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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ADRIAN VIDES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CELOSEAL ROOFING, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO. 30-2020-01162478-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Randall J. Sherman]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES AND COSTS, AND
CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT**

Date: June 10, 2022
Time: 10:00 a.m.
Dept.: CX105

Action Filed: September 28, 2020
Trial Date: None Set

PLEASE TAKE NOTICE that on June 10, 2022, at 10:00 a.m., or as soon thereafter as the matter may be heard in Department CX105 of the above-entitled Court, located at 751 W Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Adrian Vides (“Plaintiff”), as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for entry of an Order pursuant to California Code of Civil Procedure § 382 and Rule 3.769 of the California Rules of Court:

1. Confirming the certification of the Settlement Class for settlement purposes under California Code of Civil Procedure § 382;
2. Confirming the appointment of Plaintiff Adrian Vides as the Class Representative for settlement purposes;
3. Confirming the appointment of Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Settlement (“Settlement Agreement”);
5. Approving an award of \$88,333.33 in attorneys’ fees to Class Counsel;
6. Approving an award of \$8,227.30 in actual litigation costs reimbursement to Class Counsel;
7. Approving an award of \$7,500.00 in costs to Phoenix Settlement Administrators (“Phoenix”) for its settlement administration services;
8. Approving an enhancement payment of \$5,000.00 to Plaintiff Adrian Vides for his service as the Class Representative;
9. Approving an award of \$50,000.00 for civil penalties under the Private Attorneys General Act (“PAGA”), \$37,500.00 of which will be paid to the California Labor and Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Final Judgment and [Proposed] Order Granting Motion for Final Approval of Class Action Settlement, Attorneys’ Fees and Costs, and Class Representative Enhancement Payment (collectively, the “[Proposed] Judgement and Order”) submitted herewith.

1 This Motion is made on the following grounds: (1) the Settlement Class continues to meet
2 the requirements for class certification for settlement purposes only under Code of Civil
3 Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the
4 Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed
5 wage and hour claims; (4) the requested awards of attorneys' fees and costs, enhancement
6 payment, LWDA payment for its share of PAGA penalties, and settlement administration costs
7 are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Judgment
8 and Order submitted concurrently herewith should be entered so as to give finality to, and allow
9 for disbursements from, the Settlement.

10 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
11 Authorities; the supporting declarations of Fletcher W. Schmidt, Paul K. Haines, Andrew J.
12 Rowbotham, Adrian Vides,¹ and Jarrod Salinas of Phoenix, and the exhibits attached thereto; the
13 Settlement Agreement; all other pleadings and papers on file in this action; and on any further
14 oral or documentary evidence or argument presented at the time of hearing.

15 Dated: May 16, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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17 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

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¹ Plaintiff previously submitted his declaration in support of preliminary settlement approval on September 9, 2021. For the convenience of the Court, Plaintiff is re-submitting his declaration with the current filing.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Adrian Vides (“Plaintiff”) hereby submits this Memorandum of Points and
4 Authorities in support of his Motion for Final Approval of this Class Action Settlement (the
5 “Settlement”) on behalf of all current and former non-exempt employees who have worked for
6 Celoseal Roofing, Inc. (“Defendant”) in California at any time in between April 6, 2016, and
7 November 5, 2021 (the “Class Period”), and who have not signed a general release.² Plaintiff and
8 Defendant are referred to collectively as “the Parties.”

9 This is a \$265,000.00 non-reversionary Settlement, in which all participating Settlement
10 Class Members will automatically receive payments without the need to submit a claim form.
11 Combining PAGA Aggrieved Employees and Settlement Class Members, there are a total of 180
12 individuals who will take part in the Settlement. The average Individual Settlement Payment is
13 expected to be approximately \$654.36. The highest Individual Settlement Payment is expected to
14 be approximately \$10,744.88 and the lowest is expected to be approximately \$49.72. This is an
15 excellent resolution of the disputed wage and hour claims at issue in this case considering the
16 significant litigation risks that Plaintiff faced. After receiving notice of the proposed Settlement
17 and the estimated Individual Settlement Payments, no Settlement Class Member objected to the
18 Settlement and only 2 individuals elected to opt-out of the Settlement, resulting in a 98.9%
19 participation rate.

20 As explained below, the Court should grant Plaintiff’s Motion in its entirety because:
21 (1) the Settlement Class continues to meet the requirements for class certification for settlement
22 purposes under Code of Civil Procedure § 382; (2) the Settlement is a fair, adequate, and
23 reasonable compromise of the disputed claims in this case; and (3) the amounts requested for
24

25 _____
26 ² The Settlement also includes a release of the Private Attorneys General Act (“PAGA”) civil penalties for
27 all individuals who were employed by Defendant in California at any time between April 6, 2019, and
28 November 5, 2021 (the “PAGA Period”), regardless of whether they have signed a general release (referred
to as “PAGA Aggrieved Employees”). See Settlement § 2. The PAGA release covers all PAGA claims
that are based on the Labor Code violations pled in the operative complaint or Plaintiff’s letter to the
LWDA dated July 22, 2020, or which could have been pled in the operative complaint based on the factual
allegations therein, that arose during the PAGA Period. *Id.* § 3.B.

Class Counsel’s attorneys’ fees and costs, Plaintiff’s enhancement payment, California Labor and Workforce Development Agency (“LWDA”) payment, and settlement administration costs are all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed] Final Judgment and [Proposed] Order Granting Motion for Final Approval of Class Action Settlement, Attorneys’ Fees and Costs, and Class Representative Enhancement Payment (collectively, the “[Proposed] Judgement and Order”), submitted concurrently herewith.³

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant operates a construction company specializing in commercial and residential decking, roofing, and waterproofing services. Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), ¶ 8. Plaintiff worked for Defendant as a non-exempt employee from approximately 1999 to April 3, 2020. *Id.* Plaintiff, like all other Settlement Class Members, worked for Defendant in California during the Class Period and was subject to Defendant’s uniform policies and practices. *Id.*

On September 28, 2020, Plaintiff filed his class action complaint, alleging that Defendant failed to pay all overtime wages, failed to pay all minimum wages, failed to provide all meal periods, failed to reimburse necessary business expenses, failed to issue accurate, itemized wage statements, failed to pay all final wages at the time of separation, engaged in unfair competition, and is liable for civil penalties under the PAGA. Schmidt Decl., ¶ 9.

Shortly after Plaintiff filed this action, Defendant engaged in a campaign to obtain general releases from putative class members. Schmidt Decl., ¶ 10. Defendant’s counsel provided Plaintiff with samples of the general release as well as the accompanying materials provided to putative class members. *Id.* Defendant’s counsel represented that 128 of the approximately 209 putative class members signed releases as a result of these efforts. *See Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, 803 (allowing employer to enter into individual releases with employees during pendency of putative class action litigating same claims).

³ Plaintiff provided notice of the proposed Settlement, as well as copies of this Motion and all papers filed in support, to the LWDA. Schmidt Decl., ¶ 26; Exhibit 4.

1 Following Defendant’s *Pick-Up Stix* campaign, the parties reached an agreement to attend
2 mediation on behalf of the individuals with PAGA standing as well as the individuals who did
3 not sign general releases. Schmidt Decl., ¶ 11. In connection with mediation, Defendant provided
4 Plaintiff with timekeeping and payroll records for approximately 20% of the individuals who
5 worked during the relevant time periods. *Id.* Defendant also produced the employee handbook,
6 relevant policy documents, and a list of data points necessary to complete a classwide exposure
7 analysis for the claims at issue. *Id.* Plaintiff then conducted an analysis of this data and created a
8 comprehensive damages model to calculate the likely exposure that Defendant faced on each
9 claim. *Id.*

10 On April 7, 2021, the Parties participated in a mediation with Will Klatte, Esq., a respected
11 wage and hour class action mediator in California. Schmidt Decl., ¶ 12. During mediation, the
12 Parties exchanged divergent views on Defendant’s liability and Plaintiff’s exposure valuations,
13 debated their legal positions, and shared their arguments regarding the likelihood of certification
14 of Plaintiff’s claims. *Id.* As a result of a mediator’s proposal from Mr. Klatte, the Parties were
15 able to reach a classwide resolution of all claims. *Id.* During the months that followed, the Parties
16 memorialized the terms into the Settlement Agreement. *Id.*

17 On November 5, 2021, the Court granted preliminarily approval of the Stipulation of
18 Settlement (“Settlement Agreement”). Schmidt Decl. ¶ 12; Exhibit 1 (Preliminary Approval
19 Order). On January 25, 2022, the Court-approved Notice Packets were mailed in English and
20 Spanish via U.S. first-class mail to 182 individuals. *See* Declaration of Jarrod Salinas (“Salinas
21 Decl.”) ¶ 5; Exhibit A. Settlement Class Members had until March 26, 2022, to submit disputes,
22 objections, and/or requests for exclusion (the “Response Deadline”).⁴ *Id.*, ¶¶ 8-9. No Settlement
23 Class Member objected to the Settlement and only 2 individuals requested to be excluded from
24 the Settlement, resulting in a 98.9% participation rate. *Id.* Plaintiff now respectfully submits the
25 Settlement for this Court’s final approval.

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27
28 ⁴ Employees entitled to a share of the PAGA Amount will receive payment for their share of the PAGA
Amount even if they request exclusion from the class and do not receive a class portion of their Individual
Settlement Payment. *See* Settlement § 10.D.ii.

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

2 **A. Settlement Class Definition**

3 The Settlement Class includes: all current and former non-exempt employees who have
4 worked for Celoseal Roofing, Inc. in California at any time between April 6, 2016, and November
5 5, 2021, and who have not signed a general release. *See* Schmidt Decl., Exhibit 1.

6 **B. Monetary Terms**

7 Defendant will pay a non-reversionary Maximum Settlement Amount (“MSA”) of
8 \$265,000.00. *See* Settlement, § 4. The Net Settlement Amount (“NSA”) is the amount remaining
9 from the MSA after deducting Court-approved amounts for attorneys’ fees (\$88,333.33) and
10 verified costs reimbursement (\$8,227.30), the Class Representative enhancement payment
11 (\$5,000.00), settlement administration costs (\$7,500.00), and payment to the LWDA for its share
12 of PAGA penalties (\$37,500.00). Schmidt Decl., ¶ 13; Exhibit 2 (HLG Expense Summary). Based
13 on these requested amounts, Phoenix Settlement Administrators (“Phoenix”) calculates the NSA
14 to be approximately \$118,439.37. *See* Salinas Decl., ¶ 11.

15 Individual Settlement Payments will be classified as 20% wages (to be reported on IRS
16 Form W-2) and 80% penalties and interest (to be reported on IRS Form 1099). *See* Settlement,
17 § 5.D. The PAGA Amount will be allocated as 100% penalties and interest. *Id.*

18 **C. Summary of Notice Process**

19 On November 17, 2021, Defendant provided Phoenix, the Court-approved Settlement
20 Administrator, with data files containing the names, addresses, social security numbers, and
21 relevant workweek information for each putative class member who worked during the Class
22 Period. Salinas Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed
23 the Notice Packets on January 25, 2022. *Id.*, ¶¶ 4-5. Following the initial mailing, 27 Notice
24 Packets were returned. *Id.*, ¶ 6. As a result of Phoenix’s use of a skip trace and/or the Post Office
25 providing forwarding addresses, a total of 15 Notice Packets were re-mailed. *Id.* Ultimately, 12
26 Notice Packets remain undeliverable. *Id.*, ¶ 7. Settlement Class Members had until March 26,
27 2022, to submit objections, disputes, and/or requests for exclusion. *Id.*, ¶¶ 8-9. As of the date of
28 this filing, not a single Settlement Class Member objected to the Settlement and only 2 individuals

1 have requested to be excluded from the Settlement, resulting in a 98.9% participation rate. *Id.*
2 Phoenix also reports zero disputes regarding the information included in the notice packet. *Id.*

3 **D. Timing of Payments**

4 Defendant will deposit the MSA (\$265,000.00) with the Settlement Administrator within
5 30 days after the Court enters an order granting final approval of the Settlement, assuming no
6 objections or appeals. Settlement § 4.B.

7 Within 10 business days of the full funding of the MSA, the Settlement Administrator will
8 calculate each Individual Settlement Payment and mail the Individual Settlement Payments to
9 Settlement Class Members. Settlement, § 5.C. Settlement Class Members will have 180 days
10 from the date Phoenix mails the Individual Settlement Payments to cash their checks. *Id.*, § 5.E.
11 In the event that there are any uncashed checks remaining after 180 days, any funds remaining
12 uncashed will be distributed to Community Legal Aid SoCal, a 501(c)(3) cy pres dedicated to
13 providing legal services to the indigent population of Orange and Southeast Los Angeles
14 Counties. *Id.* The Parties submit that the distribution method called for under the Settlement
15 Agreement is proper as a party-selected distribution, subject to this Court's approval. *See* Code
16 of Civil Procedure § 384(b) (authorizing nonprofit organizations that provide legal services to
17 indigent populations as recipients for uncashed funds in a class action).

18 **IV. ARGUMENT**

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

22 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
23 and its members are too numerous for joinder to be practical; (2) the representative and absent
24 class members share a community of interest, and questions of law and fact common to the class
25 predominate over questions unique to individual class members; (3) the representative's claims
26 are typical of the class' claims; and (4) the representative will fairly and adequately represent the
27 class' interests. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, the Court
28 found that the Settlement Class meets all the requirements for class certification for settlement

1 purposes when it granted preliminary approval of the Settlement on November 5, 2021. *See*
2 *generally* Schmidt Decl., Exhibit 1. Since then, no events have cast doubt on the propriety of this
3 determination, and in fact, the reaction of the Settlement Class Members has been
4 overwhelmingly supportive of the Settlement, with not a single Settlement Class Member
5 objecting to the Settlement and only 2 individuals have requested to be excluded from the
6 Settlement, resulting in a 98.9% participation rate. *See* Salinas Decl., ¶¶ 8-9. The Court should
7 therefore confirm its conditional certification of the Settlement Class.

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

10 California courts have a strong policy in favor of settlement. *See Stambaugh v. Superior*
11 *Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class action settlements
12 involve a court approval process that exists to prevent fraud, collusion, and unfairness to class
13 members. *See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573,
14 578-79. This approval process consists of preliminary settlement approval, notice being given to
15 class members, and a final fairness and approval hearing being held, at which class members can
16 be heard with respect to the settlement. *Id.* Now that the settlement administrator has provided
17 notice to the Settlement Class Members, Plaintiff respectfully requests that the Court finally
18 approve the Settlement as fair, adequate, and reasonable.

19 ***1. The Settlement was Reached at Arms' Length, Through Experienced***
20 ***Counsel and an Experienced Mediator, and Was Based on Sufficient***
21 ***Information to Intelligently Negotiate a Fair Settlement Considering the***
22 ***Claims Asserted and Risks of Continued Litigation***

23 A settlement is presumptively fair where it is reached through arms'-length bargaining,
24 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
25 counsel is experienced in similar litigation, and the percentage of objectors to the settlement is
26 small. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. In deciding whether to approve
27 a proposed settlement, a trial court has broad powers to determine if the proposed settlement is
28 fair under the circumstances of the case. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434,
438. In exercising these powers, the overriding concern is to ensure that a proposed settlement is
"fair, adequate, and reasonable." *Dunk, supra*, 48 Cal.App.4th at 1801 (internal quotations

omitted). Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental 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 and give due regard to "what is otherwise a private consensual agreement between the parties." *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.* (2001) 91 Cal.App.4th 224, 250. Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than what may be obtained if the suit were successfully litigated can be reasonable because, "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

Here, the Settlement resulted from extensive arms'-length settlement negotiations between qualified and experienced counsel with the aid of a respected mediator. The Settlement is fair, adequate, and reasonable for all Settlement Class Members. While Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges the substantial risks and uncertainty in proceeding with class certification and eventually trial, which justify a downward departure from the maximum exposure that Plaintiff calculated each claim carried.

As detailed in Plaintiff's Motion for Preliminary Approval, Defendant contends that employees were always expected to take a full 45-minute, uninterrupted meal period each day and to report to their supervisors whenever a meal period was not taken or was shorter than 45 minutes. Schmidt Decl., ¶ 14. Defendant argues that working time was deducted for meal periods only when the employee was actually provided the meal period. *Id.* Defendant also contends that individualized inquiries would be required to determine whether an employee was not provided

1 a 45-minute meal period on each occasion that time was deducted from hours worked, thus posing
2 an obstacle to certification. *Id.*

3 Defendant maintains that employees were provided all legally compliant meal periods and
4 that any missed or non-compliant meal periods were the result of employee choice, not
5 Defendant's policy. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040
6 (holding that where employees were "provided" the opportunity to take compliant breaks,
7 whether they took a break or not was immaterial). Defendant also contends that employees waived
8 their second meal periods for shifts over 10.0 hours (but less than 12.0 hours). Schmidt Decl.,
9 ¶ 15. Defendant further argues that Plaintiff's meal period claims are unmanageable, since
10 individual inquiries would be required to assess whether meal periods were waived, and the
11 reasons why a particular employee recorded a non-compliant meal period or missed a meal period
12 on a particular shift. *Id.*

13 Defendant argues that it maintains a policy to reimburse all reasonable and necessary
14 business expenditures and that, to the extent that any expenses were not reimbursed, they were
15 not reasonably incurred. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 568
16 ("In calculating the reimbursement amount due under Section 2802, the employer may consider
17 not only the actual expenses that the employee incurred, but also whether each of those expenses
18 was 'necessary,' which in turn depends on the reasonableness of the employee's choices");
19 *Grissom v. Vons Cos., Inc.* (1991) 1 Cal.App.4th 52, 58 ("ascertaining what was a necessary
20 expenditure will require an inquiry into what was reasonable under the circumstances.").
21 Defendant also maintains that the reimbursement claim faces similar obstacles towards
22 certification as Plaintiff's other claims, particularly that it would require a series of mini trials to
23 determine which expenses were reasonable and necessary for the particular job duties of the
24 affected employee. Schmidt Decl., ¶ 16.

25 Defendant argues that the alleged wage statement violations were not "knowing and
26 intentional," and that Plaintiff could not show he "suffer[ed] injury," as required by Labor Code
27 § 226(e) for imposition of penalties. Schmidt Decl., ¶ 17. Defendant contends that it possesses
28 strong, good faith defenses to Plaintiff's underlying claims, precluding recovery of waiting time

1 penalties (which are only available for the “willful” failure to pay wages). *See* 8 Cal. Code Regs.
2 § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time
3 penalties under Section 203...A good-faith dispute that any wages are due occurs when an
4 employer presents a defense, based in law or fact which, if successful, would preclude any
5 recovery on the part of the employee.”). Defendant contends that any facial wage statement
6 violations resulted from an inadvertent error to check a box on the payroll software and only
7 affected a handful of employees. Schmidt Decl., ¶ 17. Defendant also contends that wage
8 statements have been legally-complaint since February 2020. *Id.* Defendant contends that any
9 alleged failure to pay meal period premiums cannot support a derivative claim for wage statement
10 or waiting time penalties. *See Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th
11 444, 474, review granted Jan. 2, 2020 (S258966); *see also Ling v. P.F. Chang’s China Bistro,*
12 *Inc.* (2016) 245 Cal.App.4th 1242, 1261 (meal and rest period premium pay compensates for the
13 non-provision of meal and rest periods, not for the ‘nonpayment of wages’ as required by Labor
14 Code § 203). Defendant also argues it attempted to pay its employees all final wages owed in
15 good faith upon their separation, therefore precluding a finding of wilfulness which is necessary
16 to obtain waiting time penalties under 8 Cal. Code Regs. § 13520. Schmidt Decl., ¶ 17.

17 Since Plaintiff’s PAGA claim is derivative of the underlying wage claims, Defendant
18 asserts that the PAGA claim will fail with those claims. *See Price v. Starbucks Corp.* (2011) 192
19 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and
20 PAGA claims also fail.”) Defendant also maintains that, given its good faith defenses, this Court
21 would exercise its discretion to reduce any PAGA penalties if it were to find Defendant liable for
22 any of Plaintiff’s claims. *See Thurman v. Bayshore Transit Management, Inc.* (2012) 203
23 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.*
24 (2018) 30 Cal.App.5th 504, 529 (affirming \$5.00 initial violation rate for PAGA penalties);
25 *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA
26 penalties from \$2.8 million to \$500,000).

27 These considerations not only bore heavily on the negotiations leading to the Settlement,
28 but also confirm that the Settlement is a fair, adequate, and reasonable compromise considering

1 the risks of further litigation. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff
2 carefully vetted the claims at issue and conducted a detailed analysis of Defendant’s data to arrive
3 at the calculated damages figures. Thus, while these risks are far from exhaustive, they show that
4 the Settlement is fair, adequate, and reasonable.

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

8 Phoenix will calculate Individual Settlement Payments based on the proportionate number
9 of workweeks worked by each Settlement Class Member during the Class Period compared to the
10 total number of workweeks worked by all Settlement Class Members during the Class Period. *See*
11 Settlement, § 5.B. Portions of the NSA will also be distributed to Settlement Class Members who
12 have standing to pursue claims for wage statement penalties, waiting time penalties, and PAGA
13 civil penalties. *Id.* This method of distribution compensates Settlement Class Members based on
14 the estimated extent of their injuries, as Settlement Class Members who worked more workweeks
15 during the relevant time periods were subjected to more of the alleged wage and hour violations
16 than those who worked fewer workweeks, and only Settlement Class Members with standing to
17 pursue derivative penalties would have been eligible to recover those penalties. Thus, the formula
18 is tethered to the damages and penalties that Settlement Class Members could recover and is
19 therefore, fair, adequate, and reasonable.

20 **3. The 98.9 % Participation Rate and Absence of Any Objections Further**
21 **Confirm That the Settlement is Fair, Adequate, and Reasonable**

22 The Settlement Class Members’ response to the Settlement is relevant in evaluating
23 whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. Further, the absence of
24 objections and requests for exclusion support a fairness presumption. *See 7-Eleven Owners for*
25 *Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections
26 and 80 opt-outs from a class of 5,454 showed a “particularly impressive” favorable response from
27 class members). Here, no Settlement Class Member objected the Settlement and only 2
28 individuals elected to opt-out of the Settlement, resulting in a 98.9% participation rate. Salinas

Decl., ¶¶ 8-9. This extremely positive reaction from the Settlement Class Members further confirms that the Settlement is fair, adequate, and reasonable.

C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Maximum Settlement Amount Confirmed by a Lodestar Cross-Check

Plaintiff and the Settlement Class Members, as the prevailing parties in settlement, are entitled to recover their attorneys’ fees and costs for their wage claims. *See* Labor Code §§ 226(e), 1194, and 2699(g). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (finding that “when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”).

California state and federal courts routinely award fee awards of one-third of the settlement fund in class actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn. 11; *see also Wershba, supra*, 91 Cal. App. 4th at 254 (recognizing the “percentage of recovery” method); *In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (affirming 33% fee award). Indeed, the California Supreme Court approved the use of the “percentage of fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (“the percentage of fund method survives in California class action cases...”); *see also Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 (holding that the percentage of the fund method more accurately reflects the results achieved 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* (3d Cir. 2005) 396 F.3d 294, 300 (“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.’”). This is consistent with Class Counsel’s experience in similar wage-and-hour class action matters. *See*

Schmidt Decl., ¶ 19. Here, Class Counsel’s fee request of \$88,333.33, representing one-third of the MSA, is the same percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery method. *Id.*

In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the contingent nature of the case and the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of approximately 12.8). In class and representative actions, where the value of the benefit conferred “can be monetized with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009).

In this case, Plaintiff’s counsel has a lodestar of approximately \$101,132.50; a **negative multiplier** compared to the \$88,333.33 fee request. Schmidt Decl., ¶ 21. A general summary showing the number of hours of work performed by each attorney and paralegal is set forth on the following page. *Id.*; Exhibit 3 (2022 *Laffey* Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (16th Year Attorney)	\$675	8.5	\$5,737.50
Fletcher W. Schmidt (10th Year Attorney)	\$650	75.9	\$49,335.00
Andrew J. Rowbotham (8th Year Attorney)	\$475	92.4	\$43,890.00
Firm Paralegals	\$175	12.4	\$2,170.00
Total Lodestar			\$101,132.50

As discussed above, this case presented significant risks to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Since undertaking representation of Plaintiff, Class Counsel has devoted substantial time to this litigation without receiving any compensation to date. Schmidt Decl., ¶ 20. Class Counsel's efforts include conducting the pre-filing investigation, analyzing Plaintiff's claims, conducting legal research and analysis into those claims, reviewing data and documents produced by Defendant, calculating a comprehensive damages model, preparing for and attending mediation, preparing and revising the long-form Settlement Agreement, preparing the Motion for Preliminary Approval and this Motion, providing supplemental briefing for the Motion for Preliminary Approval, overseeing the notice process, fielding questions from Settlement Class Members, and otherwise litigating the case. Schmidt Decl., ¶ 20. Given the considerable potential for adverse outcomes in this case, including, but not limited to, losing on class certification, the contingent risk borne by Class Counsel was great. The quality of Class Counsel's work, and the efficacy and dedication with which it was performed, should be equivalently compensated.

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation and bring more than three decades of wage-and-hour class and representative action litigation experience. *See* Schmidt Decl., ¶¶ 2-6; *see also generally* Declaration of Paul K. Haines and Andrew J. Rowbotham. State and federal courts have certified Class Counsel as counsel in many other cases. *Id.* Class Counsel's experience in similar matters was integral in evaluating the strengths and weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires

1 skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as
2 the procedural law of class action litigation. Because it is reasonable to compensate Class Counsel
3 equal with their skill, reputation, and experience, the requested fee award of one-third of the MSA
4 is fair and reasonable and should therefore be approved.

5 **D. The Requested Cost Reimbursement Warrants Final Approval as Fair,**
6 **Adequate, and Reasonable**

7 Class Counsel incurred and respectfully requests reimbursement of \$8,227.30 in actual
8 litigation costs, which is *less* than the \$15,000.00 amount preliminarily approved by the Court as
9 set out in the Settlement Agreement. Schmidt Decl., ¶ 22; Exhibit 1; *see also* Settlement,
10 § 4.C.(4). The unclaimed amount of litigation costs will be paid to the Settlement Class Members
11 as part of the NSA. Class Counsel’s request is fair, adequate, and reasonable, as all these costs
12 are documented and reasonably incurred. *See* Schmidt Decl., Exhibit 2. Moreover, the costs
13 Plaintiff seeks to reimburse are the types of costs routinely approved by courts. *See, e.g., Harris*
14 *v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover “those out-of-pocket
15 expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759
16 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and
17 exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable);
18 *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir.
19 2006) 460 F.3d 1253, 1258-59 (legal research costs are reimbursable); *In re Immune Response*
20 *Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation expenses, legal
21 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
22 Further, not a single Class Member objected to the Settlement, including Class Counsel’s request
23 for up to \$15,000.00 in reimbursement of verified costs. Salinas Decl., ¶ 9. Because the expense
24 reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class
25 Member has objected to them, the Court should grant Class Counsel’s request for \$8,227.30 in
26 actual litigation costs reimbursement.
27
28

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

3 Plaintiff also requests that the Court approve \$7,500.00 in administration costs to Phoenix
4 as the Settlement Administrator. Salinas Decl., ¶ 12, Exhibit B. As detailed in the declaration of
5 Jarrod Salinas, submitted concurrently with this Motion, Phoenix performed duties in connection
6 with this Settlement that were integral in effectuating the Settlement and the Notice process.
7 Among other things, Phoenix calculated each Settlement Class Member's Individual Settlement
8 Payment, updated addresses contained in the class data supplied by Defendant, formatted, and
9 translated the Notice Packets for mailing, mailed Notice Packets to all 182 individuals who were
10 eligible to take part in the Settlement, kept the Parties informed of the status of the Notice mailing
11 through weekly reports, and otherwise administered the Settlement. *See generally*, Salinas Decl.
12 For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be
13 finally approved.

14 **F. The Court Should Finally Approve Plaintiff's Requested Class**
15 **Representative Enhancement Payment Because the Requested Amount is**
16 **Fair, Adequate, and Reasonable Considering Plaintiff's Efforts and the Risks**
17 **Assumed on Behalf of the Class**

18 Courts routinely approve enhancement payments to compensate named plaintiffs for the
19 services they provide and the risks they incur during class action litigation. *See, e.g., Bell v.*
20 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to
21 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.
22 Cal. 1995) 901 F.Supp. 294 (approving \$50,000.00 service payment).

23 Here, Plaintiff seeks an enhancement payment of \$5,000.00 and believes that this request
24 is reasonable given Plaintiff's considerable efforts in this case, the risks Plaintiff undertook on
25 behalf of the Settlement Class Members. Schmidt Decl., ¶ 25; *see also* Vides Decl., ¶¶ 2-4.
26 Among other things, Plaintiff gathered factual information and provided relevant documents to
27 his attorneys, attended multiple telephonic meetings to discuss the claims and theories at issue in
28 the litigation, and otherwise actively participated in the prosecution of this action. *Id.* Plaintiff has
invested considerable time and effort into seeing this litigation through resolution, and the
Settlement Class, who would not be receiving anything if it were not for Plaintiff's decision to

1 pursue these claims, will benefit from his participation. Schmidt Decl., ¶ 25. Plaintiff attached his
2 name to this lawsuit for the benefit of the Settlement Class Members and the detriment of himself.
3 Plaintiff may lose employment opportunities in the future as a result of prosecuting his rights and
4 the rights of his coworkers. Plaintiff deserves to be compensated for these unique risks which
5 other Settlement Class Members are not subject to. Plaintiff estimates that he spent at least 15
6 hours performing these duties on behalf of the Settlement Class. Vides Decl., ¶ 4. Moreover, after
7 receiving notice of the proposed enhancement payment, not a single Settlement Class Member
8 objected to the proposed award. *See* Salinas Decl., ¶ 9. Thus, Plaintiff's request for an
9 enhancement payment is proper and justified as part of the Settlement and should be finally
10 approved.

11 **V. CONCLUSION**

12 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant
13 Plaintiff's Motion in its entirety and adopt the [Proposed] Judgment and [Proposed] Order
14 Granting Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class
15 Representative Enhancement Payment, submitted herewith.

16
17 Dated: May 16, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

18
19 By:


Fletcher W. Schmidt
Attorneys for Plaintiff