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FRANCISCO CALDERON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

FRANCISCO CALDERON, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

SMILEDIRECTCLUB, LLC, a Tennessee
limited liability company; JEFFREY
SULITZER, D.M.D., PROFESSIONAL
CORPORATION, a California corporation; and
DOES 1 through 100,

Defendants.

Case No. 20STCV03799

*[Assigned for all purposes to the Hon. Yvette M.
Palazuelos, Dept. SSC-9]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: January 11, 2022
Time: 10:00 a.m.
Dept.: SSC-9

Complaint Filed: January 30, 2020
Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on January
3 11, 2022 at 10:00 a.m. in Department SSC-9 of the above-entitled Court, located at 312 N. Spring Street,
4 Los Angeles, California 90012, Plaintiff Francisco Calderon (“Plaintiff”), individually and on behalf of
5 a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Confirming the certification of the Settlement Class for settlement purposes under Section 382
7 of the California Code of Civil Procedure;
- 8 2. Confirming the appointment of Plaintiff Francisco Calderon as Class Representative for
9 settlement purposes;
- 10 3. Confirming the appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
11 Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for
12 settlement purposes;
- 13 4. Granting final approval of the Amended Stipulation of Settlement (“Settlement”);
- 14 5. Approving an award of \$216,666.66 in attorneys’ fees to Class Counsel;
- 15 6. Approving an award of \$23,296.16 in costs to Class Counsel;
- 16 7. Approving an award of \$7,250.00 in costs to Phoenix Settlement Administrators (“Phoenix”)
17 for its settlement administration services;
- 18 8. Approving a service award of \$5,000.00 to Plaintiff Francisco Calderon for his services as
19 Class Representative;
- 20 9. Approving an award of \$22,500.00 to the Labor & Workforce Development Agency
21 (“LWDA”); and
- 22 10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action
23 Settlement and Final Judgment filed concurrently herewith.

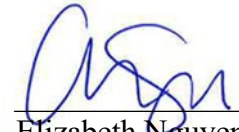
24 This Motion is based on this notice of motion, the attached memorandum of points and authorities
25 attached hereto, the declarations of Scott M. Lidman, Elizabeth Nguyen, Paul K. Haines, Milan Moore,
26
27
28

1 Plaintiff Francisco Calderon,¹ and Elizabeth Kruckenberg of Phoenix Settlement Administrators, and the
2 exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or
3 documentary evidence or argument presented at the time of hearing.

4
5 Dated: December 16, 2021

Respectfully submitted,
LIDMAN LAW, APC

6
7 By:



Elizabeth Nguyen
Attorney for Plaintiff
FRANCISCO CALDERON

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¹ The declaration of Plaintiff Francisco Calderon was originally filed with this Court on March 2, 2021 in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Francisco Calderon (“Plaintiff”) submits this memorandum of points and authorities in
4 support of his motion for final approval of the class action settlement (the “Settlement”) with Defendants
5 SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation (hereinafter collectively
6 referred to as “SmileDirect” or “Defendants”). The Settlement Class is defined as: “all current and former
7 non-exempt, hourly, employees of Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D.,
8 Professional Corporation who worked in California at any time from November 8, 2017 through August
9 2, 2021.”

10 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
11 Member is approximately **\$1,091.36**. This is a favorable resolution of the highly disputed wage and hour
12 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
13 preliminary approval on August 2, 2021, nothing has changed to impact the propriety, fairness, adequacy
14 and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their
15 projected Settlement payments, no one has opted-out or submitted a written objection to the Settlement.

16 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the Class
17 continues to meet the requirements for class certification for settlement purposes under Code of Civil
18 Procedure section 382; (2) the Settlement warrants final approval because it is a fair, adequate, and
19 reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class
20 Counsel’s attorneys’ fees and costs, Plaintiff’s Class Service Award, payment to the Labor Workforce
21 Development Agency (“LWDA”), and settlement administration costs are all fair, adequate, and
22 reasonable. For these reasons, Plaintiff respectfully requests that this Court enter the [Proposed] Order
23 of Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith.

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 On January 30, 2020, Plaintiff filed a putative class action complaint against Defendants in Los
26 Angeles County Superior Court. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. On April
27 6, 2020, Plaintiff filed a First Amended Class and Representative Action Complaint. *Id.* On May 14,
28 2021, pursuant to the Parties’ stipulation and in connection with effectuating the terms of the settlement,

1 Plaintiff filed a Second Amended Class and Representative Action Complaint (“SAC”) adding a cause
2 of action for Defendants’ failure to timely pay all wages upon separation of employment. In the SAC,
3 Plaintiff alleges that Defendants: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime
4 wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all
5 legally required rest periods; (5) failed to timely pay all wages upon separation of employment; (6) failed
6 to provide accurate, itemized wage statements; (7) engaged in unlawful business practices; and (8) is
7 liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). *Id.*

8 **A. Plaintiff’s Claims**

9 As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of
10 liability are related to Defendant’s alleged failure to pay for all time worked and failure to provide
11 Settlement Class Members all legally compliant duty-free meal and rest periods. Nguyen Decl., ¶¶ 11-
12 22. Specifically, Plaintiff alleges that Defendants failed to compensate its non-exempt employees for all
13 time worked. *Id.* at ¶ 11. Plaintiff alleges that Defendants would keep track of Plaintiff’s time worked
14 and would unlawfully round/shave Plaintiff’s work time such that Plaintiff would not be fully paid for
15 all time worked. *Id.* This time-shaving and/or rounding practice utilized by Defendants was not even-
16 handed over time and would almost exclusively round and shave in Defendants’ favor such that Plaintiff
17 was routinely underpaid for all his time worked. *Id.*

18 Plaintiff alleges that he and Settlement Class Members were not provided with all legally-required
19 off-duty meal periods beginning before the end of the fifth hour of work. Nguyen Decl., ¶ 13.
20 Specifically, Plaintiff contends that due to his job duties, he was often prevented from taking meal periods
21 that commenced before the end of the fifth hour of work and/or a meal period altogether. *Id.*

22 Plaintiff alleges that he and other Class Members were not authorized and permitted to take all
23 required rest periods due to Defendants’ rest period policies/practices which fail to authorize and permit
24 all rest periods for every four hours worked, or *major fraction thereof*. Nguyen Decl., ¶ 15. Specifically,
25 during the shifts when Plaintiff worked alone, Defendants’ policy and practice prohibited him from taking
26 any rest periods. *Id.*

27 As a result of the alleged unpaid wages and unpaid meal period and rest period premium wages
28 described above, Plaintiff alleges that Defendants issued inaccurate wage statements in violation of Labor

Code § 226, failed to pay all wages to Settlement Class Members upon their separation of employment, and are thus liable for civil penalties under the Labor Code Private Attorney General Act (“PAGA”). Nguyen Decl., ¶¶ 17-22.

As explained *infra* and in Plaintiff’s Motion for Preliminary Approval, Defendants deny Plaintiff’s claims and asserts several affirmative defenses, both on the merits and with respect to class certification.

B. Mediation and Settlement

After agreeing to participate in early mediation, Defendants informally produced time records and payroll data for the putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged in advance of mediation. Nguyen Decl., ¶ 24. Plaintiff retained an expert to conduct an analysis of the payroll data and time records produced by Defendants. After the detailed review of the payroll and time records and other documents and policies produced by Defendants, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery also allowed the Parties to discuss the strengths and weaknesses of Plaintiff’s contemplated waiting time penalty claim and Plaintiff’s various theories of liability on his claim. This discovery allowed the parties to assess the merits and value of Plaintiff’s claims and Defendants’ defenses thereto, if a settlement could not be reached. *Id.*

On November 10, 2020 after extensive research and analysis, including a detailed analysis of Defendants’ potential exposure by Plaintiff’s retained expert who holds a Ph.D. in economics, a full-day mediation was held with Jeffrey Krivis, Esq., a well-respected wage and hour class action mediator. Nguyen Decl., ¶ 25. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* As part of the negotiations and settlement discussions, the Parties agreed that Plaintiff would file a SAC adding causes of action against Defendants for waiting time penalties. After a full day mediation, the Parties reached agreement and executed a Memorandum of Understanding (“MOU”). Thereafter, the Parties cooperated and signed the Stipulation of Settlement (“Settlement”). *Id.*

C. Preliminary Approval of Settlement

Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary

1 Approval on March 2, 2021. Nguyen Decl., ¶ 26. On May 13, 2021, the Court issued its tentative ruling.
2 *Id.* On June 16, 2021, Plaintiff filed the Parties’ Amended Stipulation of Settlement and his supplemental
3 briefing in support of his Motion for Preliminary Approval addressing the issues identified in the Court’s
4 tentative ruling. On August 2, 2021, the Court issued an Order Granting Preliminary Approval of the
5 Settlement. *Id.*; Exh. A.

6 Plaintiff submitted the Settlement, the Amended Settlement and Court’s Order Granting
7 Preliminary Approval of the Settlement to the LWDA via the LWDA’s website on March 2, 2021, June
8 22, 2021, and August 9, 2021, respectively. *See* Nguyen Decl., ¶ 40; Exhs. D-F. Plaintiff will also
9 provide the LWDA with a copy of the instant motion for final approval and supporting documents after
10 the instant motion is filed and will file a supplemental proof of service prior to the hearing. Nguyen
11 Decl., ¶ 42.

12 On September 9, 2021, the Settlement Administrator mailed the Court-approved Notice Packet
13 (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and Notice of
14 Individual Settlement Award) in English and Spanish to the 337 Settlement Class Members, who had
15 until November 8, 2021 to submit disputes, objections, and/or requests for exclusion. *See* Declaration
16 of Elizabeth Kruckenberg of Phoenix Settlement Administrators (“Kruckenberg Decl.”), ¶ 8. As of the
17 date of this filing, there have been **no objections**, **no disputes**, and **no opt-outs** received. *Id.* at ¶¶ 13-
18 15. Plaintiff now respectfully submits the Settlement for this Court’s final approval.

19 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

20 **A. Settlement Class Definition**

21 The Settlement Class encompasses “all current and former non-exempt, hourly, employees of
22 Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation who worked
23 in California at any time from November 8, 2017 through August 2, 2021.” Nguyen Decl., ¶ 27.

24 **B. Monetary Terms of the Settlement**

25 The Settlement provides for Defendants to pay a Gross Settlement Amount of Six Hundred Fifty
26 Thousand Dollars and Zero Cents (\$650,000.00). Kruckenberg Decl., ¶ 16. The Net Settlement Amount
27 is the amount remaining from the Gross Settlement Amount after deducting requested attorneys’ fees
28 (\$216,666.66) and verified costs (\$23,296.16), proposed Class Representative Service Award to Plaintiff

1 (\$5,000.00), Settlement Administration costs (\$7,250.00), and PAGA payment (\$30,000.00). *Id.* Based
2 on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$367,787.18**.
3 *Id.*

4 Payment to Settlement Class Members will be distributed as follows:

5 From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement
6 Class Member's Settlement Award based on the following formula:

7 Workweek Based Amount: Ninety-Five Percent (95%) of the Net Settlement Amount, not
8 including the PAGA Amount payable to Settlement Class Members, shall be allocated to Settlement Class
9 Members who worked during the Class Period, as follows: each participating Settlement Class member
10 shall receive a proportionate settlement share based upon the number of workweeks worked during the
11 Class Period, the numerator of which is the Settlement Class member's total workweeks worked during
12 the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class
13 Members who worked during the Class Period. *See* Settlement, ¶ 7.B.i.

14 Waiting Time Penalty Amount: Five Percent (5%) of the Net Settlement Amount, not including
15 the PAGA Amount payable to Settlement Class Members, shall be designated as the "Waiting Time
16 Penalty Amount." Each participating Settlement Class member who was separated from employment
17 with Defendants at any time during the Class Period shall receive a portion of the Waiting Time Penalty
18 Amount. The Waiting Time Penalty amount shall be divided equally between all Settlement Class
19 Members who were separated from their employment during the Class Period. *See* Settlement, ¶ 7.B.ii.

20 In addition, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross
21 Settlement Amount has been designated as the "PAGA Amount". Each PAGA Employee shall receive a
22 portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during
23 the PAGA Period, which will be calculated by multiplying the PAGA Amount by a fraction, the
24 numerator of which is the PAGA Employee's number of workweeks worked during this time period, and
25 the denominator of which is the total number of workweeks worked by all PAGA Employees. *See*
26 Settlement, ¶ 7.B.iii.

27 Payments to Class Members will be classified as 67% as penalties and interest to be reported on
28 a 1099 form, and 33% as wages. *See* Settlement, ¶ 7.D.

1 Defendants will pay the employer's share of payroll taxes separately from, and in addition to, the
2 Gross Settlement Amount. *See* Settlement ¶ 6.E.; Kruckenberg Decl., ¶ 18.

3 **C. Summary of Notice Process**

4 **1. Mailing of Notice Packets**

5 On August 18, 2021, Defendants provided Phoenix with data files with the following
6 information: the names, last known addresses, phone numbers, social security numbers, positions held,
7 the dates of employment and the number of workweeks worked by each Settlement Class member while
8 employed during the Class Period. Kruckenberg Decl., ¶ 6. After performing address updates and
9 verifications, Phoenix mailed the Notice of Pendency of Class Action and Proposed Settlement and
10 Notice of Individual Settlement Award, hereinafter referred to as ("Notice Packet") to the 337 Settlement
11 Class Members on September 9, 2021 in English and Spanish. *Id.* at ¶¶ 7-8. Following the initial
12 mailing, forty-four (44) Notice Packets were returned to Phoenix by the Post Office. *Id.* at ¶ 9. After
13 Phoenix performed a Skip Trace, forty-two (42) Notice Packets were re-mailed. *Id.* at ¶ 11. As of the
14 date of filing this final approval motion, five (5) Notice Packets remains undeliverable because no
15 forwarding address was provided and/or no new address could be located through Skip Trace. *Id.* at ¶
16 12.

17 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
18 disputes was November 8, 2021. Kruckenberg Decl., ¶ 8. As of the date of this filing, there were no
19 objections, no disputes, and no opt-outs. *Id.* at ¶¶ 13-15. Accordingly, as of the date of this Motion, the
20 participation rate amongst the Settlement Class Members is 100% and the average estimated payment is
21 \$1,091.36, with the highest estimated payment to a Settlement Class Member being \$4,490.09, the lowest
22 estimated payment to a Settlement Class Member being \$65.44, and the median amount being \$741.49.
23 *Id.* at ¶¶ 13-19.

24 **D. Timing of Payments**

25 Defendants agree to deposit the Gross Settlement Amount with the Settlement Administrator
26 within thirty (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the
27 expiration of any appeal period following the Court's final approval of the Settlement (at or following
28 the Final Approval Hearing) and entry of a Final Judgment and Order Approving Settlement in the

1 same or substantially the same form as Exhibit B (“Judgment”); or (b) the final resolution of any
2 appeal that has been filed, with the California Court of Appeal or the California Supreme Court rendering
3 a final judgment affirming the Court’s final approval of the Settlement without material modification.
4 Settlement ¶ 6.B. After disbursement, Settlement Class Members will have 180 days to cash their checks.
5 See Settlement ¶¶ 7.E. Funds remaining unclaimed will be distributed to the California State Controller’s
6 Office – Unclaimed Property Fund in the name of the Settlement Class Member. *Id.*; Nguyen Decl., ¶ 28.

7 **E. Notice of Judgment**

8 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class
9 members, the final judgment entered by the Court and any changes to the Final Approval hearing date or
10 location will be posted on the Settlement Administrator’s website at
11 CalderonClassActionSettlement.com. See Kruckenberg Decl., Exh A.; Nguyen Decl., ¶ 41.

12 **IV. ARGUMENT**

13 **A. This Court Should Confirm its Conditional Certification of the Class for Settlement** 14 **Purposes Because It Meets All of the Requirements for Class Certification Under Code** 15 **of Civil Procedure § 382**

16 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and
17 its members are too numerous for joinder to be practical; (2) the representative and absent class members
18 share a community of interest, and questions of law and fact common to the class predominate over
19 questions unique to individual class members; (3) the representative’s claims are typical of the class’
20 claims; and (4) the representative will fairly and adequately represent the class’ interests. See *Richmond*
v. Dart Industries, Inc. (1981) 29 Cal.3d 462, 470.

21 Here, this Court found that the Class meets all the requirements for class certification for
22 settlement purposes when it granted preliminary approval of the Settlement on August 2, 2021. See
23 Nguyen Decl., ¶ 26; Exh. A. After the Court entered an order granting preliminary approval, no events
24 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
25 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement
26 Class Members have objected to any portion of the Settlement and no Settlement Class Member have
27 elected to opt-out of the Settlement. See Kruckenberg Decl., ¶¶ 13-15. This Court should therefore
28 confirm its conditional certification of the Settlement Class.

1 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and**
2 **Reasonable Compromise of Disputed Wage and Hour Claims**

3 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
4 *Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a
5 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*
6 *Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval
7 process consists of preliminary settlement approval, notice being given to class members, and a final
8 fairness and approval hearing being held, at which class members have the opportunity to be heard with
9 respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff
10 respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

11 ***1. The Settlement was Reached at Arm's Length, Through Experienced Counsel and***
12 ***An Experienced Mediator, and Was Based on Sufficient Information to Intelligently***
13 ***Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued***
14 ***Litigation***

15 A settlement is presumptively fair where it is reached through arm's length bargaining, based on
16 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
17 experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford*
18 *Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a
19 trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the
20 case. *Mallick v. Superior Court*, 89 Cal.App.3d 434 (1979). In exercising these powers, the overriding
21 concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk, supra*, 48
22 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but
23 are not limited:

24 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of
25 further litigation, the risk of maintaining class action status through trial, the amount
26 offered in settlement, the extent of discovery completed and the stage of the
27 proceedings, the experience and views of counsel, the presence of a governmental
28 participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
to each case. *Id.* "In the context of a settlement agreement, the test is not the maximum amount plaintiffs
might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of
the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because

1 settlements inherently involve compromise, even settlements providing for substantially narrower relief
2 than likely would be obtained if the suit were successfully litigated can be reasonable because, “the public
3 interest may indeed be served by a voluntary settlement in which each side gives ground in the interest
4 of avoiding litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455
5 F.2d 101, 109 (7th Cir. 1972)).

6 Here, the Settlement resulted from extensive arm’s length settlement negotiations between
7 qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate,
8 and reasonable for all Settlement Class Members. While Plaintiff maintains that his claims are
9 meritorious, Plaintiff acknowledges that his position includes substantial risks and uncertainty, which
10 justifies a downward departure from the maximum exposure that Plaintiff’s calculated each claim carried.

11 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
12 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect
13 to Plaintiff’s unlawful rounding claims, Defendants contend that they compensated non-exempt
14 employees for all of their time worked and that the time punch data would necessarily include minutes
15 that were not compensable work time because the employee would not start performing any work prior to
16 the start of the shift and/or would not perform any work after the scheduled stop time. Nguyen Decl., ¶
17 12. Defendants also contend that they only rounded during a portion of the relevant time period and their
18 rounding practices were lawful, Defendants further contend any unpaid time was *de minimis* and therefore
19 non-compensable. *Id.* Defendants further assert that Plaintiff would be unable to certify a rounding or
20 off-the-clock claim given the individualized inquiries that would be required, given that Defendants
21 rounding mechanism was, according to Defendants, allegedly favored the employees. *Id.*

22 As for Plaintiff’s meal period claims, Defendants counter that they have always provided non-
23 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
24 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
25 than any policy or practice of Defendants. Nguyen Decl., ¶ 14. Furthermore, Defendants counter that the
26 time records reflect compliant meal periods. Defendants point out that under *Brinker Restaurant Corp. v.*
27 *Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal
28 periods, not “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*, 53

1 Cal.4th at 1038 (rejecting “ensure” standard). Finally, Defendants contend Plaintiff’s meal period claim
2 is not suited for class certification, since individual inquiries would be required to assess which employees
3 took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons
4 why a particular employee took a non-compliant meal period or missed a meal period during a particular
5 shift. *Id.*

6 As for Plaintiff’s rest period claims, Defendants contend they have always maintained and
7 enforced lawful rest period policies and practices, and that Settlement Class Members were authorized
8 and permitted to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 16.
9 Defendants argue that their policy and practices was to schedule two to three employees to work in any
10 given shift. Therefore, Defendants argue Plaintiff’s rest period theory of liability is inherently unsuited
11 for class treatment because it was uncommon for the proposed Settlement Class Members to solely work
12 alone during their shift. In addition, Defendants argue this claim is inherently unsuited for class treatment
13 as it requires an individualized inquiry into whether each Settlement Class member was in fact authorized
14 and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-
15 trials. *Id.*

16 As for Plaintiff’s claim for wage statement penalties, Defendants argue that meal and rest period
17 claims cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services,*
18 *Inc.* (2019), review granted, 40 Cal. App. 5th 444 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53
19 Cal.4th 1244 (*see, e.g., Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012)
20 2012 WL 3264081 at **8-9). Defendants further argue that their alleged wage statement violations could
21 not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee
22 “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e)
23 for imposition of penalties. Nguyen Decl., ¶ 18.

24 As for Plaintiff’s claim for waiting time penalties, Defendants assert they have strong defenses to
25 the waiting time claim because there exist good-faith disputes as to Plaintiff’s underlying claims,
26 precluding imposition of penalties. Nguyen Decl., ¶ 20. *See also* 8 Cal. Code Regs. § 13520 (a “good
27 faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy*
28 *Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was

1 exempt precluded imposition of waiting time penalties over contested wages owed). *Id.*

2 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims,
3 Defendants argue that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims
4 will fail. Nguyen Decl., ¶ 22. Defendants also maintain that, given their good faith defenses, this Court
5 would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants
6 liable for any of Plaintiff's claims. *Id.*

7 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also
8 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
9 litigation. Nguyen Decl., ¶ 23. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted
10 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages
11 figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
12 adequate, and reasonable in view of them.

13 **2. The Settlement Fairly, Reasonably, and Adequately Compensates Class**
14 **Members Because Each Participating Class Member Will Be Paid Based on the**
Extent of His or Her Injury

15 Individual settlement payments will be calculated based on the number of workweeks worked by
16 each Settlement Class Member during the Class Period. *See* Settlement, ¶ 7.B. This method of
17 distribution compensates Settlement Class Members based on the estimated extent of their injuries, as
18 Settlement Class Members who worked more workweeks, would have been subject to more of the alleged
19 wage and hour violations than those who worked fewer weeks. Thus, the formula for compensating
20 Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties
21 that could be recovered by them.

22 **3. The 100% Participation Rate and Absence of Any Objections Further Confirms**
That the Settlement is Fair, Adequate, and Reasonable

23 Class members' response to a settlement is relevant in evaluating whether it merits final approval.
24 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
25 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
26 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
27 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion,
28 not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member

1 have elected to opt-out of the Settlement. In addition, only 5 of the 337 Notice Packets were returned
2 undeliverable. Kruckenberg Decl., ¶¶ 8-15. The extremely favorable response of the Settlement Class
3 further confirms that the Settlement is fair, adequate, and reasonable.

4 **C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common**
5 **Fund Confirmed by a Lodestar Cross-Check**

6 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
7 their attorneys' fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
8 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
9 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
10 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
11 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra,*
12 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

13 Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen Decl.,
14 ¶ 38.

15 The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506
16 (2016), that “[t]he percentage of fund method survives in California class action cases.” Specifically, the
17 *Laffitte* Court held:

18 The recognized advantages of the percentage method—including relative ease of
19 calculation, alignment of incentives between counsel and the class, a better
20 approximation of market conditions in a contingency case, and the encouragement it
21 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
22 litigation—convince us the percentage method is a valuable tool that should not be denied
23 our trial courts.

24 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
25 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
26 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
27 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
28 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*
Properties, Inc., 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating

attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'") (citation omitted).

Laffitte also held that trial courts have discretion to assess reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court calculates class counsel's lodestar (hours worked multiplied by hourly rate) and determines whether the "lodestar multiplier" needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 ("[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.")

Here, Class Counsel's fee request of \$216,666.66 (one-third of the Gross Settlement Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First, "regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008); *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27, 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour class actions..."); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience in similar wage and hour class action matters. *See* Nguyen Decl., ¶ 29. Thus, the percentage sought by Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

Next, as stated, under the lodestar method the court computes the "lodestar" amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their

1 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances
2 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
3 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24
4 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
5 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or
6 decrease a lodestar calculation”).

7 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
8 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
9 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
10 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
11 class actions such as this one, where the value of the benefit conferred to the class “can be monetized
12 with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of
13 the common fund to ensure that the fee awarded is reasonable and within the range of fees freely
14 negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th
15 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
16 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in
17 order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte*, 1 Cal.5th at 503-05.

18 In this case, Class Counsel have a lodestar of **\$173,414** which results in a multiplier of
19 approximately 1.249 compared to the \$216,666.66 fee request. *See* Nguyen Decl., ¶ 34. A general
20 summary showing the number of hours of work performed by each attorney and paralegals is set forth
21 below. The billing rates used are reasonable especially in light of the hourly rates identified based on
22 years of experience in the *Laffey Matrix*, submitted concurrently herewith. Nguyen Decl., ¶ 35, Exh. C.
23 Based on the *Laffey Matrix*, the hourly rate for a 23rd year attorney is \$914, the hourly rate for a 16th year
24 attorney is \$759, the hourly rate for a 6th year attorney is \$465, and the hourly rate for a 2nd year attorney
25 is \$378. *Id.*

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Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (23rd Year Attorney)	\$750	65.7	\$49,275
Elizabeth Nguyen (16th Year Attorney)	\$650	115.6	\$75,140
Paul K. Haines (15th Year Attorney)	\$650	17.6	\$11,440
Milan Moore (6th Year Attorney)	\$400	15.5	\$6,200
Romina Tamiry (2nd Year Attorney)	\$295	94.2	\$27,789
Paralegals	\$175	20.4	\$3,570
Total Lodestar			\$173,414

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees).

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class Member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Kruckenberg Decl., ¶¶ 13-15. Additionally, the *average* settlement payment in this case of approximately **\$1,091.36** is in line with, and above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits

1 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
2 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
3 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
4 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
5 compensation for nearly two years. Nguyen Decl., ¶ 31. During this time, Class Counsel have expended
6 a total of \$21,796.16 in actual costs and have devoted substantial time to this litigation and expect to incur
7 approximately \$1,500.00 in future costs for filing the instant motion, filing the final declaration regarding
8 distribution of settlement, Case Anywhere fees for approximately four quarters following final approval
9 until case closure, service and messenger fees, postage fees, and/or court costs for future court
10 appearances.² Nguyen Decl., ¶ 31; Exh. B. Class Counsel's efforts have included conducting pre-filing
11 investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendants' documents
12 and policies, analyzing Settlement Class Members' timekeeping data and payroll records, preparing for
13 and attending mediation, negotiating and revising the long-form Settlement Agreement, preparing the
14 Amended Stipulation of Settlement, preparing the Motions for Preliminary and Final Approval,
15 overseeing the settlement administration process, communicating with Settlement Class Members, and
16 otherwise litigating this case. See Nguyen Decl., ¶ 30. Moreover, Class Counsel have expended time,
17 effort, and money that they could have expended on less risky cases instead. Given the considerable
18 potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or
19 merits issues, the contingent risk borne by Class Counsel was great. Nguyen Decl., ¶¶ 30-33.

20 Class Counsel's previous experience in litigating wage and hour class actions also supports the
21 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
22 hour class action litigation, with substantial experience litigating claims for meal and rest period
23 violations, and related penalties. See Nguyen Decl., ¶¶ 3-8; Declaration of Scott M. Lidman ("Lidman
24 Decl."), ¶¶ 3-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. They have been certified as class
25 counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the
26 strengths and weaknesses of the case against Defendants and the reasonableness of the Settlement. See
27

28 ² This includes total costs incurred by both law firms.

1 Nguyen Decl., ¶ 32. Practice in the narrow field of wage and hour litigation requires skill and knowledge
2 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class
3 action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their
4 skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

5 Other factors also show that the fee amount requested in this case is reasonable under the
6 circumstances. This case involved nuanced legal issues including questions surrounding Defendant's
7 requirement to "provide" meal periods and "authorize and permit" rest periods, and the propriety of
8 statutory penalties, to name just a few. Nguyen Decl., ¶¶ 11-22. Thus, Class Counsel's requested fee
9 award is fair, reasonable, and adequate and should be approved.

10 **D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and**
11 **Reasonable**

12 Class Counsel seek to be reimbursed a total of \$23,296.16³ in litigation costs. Class Counsel's
13 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
14 See Nguyen Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
15 approved by courts. See, e.g., *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
16 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*,
17 No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions
18 and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees*
19 *of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59
20 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497
21 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
22 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because
23 the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement
24 Class Member has objected to them, Plaintiff respectfully requests the Court should grant the request for
25 actual costs incurred.

26
27
28 ³ Class Counsel have expended a total of \$21,796.16 in actual costs and anticipates incurring costs in the
amount of \$1,500 for filing fees, Case Anywhere fees for four quarters, service and messenger fees, postage fees,
and/or court costs for future court appearances.

1 **E. The Court Should Finally Approve the Requested Administration Costs**

2 Plaintiff also requests that the Court approve \$7,250.00 in administration costs to the Settlement
3 Administrator, Phoenix. As detailed in the declaration of Elizabeth Kruckenberg on Behalf of Phoenix
4 submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in
5 effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each
6 Settlement Class Member's individual settlement payment, updated addresses contained in the class data
7 supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 337 Settlement
8 Class Members in English and Spanish, kept the parties informed of any objections or requests for
9 exclusion, and have otherwise administered the Settlement. *See* Kruckenberg Decl., ¶¶ 2-20. For these
10 reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be finally approved.

11 **F. Plaintiff's Requested Enhancement Payment Is Fair, Adequate, and Reasonable in View**
12 **of Plaintiff's Efforts and the Risks that He Assumed on Behalf of the Class**

13 Courts routinely approve service payments to compensate named plaintiffs for the services they
14 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
15 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in
16 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
17 \$50,000 service payment). In analyzing the requested service payment, courts consider the following
18 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the
19 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has
20 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,
21 and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's*
22 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
23 Cal.App.4th 785, 804.

24 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
25 \$5,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook
26 on behalf of Settlement Class Members. *Nguyen Decl.*, ¶ 39; Declaration of Francisco Calderon
27 ("Calderon Decl."), ¶¶ 7-11. Plaintiff gathered documents for use in the lawsuit, and worked with Class
28 Counsel on the case, including preparing for mediation and discussing the case, the merits, the defenses,
and settlement. *See Nguyen Decl.*, ¶ 39; *Calderon Decl.*, ¶¶ 7-11. The class has benefited from Plaintiff's

1 actions as the average settlement amount is **\$1,091.36**.

2 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
3 lawsuit could stigmatize him and/or affect future employment. Calderon Decl., ¶ 8. Plaintiff also
4 understood the risk that he could be liable for Defendants' costs if he lost the case. *Id.* at ¶ 7. Plaintiff
5 accepted these risks and burdens because he wanted Defendants to compensate their current and former
6 employees for unpaid wages. *Id.* at ¶¶ 7-8. Plaintiff estimates he spent over 15 hours on activities related
7 to this case. *Id.* at ¶ 10.

8 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
9 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendants
10 and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving
11 all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Settlement, ¶ 4.F.

12 Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff,
13 no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See*
14 Kruckenberg Decl., ¶ 15. Thus, the service award to Plaintiff is appropriate and justified as part of the
15 Settlement and should be finally approved.

16 **V. CONCLUSION**

17 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant Plaintiff's
18 motion in its entirety and adopt the [Proposed] Order of Final Approval of Class Action Settlement and
19 Final Judgment submitted herewith.

20
21 Dated: December 16, 2021

Respectfully submitted,
LIDMAN LAW, APC

22
23 By:



Elizabeth Nguyen
Attorney for Plaintiff
FRANCISCO CALDERON