 Decl., the incurred costs include court fees, mediation fees, copying fees, document
2 management fees, legal research charges, telephone charges, travel expenses, and
3 postage fees. *Id.* The costs incurred by Class Counsel in this matter benefited the
4 Class Members. Furthermore, reimbursement of costs are permitted by statute for the
5 types of claims sought in the Lawsuit and settled, including but not limited to under
6 California Labor Code section 226(e)(1) and the PAGA. Accordingly, Class Counsel
7 respectfully request that the Court award Class Counsel their costs incurred in
8 litigating this matter.

9 **VI. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT**
10 **PAYMENT IS FAIR AND REASONABLE AND SHOULD BE FINALLY**
11 **APPROVED**

12 Plaintiff seeks a Class Representative Enhancement Payment in the amount of
13 \$5,000. This enhancement is intended to recognize the time and efforts that Plaintiff
14 spent on behalf of the Class Members, the release of claims he agreed to release
15 which is much broader than the narrowly-tailored Class Member Released Claims, as
16 well as the risks Plaintiff assumed in acting as the Plaintiff in this Lawsuit. Meservy.
17 Decl., ¶¶26-29; Dente Decl., ¶¶26-29; Richard Decl., ¶¶29-32; *see generally*
18 Mansfield Decl.¹⁰ Plaintiff actively participated in this litigation, spending time
19 participating in meetings with Class Counsel who required considerable information
20 pertaining to SWA's policies and procedures. Meservy. Decl., ¶26; Dente Decl., ¶26;
21 Richard Decl., ¶29; *see generally* Mansfield Decl. This work was undertaken in
22

23 ¹⁰ "Mansfield Decl." refers to the Declaration of Timothy Mansfield in Support of
24 Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and
25 Application for Award of Attorneys' Fees and Costs, Class Representative's
26 Enhancement Payment, and Payment to Claims Administrator filed
27 contemporaneously herewith.

1 order to prepare the complaints, to prepare for mediation, and to ultimately settle the
2 claims. *Id.*

3 Employees are dependent on, and generally thankful for, their jobs, especially
4 given the current economic climate and soaring unemployment rate in California.
5 Meservy. Decl., ¶27; Dente Decl., ¶27; Richard Decl., ¶30. Given these realities,
6 employees are particularly unlikely to jeopardize their future employment by
7 complaining, much less filing a class action lawsuit against their employers on behalf
8 of their fellow employees. *Id.* Plaintiff's willingness to sacrifice and set aside his
9 own personal interests for the benefit of the Class should be rewarded, both as just
10 compensation for his efforts and achievements in this case, and to encourage others to
11 stand up and object to employment practices they believe to be unlawful. *Id.*

12 The potential financial risks are in and of themselves enough to dissuade many
13 if not most people from agreeing to act as a class representative. Meservy. Decl.,
14 ¶28; Dente Decl., ¶28; Richard Decl., ¶31. Plaintiff also took the risk that this
15 Lawsuit would have a negative impact on his future employment opportunities. *Id.*
16 Plaintiff also runs the risk that his prospective employers may run a background
17 search, including a search for court records that might reveal this Lawsuit and his
18 willingness to file suit against his employer. *Id.* Suffice to say, this could certainly
19 have a negative impact on his future employment prospects. *Id.*

20 Plaintiff sacrificed his personal interests for the benefit of the class. Meservy.
21 Decl., ¶29; Dente Decl., ¶29; Richard Decl., ¶32; *see generally Mansfield Decl.* By
22 agreeing to file this case, Plaintiff assumed the risk of a judgment against him and
23 personal liability for an award of costs to SWA in the event of an adverse outcome.
24 *Id.* In class action losses, the class representative is deemed the losing party and thus
25 potentially liable for the prevailing party's costs.

1 While class representatives are potentially personally liable for all of the costs
2 in an unsuccessful suit, they certainly do not reap all of the benefits in a successful
3 one. *Id.* Here, for example, Plaintiff is requesting \$5,000 (.50% of the gross benefits
4 achieved). *Id.* Accordingly, a fair service fee is necessary to ensure that successful
5 class representatives receive just compensation for their willingness to take on the full
6 risks of a loss. *Id.*

7 The requested \$5,000 Class Representative Enhancement Payment is fair and
8 reasonable sum in light of Plaintiff's involvement and the result achieved. *Id.*
9 Equally significant is the fact that Plaintiff's intention to request class representative
10 enhancement of \$5,000 was clearly disclosed to each Class Member in the Court-
11 approved Class Notice. As of the date of this Motion, not one of the 6,113 Class
12 Members objected to Plaintiff's request for a \$5,000 Class Representative
13 Enhancement Payment. Cunningham Decl., ¶12. For the foregoing reasons
14 Plaintiff's requested Class Representative Enhancement Payment is extremely
15 reasonable and should be granted.

16 **VII. THE COURT SHOULD APPROVE THE PAYMENT TO CPT**

17 As a part of the preliminary approval process, this Court approved the hiring of
18 CPT as the Settlement Administrator. CPT has performed all of its required duties to
19 date and is committed to completing the claims administration process. *See generally*
20 Cunningham Decl. CPT's total costs for the administration of the Settlement,
21 including fees incurred and future costs for completion of administration, is \$31,500.
22 Cunningham Decl., ¶16. The requested fees is an increase of \$1,500 from the
23 original bid prepared by CPT as a result of a slight increase in the Class size realized
24 after preliminary approval was granted. Plaintiff respectfully requests that this Court,
25 as part of its final order approving the Settlement, approve payment to CPT in the
26

1 amount of \$31,500 in connection with administering the Settlement for this 6,000-
2 plus Class.

3 **VIII. CONCLUSION**

4 For all of the foregoing reasons, Plaintiff requests, and neither SWA nor any
5 Class Members oppose, that this Court: (i) grant final approval of this Settlement;
6 (ii) approve distribution of the settlement funds to the Class Members and the
7 LWDA; (iii) approve the request for the Class Representative Payment of \$5,000;
8 (iv) approve payment of \$31,500 to CPT for administration fees and costs; and
9 (v) approve Class Counsel's request for an award of \$250,000 in Attorneys' Fees and
10 \$10,856.02 in costs.

11 Dated: November 4, 2014

Respectfully submitted,

12
13 ROBBINS ARROYO LLP
14 THE DENTE LAW FIRM
15 MESERVY LAW, P.C.

16 s/ Diane E. Richard

DIANE E. RICHARD

17 Attorneys for Plaintiff Timothy Mansfield,
18 Individually, and as a Representative of Other
19 Members of the Public Similarly Situated
20 E-mail: drichard@robbinsarroyo.com

21 990814

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

Executed November 4, 2014

s/ Diane E. Richard

DIANE E. RICHARD

ROBBINS ARROYO LLP
600 B Street, Suite 1900
San Diego, CA 92101
drichard@robbinsarroyo.com

(3:13cv02337)