

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

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

EDUARDO GONZALEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

GUARDIAN INDUSTRIES, LLC, a Delaware
Limited Liability Corporation; and DOES 1
through 100,

Defendants.

Case No. 19CECG02134

*[Case Assigned for all purposes to the Hon.
Jon M. Skiles, Dept. 502]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: April 26, 2023

Time: 3:30 p.m.

Dept: 502

Action Filed: June 20, 2019

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 26, 2023, at 3:30 p.m., or as soon thereafter as the matter may be heard in Department 502 of the above-entitled Court, located at 1130 O Street, Fresno, California 93724, Plaintiff Eduardo Gonzalez (“Plaintiff”) will, and hereby does, move this Court for entry of an Order:

1. Confirming certification of the Settlement Class for settlement purposes under California Code of Civil Procedure § 382;
2. Confirming the appointment of Plaintiff Eduardo Gonzalez as 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 \$166,666.67 in attorney’s fees to Class Counsel;
6. Approving an award of \$42,614.62 in costs to Class Counsel;
7. Approving an award of \$10,000.00 in costs to Phoenix Settlement Administrator (“Phoenix”) for its settlement administration services;
8. Approving a payment of \$22,500.00 to the Labor & Workforce Development Agency (“LWDA”) for its share of Private Attorneys General Act (“PAGA”) civil penalties;
9. Approving an enhancement payment of \$5,000.00 to Plaintiff for his services as Class Representative; and
10. Entering the proposed Judgment and Order Granting Motion for Final Approval of Class Action Settlement filed herewith.

This Motion is made on the following grounds: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and

1 hour claims; (4) the requested amounts for Class Counsel's attorneys' fees and costs, settlement
2 administration costs, and Class Representative enhancement payment are all fair, adequate, and
3 reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order Granting Motion
4 for Final Approval of Class Action Settlement submitted herewith should be entered so as to give
5 finality to, and allow for disbursements from, the Settlement.

6 This motion is based on this Notice; the attached Memorandum of Points and Authorities;
7 the supporting declarations of Fletcher W. Schmidt, Paul K. Haines, Andrew J. Rowbotham,
8 Eduardo Gonzalez,¹ and Taylor Mitzner of Phoenix and exhibits attached thereto; the Settlement
9 Agreement; all other pleadings and papers on file in this action; and on any further oral or
10 documentary evidence or argument presented at the time of hearing.

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12 Dated: April 4, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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14 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

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28 ¹ The Declaration of Eduardo Gonzalez was filed on September 9, 2022, in connection with Plaintiff's Motion for Preliminary Approval. For the convenience of the Court, Plaintiff is re-filing his declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eduardo Gonzalez (“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 hourly employees of Defendant
6 Guardian Industries, LLC (“Defendant”) in the State of California from June 20, 2015, through
7 May 27, 2020 (the “Class Period”).² Plaintiff and Defendant are referred to collectively as the
8 “Parties.”

9 This is a \$500,000.00 non-reversionary Settlement, in which all 325 participating Class
10 Members will automatically receive payments without the need to submit a claim form. The
11 average Individual Settlement Payment is expected to be approximately \$756.06 and the highest
12 Individual Settlement Payment is expected to be approximately \$1,244.51. The average Private
13 Attorneys General Act (“PAGA”) Payment is estimated to be \$31.38 and the highest is estimated
14 to be \$37.63. This is an excellent resolution of the disputed wage and hour claims at issue in this
15 case considering the significant litigation risks that Plaintiff faced. After receiving notice of the
16 proposed Settlement through the written Notice of Proposed Class Action Settlement and Final
17 Hearing (“Class Notice”) and Notice of Settlement Payment (“Dispute Form”) (collectively, the
18 “Notice Packet”), not a single Class Member requested to opt-out of the Settlement, resulting in
19 a 100% participation rate.

20 The Court should grant this Motion because the Settlement satisfies all of the criteria for
21 final approval, and falls well within the range of approval. Specifically, (1) the Settlement Class
22 continues to meet the requirements for certification purposes under Code of Civil Procedure
23 § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the disputed claims
24 in this case; and (3) the requested amounts for attorneys’ fees and costs, settlement administration
25 costs, class representative enhancement payment, and payment to the Labor & Workforce
26

27
28 ² The Settlement also includes a release of PAGA civil penalties for non-exempt employees who were
employed by Defendant in California at any time between June 20, 2018, and May 27, 2020 (the “PAGA
Period”). *See* Settlement § 4.B.1. The PAGA release covers all PAGA claims premised on factual
allegations pled in the operative complaint (which mirror those in Plaintiff’s pre-filing LWDA letter).

Development Agency (“LWDA”) for its share of PAGA civil penalties are all fair, adequate, and reasonable.

II. BACKGROUND

A. Factual Background and Procedural History

Guardian manufactures float glass, fabricated glass products, fiberglass insulation and building materials for commercial, residential, and automotive applications. Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), ¶ 8. Plaintiff, like all other Settlement Class members, was an employee of Guardian and worked in California during the Class Period. *Id.*; *see also* Declaration of Eduardo Gonzalez (“Gonzalez Decl.”), ¶ 3.

On June 20, 2019, Plaintiff filed the initial complaint as a class action in Fresno Superior Court. Schmidt Decl., ¶ 9. Plaintiff’s operative complaint alleges that Defendant: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages; (3) failed to provide all lawful meal periods; (4) failed to comply with California’s Unfair Competition Laws; (5) failed to pay all wages due at separation of employment; and (6) for civil penalties under the PAGA.³ Schmidt Decl. ¶ 10.

After engaging in extensive informal discovery, the Parties agreed to attend mediation with Francis “Tripper” Ortman Esq. on April 27, 2020. Schmidt Decl., ¶ 11. At mediation, the Parties vigorously debated their legal positions, the legal bases for their claims and defenses and, with the help of Mr. Ortman, were able to reach a class wide settlement of all claims. *Id.*

On March 1, 2021, Plaintiff presented the proposed Settlement to the Court with his Motion for Preliminary Approval. Schmidt Decl., ¶ 12. At the April 29, 2021 hearing, the Court requested additional information and clarification on certain issues. *Id.* Subsequently, Plaintiff’s addressed these issues and re-filed his Motion for Preliminary Approval on October 25, 2021. *Id.*

³ Plaintiff separated his employment with Guardian in July 2020. Gonzalez Decl., ¶ 3. For purposes of mediation, Plaintiff evaluated Guardian’s waiting time penalty and PAGA civil penalty exposure so that Plaintiff would be prepared to discuss the value of those claims at mediation. Schmidt Decl., ¶ 11. On July 9, 2020, Plaintiff submitted a letter to the LWDA identifying the alleged Labor Code violations at issue in this case. *Id.* On September 14, 2020, after having received no response from the LWDA, Plaintiff filed the operative First Amended Complaint adding representative class and representative claims for Defendant’s alleged failure to pay all final wages upon separation of employment and for violations of the PAGA. *Id.*

At the January 13, 2022 hearing, the court raised a few additional issues with Plaintiff’s Motion for Preliminary Approval. *Id.* After addressing the Court’s remaining points, Plaintiff re-filed his Motion for Preliminary Approval on September 9, 2022.⁴ *Id.* On October 25, 2022, this Court granted preliminary approval of the Settlement. *Id.*; Exhibit 1 (Preliminary Approval Order).

B. Discovery and Investigation Prior to the Settlement

Prior to mediation, the Parties engaged in a significant amount of informal discovery. Schmidt Decl., ¶ 14. Specifically, Defendant provided Plaintiff with timekeeping and payroll records for approximately 10% of the non-exempt employees who worked during the Class Period. *Id.*; *see also* Declaration of Lily Yang (“Yang Decl.”), ¶ 4 (filed concurrently and attached as Exhibit 6 to Schmidt Decl.); Declaration of J. Michael DuMond (“DuMond Decl.”), ¶ 2 (Exhibit 10 to Schmidt Decl.) Guardian also produced relevant policies for timekeeping, meal periods, and required personal protective equipment (“PPE”) as well as a summary of relevant information necessary for a classwide damages analysis. Schmidt Decl., ¶ 14; Yang Decl., ¶ 2-3. Plaintiff, with the help of his retained expert who holds a Ph.D. in labor economics, conducted an analysis of this data and created a comprehensive damages model to calculate the likely exposure that Defendant faced on each claim. *Id.*

III. PRINCIPAL TERMS OF THE SETTLEMENT

The Settlement Class includes all current and former non-exempt employees of Defendant employed in the State of California at any time from June 20, 2015, to May 27, 2020. *See* Settlement, § 1. The Settlement requires Defendant to pay \$500,000.00 (“Maximum Settlement Amount” or “MSA”), plus employer-side taxes, which will be paid by Defendant separately and in addition to the MSA. *See* Settlement, § 3.

Subject to this Court’s approval, the following deductions will be made from the Maximum Settlement Amount: (i) all Individual Settlement Payments to Settlement Class members; (ii) a Class Representative Enhancement Payment of \$5,000.00 to Plaintiff; (iii) Class Counsel fee award of \$166,666.67 (one-third of the MSA), and \$42,614.62 for Class Counsel’s

⁴ On September 9, 2022, Plaintiff submitted the Settlement Agreement and moving papers to the LWDA in connection with the filing of his Motion for Preliminary Approval. *See* Schmidt Decl., ¶ 13; Exhibit 5.

1 litigation expenses; (iv) a payment of \$22,500.00 to the LWDA for its 75% share of the
2 \$30,000.00 designated as PAGA civil penalties; and (vi) a payment to the Settlement
3 Administrator of \$10,000.00 for its fees and expenses incurred in administering the Settlement.
4 *See* Settlement, § 3.C; Schmidt Decl. Exhibit 2 (Cost Records); Declaration of Taylor Mitzner
5 (“Mitzner Decl.”), ¶ 18; Exhibit B.

6 After deducting these amounts from the MSA, the remaining \$253,218.71 (“Net
7 Settlement Amount”) will be distributed to each Settlement Class member based on their
8 proportionate workweeks worked during the Class Period, as well as their eligibility for wage
9 statement and waiting time penalties. *See* Settlement at § 4.B.3. Additionally, \$7,500.00 (25% of
10 the amount set aside as PAGA civil penalties), has been designated the “PAGA Amount” and
11 will be distributed to each PAGA Member based on their proportionate number of workweeks
12 worked during the PAGA Period. *See Id.* at § 4.B.1.

13 Settlement Class members will be bound by the Settlement, and will release all claims
14 against Defendant that were alleged in the operative Complaint or that could have been alleged
15 based on the facts alleged in the Complaint, arising from their employment with Defendant. *See*
16 Settlement, § 2.A. All Settlement Class members who worked for Defendant during the PAGA
17 Period (whether or not they opt out) will nonetheless be bound by PAGA release. *Id.*

18 Settlement Class members will have 180 days to cash their Settlement checks. *See*
19 Settlement, § 4.E. Any funds remaining uncashed after this deadline will be distributed to the
20 Controller of the State of California to be held pursuant to the Unclaimed Property Law,
21 California Civil Code § 1500 *et seq.*, in the name of the Settlement Class Member to whom the
22 check was issued, until such time that they claim their property. *Id.*

23 **IV. NOTICE AND SETTLEMENT ADMINISTRATION**

24 On December 2, 2022, Phoenix Settlement Administrators (“Phoenix”), the Court-
25 approved settlement administrator, received a data file from Defendant with Class Member
26 names, mailing addresses, Social Security numbers and employment information. *See* Mitzner
27 Decl., ¶ 3. The final mailing list contained 325 Settlement Class members. *Id.* On December 6,
28 2022 Phoenix conducted a National Change of Address search in an attempt to update Settlement

1 Class members' addresses. *Id.*, ¶ 4.

2 On December 16, 2022, Phoenix mailed the Notice Packets in English and Spanish to all
3 Settlement Class members. Mitzner Decl. ¶ 5. The Notice Packet advised Settlement Class
4 members that the deadline to opt-out, dispute workweeks, or object to the Settlement was
5 February 14, 2023. *Id.*, ¶ 8; Exhibit A (Notice Packet).

6 A total of 6 Notice Packets were returned to Phoenix as undeliverable. Mitzner Decl., ¶ 6.
7 Phoenix performed skip traces and were able to locate 6 updated addresses. *Id.* Notice Packets
8 were promptly re-mailed to those Settlement Class members. *Id.* A total of zero Notice Packets
9 remain undeliverable. Mitzner Decl., ¶ 7.

10 Phoenix did not receive any objections or workweek disputes. Mitzner Decl., ¶¶ 9-10.
11 Likewise, Phoenix did not receive any Requests for Exclusion from the Settlement, resulting in
12 a 100% participation rate. *Id.*, ¶ 8. Phoenix calculates the average Individual Settlement Payment
13 to be approximately \$756.06, the highest payment to be \$1,244.51, the average estimated PAGA
14 payment to be approximately \$31.38, and the highest estimated PAGA payment to be \$37.63.
15 *Id.*, ¶¶ 14-15.

16 **V. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED**

17 The process for approving a settlement is set forth in California Rule of Court 3.769. The
18 decision whether a settlement is fair, reasonable, and adequate is made at the final approval stage,
19 after class members have been given notice of the settlement and an opportunity to voice their
20 views of the settlement or to exclude themselves from it. Cal. R. Ct. 3.769(f)-(g).

21 At the final fairness hearing, "the trial court has broad discretion to determine whether the
22 settlement is fair." *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1138 (1990). The court
23 should consider relevant factors such as the strength of the plaintiff's case; the risk, expense,
24 complexity and likely duration of further litigation; the risk of maintaining class action status; the
25 amount of the settlement; the extent of discovery completed and information exchanged; the
26 experience and views of counsel; and the reaction of the class to the proposed settlement. *7-Eleven*
27 *Owners for Fair Franchising v. Southland Corp*, 85 Cal. App. 4th 1135, 1146 (2001).

28 In granting preliminary approval of the Settlement, this Court reviewed the nature of the

case, the history of the litigation, and the legal requirements for approval of a class settlement. At that time, this Court found that the proposed Settlement Class meets the requirements for class certification for settlement purposes, and that the Settlement's terms are within the range of reasonableness of a settlement that could ultimately be finally approved. *See* Schmidt Decl.; Exhibit 1. Plaintiff respectfully submits that no subsequent events have cast doubt on this determination. The Settlement clearly satisfies the standard for final approval, as it is well within the range of possible approval and there are no grounds to doubt its fairness. This is evidenced by the fact that no Settlement Class member objected to the Settlement and no Settlement Class member elected to opt out resulting in a 100% participation rate. *See* Mitzner Decl., ¶¶ 8-10.

A. The Settlement Resulted from Arm's-Length Negotiations

There is an initial presumption that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84 (RMB), 2004 WL 1724980 at *10 (S.D.N.Y. July 30, 2004) ("Where 'the Court finds that the settlement is the product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness'"); *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (observing that "when a settlement is the result of extensive negotiations by experienced counsel, the Court should presume it is fair"). Moreover, a "court ... should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." *Kullar v. Foot Locker Rental, Inc.*, 168 Cal. App. 4th 116, 129 (2008).

Here, the Settlement was reached following arm's-length negotiations and extensive informal discovery and investigation. This included Defendant's production of employee timekeeping and payroll data; a class list including dates of employment; relevant policy documents; and other documents and information. Schmidt Decl., ¶ 14. Plaintiff and Class Counsel, with the help of a retained expert who holds a Ph.D. in labor economics, were well-informed about the relevant facts and potential value of Plaintiff's claims when negotiating the

Settlement. *Id.*

On April 27, 2020, the Parties participated in a mediation with Francis “Tripper” Ortman, Esq., a well-respected wage and hour class action mediator. Schmidt Decl., ¶ 11. At the mediation, the Parties vigorously debated their positions and the legal bases for their claims and defenses. *Id.* At the conclusion of the mediation, parties were able reach a global resolution. *Id.* Over the following months, the Parties memorialized this resolution in the long form Stipulation of Settlement (“Settlement Agreement”) which was preliminarily approved by this Court on October 25, 2022. *Id.*

B. The Settlement is Well-Received by the Class and Provides Significant Payments

Courts may appropriately infer that a class action settlement is fair and reasonable where, among other things, only a small percentage of class members object to it. *See 7-Eleven Owners*, 85 Cal. App. 4th at 1152-53 (affirming order granting final approval where 9 of 5,454 class members objected to settlement); *Dunk*, 48 Cal. App. 4th at 1802 (affirming order granting final approval where, “[a]lthough several people objected, their numbers were small in comparison to the entire class[.]”).

Here, the Settlement merits final approval because Settlement Class members have reacted unanimously in favor of the Settlement, with no Settlement Class members choosing to opt out or object, resulting in a 100% participation rate. Mitzner Decl., ¶¶ 8-10; *see also Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (“[T]he reaction of class members to the proposed settlement, or perhaps more accurately the absence of a negative reaction, strongly supports settlement”).

The Settlement also represents a very favorable outcome for Settlement Class members, who will receive average Individual Settlement Payment of \$756.06 without having to submit a claim. Mitzner Decl., ¶ 14. These payments far exceed average payments in other wage and hour class action settlements. *See, e.g., Williams v. Centerplate, Inc.*, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108, describing result as “very favorable”); *Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (E.D. Cal. June 11,

2012) (finding that average payment to class members of less than \$200 was a “good” result). Moreover, these payments are particularly reasonable in light of the uncertainty of Plaintiff’s claims and the challenges faced by Plaintiff in this litigation.

C. The Settlement Falls Well Within the Range of Approval

As explained in detail in the Motion for Preliminary Approval, several risks attended Plaintiff’s claims. At the time of the Parties’ proposed Settlement, Plaintiff had not yet filed his Motion for Class Certification. Given Guardian’s numerous arguments that individualized issues would predominate Plaintiff’s claims, thereby precluding class certification, there was a legitimate risk that there would not be a certified class at the time of trial. Schmidt Decl., ¶ 16.

Guardian contends that it has paid all wages owed to employees, including overtime wages and that it strictly forbids off-the-clock work. *See* Schmidt Decl., ¶ 17; Exhibit 7 (Timekeeping Policy). Guardian argues that its quarter-hour rounding system used through May 2018 was neutral and not operated in a way to deprive employees of time worked. *Id.* As of June 3, 2018, Guardian stopped rounding time and changed its time keeping system to reflect the time clocked in/out at the nearest minute. *Id.*; Exhibit 8 (Timekeeping Exemplar). Guardian further contends that that employees are expected to clock in for their shift before donning any substantive personal protective equipment necessary to perform their work. Additionally, Guardian contends that many employees arrive in boots and high visibility shirts or sweatshirts as part of their everyday clothing as a result of Guardian’s policy requiring those items in order to enter the plant. *Id.* Guardian provides three time punch machines immediately upon entry to the plant to enable employees to clock in prior to performing any work, and provides a locker room located next to the time clocks immediately upon entry for the employees’ use. *Id.* At the end of each shift, employees remove any PPE before clocking out to head home. *Id.* Guardian argues that class certification will be unlikely due to the number of individualized inquiries that will be necessary to determine liability for each class member, including the circumstances of each class member’s employment, the timekeeping practices/schedule in that employee’s department and the employees work and clocking patterns. *Id.*; *see also* *Pena v. Taylor Farms Pacific, Inc.* (2015) 305 F.R.D. 197, 210-11 (denying certification of donning and doffing class due to predominance of individualized

inquiries); *Robbins v. Phillips 66 Company*, Case No. 18-cv-00292, 2021 WL 4932729 at *4 (N.D. Cal. Mar. 29, 2021) (denying certification of donning and doffing class due to lack of commonality); *Vazquez v. Kraft Heinz Foods Company*, Case No. 16-cv-2749, 2018 WL 4896072 at *11 (denying certification of donning and doffing class due to lack of a common policy and manageability concerns).

Guardian contends that it has always provided employees with legally-compliant meal periods and that any meal periods that did not meet that standard were solely the result of employee choice (not Guardian’s policy/practice). *See* Schmidt Decl., ¶ 18; Exhibit 9 (Meal Period Policies). Guardian produced evidence showing that all members of the Settlement Class, *including Plaintiff*, signed written waivers to waive their meal period when legally-allowed to do so (*e.g.* shift in excess of 5.0 hours but less than 6.0 hours total or a shift in excess of 10.0 hours but less than 12.0 hours total). *Id.* Because the vast majority of shifts were longer than 10.0 hours but less than 12.0 hours, these written meal period waivers dramatically reduced Guardian’s potential exposure for meal period violations. *Id.* Guardian further argues that under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken – which Guardian contends it has always done. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038 (rejecting “ensure” standard). To the to the extent putative class members did not take a compliant meal period, Guardian paid meal period premiums for non-compliant meal periods throughout the relevant time period. Schmidt Decl., ¶ 18. In fact, Guardian contends that after accounting for valid written meal period waivers and payment of meal period premiums, only 8.4% of all shifts reflected a non-compliant meal period with no premium paid. *Id.* Plaintiff recognizes that Guardian does not even face certain liability on these 8.4% of shifts, as Guardian could still escape liability by showing that in certain instances the employee simply voluntarily skipped the meal, which is an issue that itself could defeat class certification and deny Plaintiff any class-wide recovery on the claim. *Id.*

Guardian contends that it possesses strong, good faith defense to Plaintiff’s underlying claims, precluding recovery of waiting time penalties (which are only available for the “willful” failure to pay wages). *See* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are

1 due will preclude imposition of waiting time penalties under Section 203...A good-faith dispute
2 that any wages are due occurs when an employer presents a defense, based in law or fact which,
3 if successful, would preclude any recovery on the part of the employee.”) Guardian maintains that
4 not all former employees (if any) experienced an underpayment of wages, thus Plaintiff’s
5 exposure analysis is overstated. *See* Schmidt Decl., ¶ 19. Since Plaintiff’s PAGA claim is
6 derivative of the underlying wage claims, Guardian asserts that the PAGA claim will fail with
7 those claims. *See Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the
8 underlying causes of action fail, the derivative UCL and PAGA claims also fail.”) Guardian also
9 maintains that given its good faith defenses, this Court would exercise its discretion to
10 substantially reduce any PAGA penalties if it were to find Guardian liable for any of Plaintiff’s
11 claims. *See Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135
12 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th
13 504, 529 (affirming \$5.00 initial violation rate for PAGA penalties); *Fleming v. Covidien Inc.*
14 (C.D. Cal., Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million
15 to \$500,000).

16 In light of Defendant’s numerous defenses, the Settlement represents a fair and reasonable
17 resolution given the substantial risks involved. Although Plaintiff believes his claims have merit,
18 Plaintiff appreciates the risk that Defendant could prevail on one or more of its arguments, and
19 significantly limit the scope and potential recovery to the Settlement Class. Schmidt Decl., ¶ 20.
20 Plaintiff also recognizes the inherent risks posed by continued litigation – including unfavorable
21 decisions on summary judgment, unfavorable verdicts and/or damages awards, judicial discretion
22 in reducing PAGA penalties, and appeals that could take years to resolve – and the comparative
23 value of Settlement Class members receiving settlement funds immediately. *Id.*

24 **D. The Amount Allocated to the Class is Fair and Favorable**

25 As discussed *supra*, the amounts recovered under the Settlement compare favorably to
26 amounts recovered in similar wage and hour class action settlements. In addition, Individual
27 Settlement Payments are calculated based on each Settlement Class member’s number of
28 workweeks worked during the Class Period, as well as their eligibility for wage statement and

1 waiting time penalties. *See* Settlement, § 4.B. Because Settlement Class members who worked
2 more workweeks would have been subject to more of the alleged wage and hour violations than
3 those who worked fewer, this method of distribution compensates Settlement Class members
4 based on the estimated extent of their alleged injuries and is thus fair, adequate, and reasonable.

5 **VI. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AS A**
6 **PERCENTAGE OF THE COMMON FUND AS CONFIRMED BY A LODESTAR**
7 **"CROSS-CHECK"**

8 Plaintiff and Settlement Class members, as the prevailing parties in settlement, are
9 entitled to recover their attorney's fees and costs for their wage claims. *See* Lab. Code §§ 226(e),
10 1194, and 2699(g); Cal. Code Civ. Proc. § 1021.5. An attorneys' fee award is justified where the
11 legal action has produced its benefits by way of a voluntary settlement. *See e.g., Maria P. v.*
12 *Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Cmnty. for Independent Living, Inc. v. Obledo*,
33 Cal.3d 348, 352-53 (1983).

13 **A. Under the Common Fund Doctrine, it is Proper to Compensate Class Counsel**
14 **Based on a Percentage of the Recovery Obtained for the Class**

15 When a settlement results in a common fund for the benefit of a class, class counsel may
16 be awarded fees as a percentage of the common fund. *Wershba v. Apple Computer, Inc.*, 91
17 Cal.App.4th 224, 254 (2001) (recognizing the "percentage of recovery" method). The California
18 Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* that "[t]he percentage of fund
19 method survives in California class action cases." 1 Cal.5th 480, 506 (2016). In *Laffitte*, the
20 California Supreme Court held:

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

25 *Id.* at 503; *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("when a number of persons
26 are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the
27 benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may
28 be awarded attorney's fees out of the fund."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in

1 awarding a fee from the common fund obtained for the benefit of all parties, trial court acts within
2 its equitable power to prevent the other parties' unjust enrichment); *Rawlings v. Prudential-Bache*
3 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (percentage-of-the-fund method more accurately
4 reflects the results achieved for the putative class than the lodestar method and "establishes
5 reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it
6 encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Sec. Litig.*,
7 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in
8 common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
9 counsel for success and penalizes it for failure.'").

10 Here, Class Counsel's fee request of \$166,666.67 (one-third of the Maximum Settlement
11 Amount) is fair and reasonable based on a percentage of the recovery. "Regardless whether the
12 percentage method or the lodestar method is used, fee awards in class actions average around one-
13 third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008). This is also
14 consistent with Class Counsel's experience in similar wage and hour class action matters. *See*
15 Schmidt Decl., ¶ 21. Thus, the percentage sought by Class Counsel here (the same percentage
16 approved in *Laffitte*) is reasonable.

17 **B. The Fee Request's Reasonableness is Confirmed by a Lodestar "Cross-Check"**

18 The California Supreme Court in *Laffitte* also held trial courts have discretion to assess
19 the reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial
20 court calculates counsel's lodestar and determines whether the "lodestar multiplier" needed to
21 bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-
22 06. Under the lodestar method, the court multiplies the number of hours reasonably expended by
23 each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar
24 figure by a "multiplier" to account for a range of factors, such as the contingent nature of the case
25 and the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d at 48-49; *Ketchum v. Moses*,
26 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 834
27 (2001) ("There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial
28 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.A. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal. App. 3d 241, 251 (1977) (approving multiplier of about 12.8). In class actions such as this one, where the value of the benefit conferred to the class “can be monetized with a reasonable degree of certainty,” the 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, Class Counsel have a lodestar of approximately \$154,187.50, which results in a modest 1.08 multiplier compared to the \$166,666.67 fee request. Schmidt Decl., ¶ 21. A general summary showing the number of hours of work performed by each attorney and firm paralegals is set forth below. Class Counsel has also included a billing summary grouping of tasks completed during the litigation along with the attorney time associated with each of the tasks. *Id.*; Exhibit 3 (Billing Summary). Class Counsel submit that the billing rates used are reasonable in view of the evidence submitted herewith. Schmidt Decl., ¶ 22; Exhibit 4 (2023 *Laffey* Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (17th Year Attorney)	\$750	30.7	\$23,025.00
Fletcher W. Schmidt (11th Year Attorney)	\$725	66.9	\$48,502.50
Andrew J. Rowbotham (9th Year Attorney)	\$575	122.9	\$70,667.50
Susan J. Perez (4th Year Attorney)	\$475	4.1	\$1,947.50
Edgar J. Morales (1st Year Attorney)	\$400	17.5	\$7,000.00
Firm Paralegals	\$175	17.4	\$3,045.00
Total Lodestar			\$154,187.50

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

1 with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir.
2 2002) (finding that exceptional results in a contingency case, significant risk and the absence of
3 supporting precedents, are proper considerations in awarding attorney's fees).

4 **C. The Requested Fee is Justified by the Favorable Result Achieved, Complexity**
5 **of the Case, and Class Members' Favorable Reaction to the Settlement**

6 The fee request is further justified because Class Counsel negotiated a substantial
7 recovery for the Settlement Class, and not a single Settlement Class member objected to the
8 Settlement, including Class Counsel's requested fee. *See* Mitzner Decl., ¶ 9. The fact that Class
9 Counsel achieved these results in the face of serious defense challenges and an uncertain legal
10 landscape, confirms the strength of the results achieved.

11 As discussed above and in Plaintiff's Motion for Preliminary Approval, Defendant
12 presented numerous defenses that could seriously limit or outright prevent potential recovery on
13 Plaintiff's claims. Accordingly, it is fair and reasonable to account for these risks in compensating
14 Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking
15 this litigation and expending considerable effort, all while working on a pure contingency basis.
16 Since undertaking representation of Plaintiff almost four years ago, Class Counsel have borne all
17 costs of litigation without receiving any compensation to date. *See* Schmidt Decl., ¶ 23; Exhibit
18 2. Some of the tasks completed by Class Counsel to advance this matter to this stage include:
19 (i) analyzing Plaintiff's claims and Defendant's potential defenses; (ii) conducting legal research;
20 (iii) retaining an expert and reviewing documents and data produced by Defendant; (iv) extensive
21 discussions with Defendant's counsel regarding Plaintiff's claims and Defendant's defenses;
22 (v) drafting a detailed mediation brief; (vi) preparing for and attending mediation;
23 (vii) negotiating the Settlement Agreement; (viii) preparing the Motions for Preliminary and Final
24 Approval; (ix) overseeing the Notice process; and otherwise litigating the case. Schmidt Decl.,
25 ¶ 23. Given the considerable potential for adverse outcomes, the contingent risk borne by counsel
26 in this case was great.

27 Class Counsel's experience also supports the reasonableness of the fee request. Class
28 Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with
decades of combined experience litigating similar claims. Schmidt Decl., ¶¶ 2-6; *see also*

1 Declarations of Paul K. Haines and Andrew J. Rowbotham. Class Counsel have been certified as
2 class counsel in numerous other cases. *Id.* Their experience in similar matters was integral in
3 evaluating the strengths and weaknesses of the case and the reasonableness of the Settlement.
4 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
5 the rapidly evolving substantive law, as well as class action procedural law. Because it is
6 reasonable to compensate Class Counsel commensurate with their skill, reputation, and
7 experience, a fee award of one-third of the MSA is reasonable. Thus, Class Counsel submit the
8 requested fee award is fair, reasonable, and adequate and should be approved.

9 **VII. THE REQUESTED LITIGATION COSTS WARRANT FINAL APPROVAL**

10 Through the conclusion of this litigation, Class Counsel has incurred \$42,614.62 in
11 litigation costs, which is less than the “up to” amount of \$45,000.00 preliminary approved by this
12 Court on October 25, 2022. *See* Schmidt Decl., ¶ 24; Exhibit 2. Counsel’s request is fair, adequate,
13 and reasonable, as all of these costs are reasonably incurred. Moreover, the costs Plaintiff seeks
14 are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19
15 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be
16 charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713 at *3
17 (N.D. Cal. Mar. 7, 2011) (“costs of reproducing pleadings, motions and exhibits are typically
18 billed by attorneys to their fee-paying clients” and are reimbursable); *In re Immune Response Sec.*
19 *Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert
20 fees, copies, postage, filing fees, messenger and overnight delivery costs reimbursable). In
21 addition, not a single Settlement Class member objected to the Settlement, including Class
22 Counsel’s request of up to \$45,000.00 in reimbursement of litigation costs. Mitzner Decl., ¶ 9.
23 Because the requested costs were reasonably incurred, and no Settlement Class member has
24 objected to them, the Court should grant the request.

25 **VIII. THE REQUESTED ADMINISTRATION COSTS SHOULD BE APPROVED**

26 Plaintiff requests the Court approve \$10,000.00 in settlement administration costs to
27 Phoenix. As detailed in the Mitzner Declaration filed concurrently herewith, Phoenix performed
28 duties in connection with this Settlement that were integral in effectuating the Settlement and

1 Notice process. Among other things, Phoenix calculated each Individual Settlement Payment,
2 PAGA Payment, updated addresses contained in the data supplied by Defendant; translated,
3 formatted and mailed Notice Packets, and kept the Parties informed of the status of the Notice
4 process. *See* Mitzner Decl., ¶¶ 3-16. Thus, Phoenix’s requested costs are fair, reasonable, and
5 adequate and should be finally approved.

6 **IX. THE COURT SHOULD APPROVE PLAINTIFF’S REQUESTED**
7 **ENHANCEMENT PAYMENT IN VIEW OF PLAINTIFF’S EFFORTS AND THE**
8 **RISKS HE ASSUMED ON BEHALF OF THE SETTLEMENT CLASS**

9 Courts routinely approve enhancement payments to compensate the named plaintiff(s) for
10 the services provided and the risks incurred in class action litigation. *See, e.g., Bell v. Farmers*
11 *Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “enhancement payments” to named
12 plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F.
13 Supp. 294 (N.D. Cal. 1995) (approving \$50,000 enhancement payment). Indeed, “[i]ncentive
14 awards are fairly typical in class action cases.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948,
15 958 (9th Cir. 2009). The Court may award these payments “to compensate [plaintiffs] for work
16 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
17 the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Id.*
18 at 958-59.

19 Here, Plaintiff seeks an enhancement payment of \$5,000.00 and believes this request is
20 reasonable given his time and efforts devoted to this case as well as the risks he undertook on
21 behalf of Settlement Class members. *See* Schmidt Decl., ¶ 26; Declaration of Eduardo Gonzalez,
22 ¶¶ 3-10. Plaintiff provided substantial factual information and documents to Class Counsel,
23 identified potential witnesses, participated in discussions with counsel to discuss case strategy
24 and Defendant’s wage and hour practices, and made himself available the entire day of mediation.
25 *Id.*, ¶ 5. In total, Plaintiff estimates that he spent at least 15 hours dedicated to activities that
26 resulted in the Settlement. *Id.*, ¶ 10. Plaintiff’s efforts resulted in an excellent result for Settlement
27 Class members, who will receive average payments of over \$756.06 as a direct result of this
28 litigation, which as discussed *supra*, far exceeds average payments obtained in many other wage
and hour class action settlements. Schmidt Decl., ¶ 15.

1 Plaintiff also undertook substantial risks in acting as the named plaintiff in this case. For
2 example, Plaintiff took the risk of being liable for Defendant's costs if he was ultimately
3 unsuccessful in prosecuting these claims. Plaintiff also undertook the substantial reputational risk
4 of being the named plaintiff in a wage and hour class action against an employer. *See, e.g.,*
5 *Deaver v. Compass Bank*, No. 13-cv-00222-JSC, 2015 WL 8526982 at **14-15 (N.D. Cal. Dec.
6 11, 2015) (approving \$7,500.00 enhancement award in wage and hour settlement, finding the
7 award "particularly appropriate in this wage and hour class action, where Plaintiff undertook a
8 significant 'reputational risk' in bringing this action against her former employer"); *Greer v.*
9 *Dick's Sporting Goods, Inc.*, No. 2:15-cv-01063, 2020 WL 5535399 at *4 (E.D. Cal. Sept. 15,
10 2020) (approving \$10,000.00 enhancement payment in wage and hour settlement where average
11 payment was just \$155, in part because plaintiff "undertook reputational risk by litigating claims
12 against a former employer, which could impact her ability to find employment in the future if a
13 potential employer conducts a screening to determine whether he has filed suit.")

14 Finally, after receiving notice of the proposed enhancement award for Plaintiff, no
15 Settlement Class member objected to the amount. Mitzner Decl., ¶ 9. Given Plaintiff's significant
16 contributions to this case, the time he invested in ensuring this case resolved in a way that resulted
17 in significant monetary compensation to the Settlement Class, the risks he undertook, and the
18 lack of any objection from the Settlement Class, Plaintiff's requested enhancement payment is
19 appropriate and justified as part of the Settlement, and should be finally approved.

20 **X. CONCLUSION**

21 Based upon the foregoing, Plaintiff respectfully requests that the Court grant final
22 approval of the Settlement and enter the Proposed Judgment and Order filed herewith.

23
24 Dated: April 4, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

25
26 By:


Fletcher W. Schmidt
Attorneys for Plaintiff