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

RAUL NUNEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

TK SERVICES, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No.: BC682512

*[Assigned for All Purposes to Hon. Kenneth R.
Freeman, SSC-14]*

**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: July 19, 2022
Time: 11:30 a.m.
Dept.: SSC-14

Complaint Filed: November 6, 2017
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 19, 2022 at 11:30 a.m. in Department 14 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Raul Nunez (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Raul Nunez as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman, Elizabeth Nguyen and Milan Moore of Lidman Law, APC and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Settlement (“Settlement”);
5. Approving an award of \$583,333.33 in attorneys’ fees to Class Counsel;
6. Approving an award of \$35,580.76 in costs to Class Counsel;
7. Approving an award of \$10,000.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving a service award of \$7,500.00 to Plaintiff Raul Nunez for his services as Class Representative;
9. Approving an award of \$37,500.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Order Granting Plaintiff’s Motion for

Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith. This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the supporting declarations of Scott M. Lidman, Elizabeth Nguyen, Paul K. Haines, Milan Moore, Raul Nunez¹, Jarrod Salinas of Phoenix Settlement Administrators, and the exhibits attached thereto; the

¹ The declaration of Plaintiff Raul Nunez was previously submitted on March 10, 2021 in connection with Plaintiff’s Motion for Preliminary Approval. Mr. Nunez’s declaration is re-filed in connection with the instant motion.

1 Settlement; all other pleadings and papers on file in this action; and on any further oral or documentary
2 evidence or argument presented at the time of hearing.

3 Dated: May 20, 2022

Respectfully submitted,
LIDMAN LAW, APC

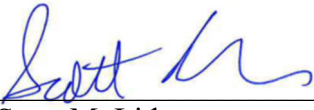
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5 By: 
6 Scott M. Lidman
7 Attorney for Plaintiff
8 RAUL NUNEZ
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Raul Nunez (“Plaintiff”) submits this memorandum of points and authorities in support
4 of his motion for final approval of the class action settlement (the “Settlement”) with TK Services, Inc.
5 (hereinafter “TK Services” or “Defendant”) on behalf of the Settlement Class defined as: “all current and
6 former non-exempt, hourly employees of Defendant TK Services, Inc. who worked for Defendant in
7 California at any time from November 6, 2013 through June 22, 2021.”

8 In this non-reversionary Settlement, all participating Settlement Class members will receive
9 **automatic** payments without the need to submit a claim form, resulting in an average settlement payment
10 of approximately \$2,370.23 to each participating Settlement Class member. This is a favorable resolution
11 of the highly disputed wage and hour claims in this case and the significant litigation risks that Plaintiff
12 faced. Since this Court granted preliminary approval on June 22, 2021, nothing has changed to impact
13 the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice
14 of the Settlement and of their projected Settlement payments, no one has opted out and not a single
15 Settlement Class member submitted a written objection to the Settlement.

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

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 On November 6, 2017, Plaintiff filed a putative class action complaint against TK Services in Los
27 Angeles County Superior Court. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Pursuant
28 to the Court’s approval and to effectuate the terms of the settlement, on June 15, 2021, Plaintiff filed a

1 First Amended Class and Representative Action Complaint. *Id.* In the FAC, Plaintiff alleges that TK
2 Services: 1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed
3 to pay all wages at the agreed-upon rate; (4) failed to provide all legally required meal periods; (5) failed
4 to pay all final wages upon separation of employment; (6) engaged in unlawful business practices; (7)
5 failure to authorize and permit all legally required rest periods; (8) failure to provide accurate, itemized
6 wage statements and (9) liability for civil penalties under the Labor Code Private Attorneys General Act
7 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 TK Services’ alleged unlawful wage and timekeeping and meal and rest period
11 policies and practices. Lidman Decl., ¶¶ 11-24. Specifically, Plaintiff alleges that he and Settlement Class
12 members were not fully compensated for all of their time worked. Lidman Decl., ¶ 11. Plaintiff alleges
13 TK Services would keep track of his hours and the hours of the other non-exempt employees, and would
14 unlawfully shave their work time and/or round their work time such that they would not be fully paid for
15 all time worked. *Id.* Plaintiff also alleges that this time shaving and/or rounding practice utilized by TK
16 Services was not-even handed over time and would almost exclusively round and shave in TK Services’
17 favor such that the employees were routinely underpaid for their time worked. *Id.*

18 Plaintiff alleges that TK Services failed to include the payment of annual bonuses to Plaintiff and
19 Settlement Class members in the regular rate of pay when overtime was paid, resulting in a systematic
20 underpayment of overtime wages. Lidman Decl., ¶ 13. Plaintiff alleges that this resulted in a systematic
21 underpayment of overtime wages. *Id.*

22 Plaintiff alleges that he and Settlement Class members were not provided with all legally-
23 compliant first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 15.
24 Specifically, Plaintiff alleges that up to December 1, 2017, TK Services did not record meal periods and
25 would unlawfully deduct thirty (30) minutes of work time for purported meal periods whether they were
26 taken or not, and whether they were less than 30 minutes or not. *Id.* Further, once TK Services began
27 keeping track of meal periods, the records showed that in approximately 47% of the meal-enabling shifts,
28 there was either a late, short, or missed meal period. *Id.*

1 Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to
2 take all required rest periods due to TK Services' rest period policies and practices that fail to authorize
3 and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 17.
4 Specifically, Plaintiff alleges that TK Services' rest period policy as written in its Employee Handbook
5 required non-exempt employees to remain on the work premises during rest periods. *Id.* By prohibiting
6 its non-exempt employees from leaving the work premises during rest periods, Plaintiff alleges TK
7 Services fails to relinquish control in violation of California law and resulted in at least one rest period
8 violation on every shift in excess of 3.5 hours. *Id.*

9 As a result of the alleged unpaid wages and unpaid meal and rest period premium wages described
10 above, Plaintiff alleges that TK Services issued inaccurate wage statements in violation of Labor Code §
11 226, failed to pay all wages upon termination, and is liable for civil penalties under the Labor Code Private
12 Attorney General Act ("PAGA"). Lidman Decl., ¶¶ 19-24.

13 As explained *infra* and in Plaintiff's Motion for Preliminary Approval, TK Services denies
14 Plaintiff's claims and asserts several affirmative defenses, both on the merits and with respect to class
15 certification.

16 **B. Mediation and Settlement**

17 Throughout the three-year litigation of this action, Plaintiff propounded two sets of written
18 discovery, including without limitation, Special Interrogatories, Form Interrogatories General and
19 Employment, and Requests for Production. Lidman Decl., ¶ 26. TK Services responded to the first set of
20 written discovery and produced nearly 20,000 pages of documents and information pertaining to Plaintiff
21 and the putative class. Further, the Parties completed the *Belaire-West* notice process and TK Services
22 produced the contact information for the putative class members that did not opt-out. Additionally, over
23 the course of two days, Plaintiff took the deposition of TK Services' Person Most Knowledgeable.

24 After agreeing to participate in private mediation, TK Services informally produced a class list,
25 as well as its wage and hour policies and other relevant documents and information relevant to the claims
26 alleged that had not already been produced or obtained through formal discovery methods. Lidman Decl.,
27 ¶ 26. After the detailed review of the payroll and time records for the putative class and other documents
28 and policies produced by TK Services, Class Counsel drew on their extensive experience in similar cases

1 to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery allowed the parties to assess
2 the merits and value of Plaintiff’s claims and TK Services’ defenses thereto, if a settlement could not be
3 reached.

4 On October 6, 2020, after extensive research and analysis, a full-day mediation was held with
5 Jeffrey Krivis, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 27. During
6 mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of
7 Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in
8 principle on a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of
9 settlement and executed the Stipulation of Settlement (“Settlement”). *Id.*

10 **C. Preliminary Approval of Settlement**

11 Plaintiff submitted the Settlement to the Court with his Motion for Preliminary Approval on
12 March 10, 2021. Lidman Decl., ¶ 28. Plaintiff also submitted the Settlement to the LWDA. Lidman
13 Decl., ¶ 42, Exh. D. On April 12, 2021, Plaintiff submitted a supplemental brief and revised settlement
14 agreement in accordance with the Los Angeles Superior Court’s Checklist for Preliminary Approval of
15 Class Action Settlements. Lidman Decl., ¶ 28. On June 22, 2021, the Court granted preliminary approval.
16 Lidman Decl., ¶ 28, Exh. A (Order Granting Preliminary Approval). Plaintiff submitted the Order
17 Granting Preliminary Approval on June 24, 2021 to the LWDA. Lidman Decl., ¶ 43, Exh. E.

18 Plaintiff will also provide the LWDA with a copy of the instant motion for final approval and
19 supporting documents after it is filed and will file a supplemental proof of service prior to the final
20 approval hearing. Lidman Decl., ¶ 44.

21 On July 16, 2021, the Court-approved Notice Packets (consisting of the Notice of Pendency of
22 Class Action and Proposed Settlement and Notice of Individual Settlement Award) in both English and
23 Spanish were sent to 431 Settlement Class members, who had until September 14, 2021 to submit
24 disputes, objections, and/or requests for exclusion. *See* Declaration of Jarrod Salinas of Phoenix
25 Settlement Administrators (“Salinas Decl.”), ¶ 8.

26 After the opt-out period had expired, Defendant became aware of the inadvertent exclusion of 24
27 additional Settlement Class Members who should have been sent Notice Packets with but did not.
28 Therefore, on March 9, 2022, the Court-approved revised Notice Packets were mailed to the entire

1 settlement class of 455, who had until May 9, 2022 to submit disputes, objections, and/or requests for
2 exclusion. Salinas Decl., ¶ 9.

3 As of the date of this filing, there have been **no objections, no disputes** and **no opt-outs**. *Id.*, ¶¶
4 14-16. Plaintiff now respectfully submits the Settlement for this Court’s final approval.

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

6 **A. Settlement Class Definition**

7 The Settlement Class encompasses all “current and former non-exempt, hourly employees of
8 Defendant TK Services, Inc. who worked for Defendant in California at any time from November 6, 2013
9 through June 22, 2021.” Lidman Decl., ¶ 29.

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

11 The Settlement requires TK Services to pay a Gross Settlement Amount (“GSA”) of
12 \$1,750,000.00. Salinas Decl., ¶ 18. The Net Settlement Amount (“NSA”) is the amount remaining from
13 the GSA after deducting requested attorneys’ fees (\$583,333.33) and verified costs (\$35,580.76),
14 proposed Class Representative Service Award to Plaintiff (\$7,500.00), Settlement Administration costs
15 (\$10,000.00), and PAGA payment to the LWDA (\$37,500.00). Based on these requested amounts, the
16 NSA is calculated to be approximately **\$1,076,085.91**. Salinas Decl., ¶ 17; Lidman Decl., ¶ 33, Exh. B.

17 The Net Settlement Amount shall be allocated to Settlement Class members who worked during
18 the Class Period, as follows: each participating Settlement Class member shall receive a proportionate
19 settlement share based upon the number of workweeks worked as a non-exempt employee during the
20 Class Period, the numerator of which is the Settlement Class member’s total workweeks worked as a non-
21 exempt employee during the Class Period, and the denominator of which is the total workweeks worked
22 as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the
23 Class Period. Settlement, ¶ 6.B.i

24 Additionally, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross
25 Settlement Amount has been designated as the “PAGA Amount” as described above. Each Settlement
26 Class member who was employed by Defendant at any time from November 6, 2016 to June 22, 2021
27 (the “PAGA Period”) of this Settlement shall receive a portion of the PAGA Amount proportionate to the
28 number of workweeks that he or she worked as a non-exempt employee during this time period. Each

1 Settlement Class member who worked during this time period shall receive a portion of the PAGA
2 Amount, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of
3 which is the Settlement Class members' number of workweeks worked as a non-exempt employee during
4 this time period, and the denominator of which is the total number of workweeks worked by all Settlement
5 Class members as non-exempt employees during this time period. Settlement, ¶ 6.C.

6 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
7 allocated as follows: Seventy-five percent (75%) as penalties and interest; and Twenty-Five percent
8 (25%) as wages. Settlement, ¶ 5.E.

9 The Settlement provides that TK Services' payroll taxes shall be paid separately from, and in
10 addition to, and the Class Settlement Amount. Settlement ¶ 4.D; Salinas Decl., ¶ 19.

11 **C. Summary of Notice Process**

12 ***1. Mailing of Notice Packets***

13 On July 2, 2021, TK Services provided Phoenix Settlement Administrators ("PSA") with data
14 files containing the names, last known addresses, phone numbers, social security numbers, positions held,
15 the number of workweeks worked (or information allowing the Settlement Administrator to calculate
16 same) as a non-exempt employee by each Settlement Class member while employed during the Class
17 Period and PAGA Period. Kruckenberg Decl., ¶ 6.

18 After performing address updates and verifications, PSA mailed the Notice Packets (consisting of
19 the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement
20 Award) to the 431 Settlement Class members on July 16, 2021. *Id.*, ¶¶ 7-8. The deadline for Settlement
21 Class members to submit objections, requests for exclusion, or disputes was September 14, 2021. Salinas
22 Decl., ¶ 8.

23 After the opt-out period had expired, Defendant became aware of the inadvertent exclusion of 24
24 additional Settlement Class Members who should have been sent Notice Packets with but did not.
25 Therefore, on March 9, 2022, the Court-approved revised Notice Packets were mailed to the entire
26 settlement class of 455, who had until May 9, 2022 to submit disputes, objections, and/or requests for
27 exclusion. Salinas Decl., ¶ 9. Following the mailing of the revised Notice Packets to Settlement Class
28 Members, thirty-one (31) Notice Packets were returned to PSA as undeliverable. *Id.*, ¶ 10. As a result

1 of a skip trace, forwarding address provided by the Post Office, or re-mail requests from Counsel or Class
2 Members, twenty-eight (28) Notice Packet was re-mailed. *Id.*, ¶ 12. As of the date of filing this final
3 approval motion, fifteen (15) Notice Packets remain undeliverable with no forwarding address, and where
4 no new address could be located through skip trace. *Id.*, ¶ 13.

5 As of the date of this filing, there were no objections, no disputes, and no Settlement Class
6 members have elected to opt-out of the Settlement. *Id.*, ¶¶ 14-16. Accordingly, as of the date of this
7 Motion, the participation rate amongst the Settlement Class members is 100% and the average estimated
8 payment is \$2,370.23, with the highest estimated payment to a Settlement Class member being \$7,845.18,
9 the lowest estimated payment to a Settlement Class member being \$12.87, and the median amount being
10 \$1,478.35. *Id.*, ¶¶ 114-20.

11 **D. Timing of Payments**

12 With the exception of the Settlement Administrator's fees, if required by the Settlement
13 Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement
14 fund set up by the Settlement Administrator for the benefit of participating Settlement Class members.
15 Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within thirty
16 (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the Court's final approval
17 of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the
18 time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or
19 (c) the final resolution of any appeal that has been filed. *See* Settlement, ¶ 5.B.

20 Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount
21 with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award
22 amounts and provide the same to counsel for review and approval. Within seven (7) calendar days of
23 approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement
24 Awards, less applicable taxes and withholdings, to participating Settlement Class members. Settlement,
25 ¶ 6.D.

26 **E. Uncashed Funds**

27 Settlement Class members shall have 180 days from the date the Settlement Administrator mails
28 the checks to negotiate them, and any uncashed funds remaining after 180 days shall be transmitted by

1 the Settlement Administrator to the California State Controller's Office under the unclaimed property
2 laws in the names and corresponding amounts associated with each Settlement Class member. Settlement
3 ¶ 6.F; Lidman Decl., ¶ 30.

4 **IV. ARGUMENT**

5 **A. This Court Should Confirm its Conditional Certification of the Settlement Class for** 6 **Settlement Purposes Because It Meets All of the Requirements for Class Certification** 7 **Under Code of Civil Procedure § 382**

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

14 Here, this Court found that the Settlement Class meets all the requirements for class certification
15 for settlement purposes when it granted preliminary approval of the Settlement on June 22, 2021. *See*
16 *Lidman Decl., ¶ 28; Exh. A.* After the court entered an order granting preliminary approval, no events
17 have cast doubt on the propriety of this determination. In fact, the reaction of the Settlement Class
18 members thus far to the Settlement has been strongly in support of the Settlement, with no Settlement
19 Class members objecting to any portion of the Settlement and no Settlement Class members electing to
20 opt-out of the Settlement. *See Salinas Decl., ¶¶ 14-16.* This Court should therefore confirm its conditional
21 certification of the Settlement Class.

22 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate,** 23 **and Reasonable Compromise of Disputed Wage and Hour Claims**

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

respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

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

A settlement is presumptively fair where it is reached through arm's-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court*, 89 Cal.App.3d 434, 438 (1979). 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.*, 91 Cal.App.4th 224, 250 (2001). Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would 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.*, 455 F.2d 101, 109 (7th Cir. 1972)).

Here, the Settlement resulted from extensive arm's length settlement negotiations between

1 qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate,
2 and reasonable for all Settlement Class members. While Plaintiff maintains that his claims are
3 meritorious, Plaintiff acknowledges that his position includes substantial risks and uncertainty, which
4 justifies a downward departure from the maximum exposure that Plaintiff's calculated each claim carried.

5 As detailed in Plaintiff's Motion for Preliminary Approval, there is significant risk of non-
6 certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example,
7 with respect to Plaintiff's claim for unpaid wages for unlawfully rounding hours, TK Services contends
8 that it compensated Settlement Class members for all of their time worked. Lidman Decl., ¶ 12. TK
9 Services also contends that its rounding practices were lawful, and any unpaid time was *de minimis* and
10 therefore non-compensable. *Id.* TK Services further asserts that Plaintiff would be unable to certify a
11 rounding class given the individualized inquiries that would be required, and also that TK Services'
12 rounding mechanism was, according to it, allegedly facially neutral. *Id.*

13 As for Plaintiff's miscalculation of regular rate claim, TK Services contends that Settlement Class
14 members received all overtime wages to which they were entitled. Lidman Decl., ¶ 14. TK Services
15 further counters that any bonuses to putative class members during the relevant time period were
16 discretionary and did not need to be included in the regular rate of pay for overtime purposes. *See* 29
17 C.F.R. §§778.208, 778.211 (excluding "discretionary" bonuses from the regular rate); *see also* DLSE
18 Manual § 49.1.2.4(3) (bonuses are discretionary, and therefore excludable, if "both the fact that payment
19 is to be made and the amount of the payment" are discretionary). *Id.*

20 As for Plaintiff's meal period claims, TK Services counters that it has always provided non-
21 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
22 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
23 than any policy or practice of TK Services. Lidman Decl., ¶ 16. TK Services points out that under
24 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the
25 opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so.
26 *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, TK Services contends Plaintiff's
27 meal period claim is not suited for class certification, since individual inquiries would be required to
28 assess which employees took non-compliant meal periods, how many meal periods were non-compliant

1 or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
2 period during a particular shift. *Id.*

3 As for Plaintiff's rest period claims, TK Services contends it has always maintained and enforced
4 lawful rest period policies and practices, and that Settlement Class Members were authorized and
5 permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 18. TK
6 Services also contends that Plaintiff did not allege a rest period claim in his operative complaint. *Id.*
7 Further, TK Services argues that Plaintiff's rest period claim is inherently unsuited for class treatment as
8 it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized
9 and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-
10 trials. *Id.*

11 As for Plaintiff's wage statement claim, TK Services argues that meal and rest period claims
12 cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.*
13 (2019) 40 Cal. App. 5th 444, review granted and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th
14 1244 (see, e.g., *Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL
15 3264081 at **8-9). Lidman Decl., ¶ 20. TK Services further argues that its alleged wage statement
16 violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or
17 any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required
18 by Lab. Code § 226(e) for imposition of penalties. *Id.*

19 As for Plaintiff's claim for waiting time penalties, TK Services asserts it has strong defenses to
20 the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims,
21 precluding imposition of penalties. Lidman Decl., ¶ 22. See also 8 Cal. Code Regs. § 13520 (a "good
22 faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy*
23 *Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was
24 exempt precluded imposition of waiting time penalties over contested wages owed).

25 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims, TK
26 Services asserts the PAGA claim would fail with those claims. Lidman Decl., ¶ 24. TK Services also
27 maintains that given its good faith defenses, this Court would exercise its discretion to substantially
28 reduce any PAGA penalties if it were to find TK Services liable for any of Plaintiff's claims. *Id.*

1 These considerations not only bore heavily on the negotiations leading to the Settlement, but also
2 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
3 litigation. Lidman Decl., ¶ 25. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff
4 carefully vetted the claims at issue and conducted a detailed statistical analysis of class-wide data to arrive
5 at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate that
6 the Settlement is fair, adequate, and reasonable in view of them. *Id.*

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

10 Individual settlement payments will be calculated based on the number of weeks worked by each
11 Settlement Class member. See Settlement ¶ 6.B. This method of distribution compensates Settlement
12 Class members based on the estimated extent of their injuries, as Settlement Class members who worked
13 more weeks, would have been subject to more of the alleged wage and hour violations than those who
14 worked fewer weeks. Thus, the formula for compensating Settlement Class members is fair, adequate,
15 and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

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

18 Class members’ response to a settlement is relevant in evaluating whether it merits final approval.
19 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
20 fairness presumption. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
21 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
22 “particularly impressive” favorable response from class members). Here, as of the filing of this Motion,
23 not a single Settlement Class member has objected to the Settlement, not a single Settlement Class
24 member has elected to opt-out, and fifteen (15) of the 455 Notice Packets were returned undeliverable.
25 Salinas Decl., ¶¶ 14-18. The extremely favorable response of the Settlement Class further confirms that
26 the Settlement is fair, adequate, and reasonable.

27 **C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the**
28 **Common Fund Confirmed by a Lodestar Cross-Check**

 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
their attorneys’ fees and costs for their wage claims. See Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
award is justified where the legal action has produced its benefits by way of a voluntary settlement. See,

1 *e.g.*, *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
2 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
3 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,
4 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court
5 confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), that “[t]he percentage of fund
6 method survives in California class action cases.” Specifically, the *Laffitte* Court held:

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

13 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
14 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
15 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
16 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
17 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
18 equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*
19 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
20 attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method
21 and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery;
22 and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities*
23 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) (“The percentage-of-recovery method is generally favored
24 in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
25 counsel for success and penalizes it for failure.’”) (citation omitted).

26 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools
27 such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar (hours
28 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

1 discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the
2 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
3 requested percentage fee.”)

4 Here, Class Counsel’s fee request of \$583,333.33 (one-third of the Gross Settlement Amount) is
5 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
6 “regardless whether the percentage method or the lodestar method is used, fee awards in class actions
7 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
8 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
9 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
10 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
11 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
12 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
13 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
14 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 31. Thus, the percentage sought by
15 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

16 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
17 multiplying the number of hours reasonably expended by each attorney or legal staff member by their
18 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances
19 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
20 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24
21 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
22 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or
23 decrease a lodestar calculation”).

24 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
25 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
26 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
27 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
28 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,” 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 doing so, “the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of \$328,360 which results in a multiple of 1.78 compared to the \$583,333.33 fee request. Lidman Decl., ¶ 36. A summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. *Id.*, at ¶ 37, Exh. C.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (23rd Year Attorney)	\$750	186.4	\$139,800
Elizabeth Nguyen (16th Year Attorney)	\$650	105.7	\$68,705
Paul K. Haines (15th Year Attorney)	\$650	65.8	\$42,770
Milan Moore (6th Year Attorney)	\$400	179.5	\$71,800
Paralegals	\$175	30.2	\$5,285
Total Lodestar			\$328,360

The fee award requested here is justified because Class Counsel engaged in protracted litigation involving substantial formal discovery and 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* Salinas Decl., ¶¶ 11-16. Additionally, the *average* settlement payment in this case of approximately \$2,370.23 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 *17 (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 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation for nearly five years of work. Lidman Decl., ¶ 33. During this time, Class Counsel have expended \$33,855.76, in actual costs, have devoted substantial time to this litigation and expect to incur approximately \$1,725.00 in future costs for filing the instant motion, filing the final declaration regarding distribution of settlement, continued Case Anywhere fees for six quarters, service and messenger fees, postage fees, and/or costs for future appearances.² Lidman Decl., ¶ 33, Exh. B. Class Counsel's efforts

² This includes total costs incurred by both law firms.

1 have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research,
2 propounding two sets of written discovery, participating in an informal discovery conference,
3 participating in the *Belaire-West* notice process, taking the deposition of TK Services' designated PMK,
4 reviewing approximately 20,000 pages of TK Services' documents and policies, analyzing Settlement
5 Class members' timekeeping data and payroll records, preparing for and attending mediation, negotiating
6 and revising the long-form Settlement, preparing the Motions for Preliminary and Final Approval,
7 overseeing the settlement administration process, communicating with Settlement Class members, and
8 otherwise litigating this case. *See* Lidman Decl., ¶ 32. Given the considerable potential for adverse
9 outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the
10 contingent risk borne by Class Counsel was great. Lidman Decl., ¶ 35.

11 Class Counsel's previous experience in litigating wage and hour class actions also supports the
12 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
13 hour class action litigation, with substantial experience litigating claims for meal and rest period
14 violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration Elizabeth Nguyen ("Nguyen
15 Decl."), ¶¶ 3-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. They have been certified as class
16 counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the
17 strengths and weaknesses of the case against Diamond and the reasonableness of the Settlement. *See*
18 Lidman Decl., ¶ 34. Practice in the narrow field of wage and hour litigation requires skill and knowledge
19 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class
20 action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their
21 skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

22 Other factors also show that the fee amount requested in this case is reasonable under the
23 circumstances. This case involved nuanced legal issues including questions surrounding the potential
24 applicability of the *de minimis* defense, Defendant's obligation to "provide" meal periods and
25 authorize and permit" rest periods, and the propriety of statutory penalties, to name just a few. Lidman
26 Decl., ¶¶ 11-24. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should
27 be approved.

28 //

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

3 Class Counsel have incurred \$35,580.76³ (including anticipatory fees and expenses related to the
4 instant motion) in litigation costs. Class Counsel’s request is fair, adequate, and reasonable, as all of these
5 costs are documented and reasonably incurred. *See* Lidman Decl., ¶ 33; Exh. B. Moreover, the costs
6 Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d
7 16, 19 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be
8 charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal.
9 2011)(“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-
10 paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust*
11 *v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re*
12 *Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation
13 expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight
14 delivery costs are reimbursable). Because the expense reimbursements requested by Class Counsel were
15 reasonably incurred, and no Settlement Class member has objected to them, Plaintiff respectfully requests
16 the Court should grant the request for actual costs incurred.

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

18 Plaintiff also requests that the Court approve \$10,000.00 in administration costs to the Settlement
19 Administrator, Phoenix Settlement Administrators. As detailed in the declaration of Jarrod Salinas on
20 Behalf of Phoenix Settlement Administrators submitted herewith, PSA performed duties in connection
21 with this Settlement that were integral in effectuating the Settlement and the Notice process. Among
22 other things, PSA calculated each Settlement Class member’s individual settlement payment, updated
23 addresses contained in the class data supplied by Diamond, formatted and translated Notice Packets (and
24 revised Notice Packets) for mailing in both English and Spanish, mailed Notice Packets to all 455
25 Settlement Class members, kept the parties informed of any objections or requests for exclusion, and have
26 otherwise administered the Settlement. *See* Salinas Decl., ¶¶ 2-21. For these reasons, PSA’s requested

27 _____
28 ³ This amount includes the anticipated costs of \$1,725.00 for filing fees, continued Case Anywhere fees
for six quarters, service and messenger fees, postage fees, and/or costs for future court appearances.

costs are fair, reasonable, and adequate, and should be finally approved.

F. This Court Should Finally Approve Plaintiff's Requested Service Award Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that He Assumed on Behalf of the Class

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

Here, analyzing these factors weigh in favor of approving Plaintiff's requested service award of \$7,500.00 because it is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Settlement Class members. Lidman Decl., ¶ 41; Declaration of Raul Nunez (“Nunez Decl.”), ¶ 9. Plaintiff provided substantial factual information and documents to Class Counsel, attended multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, responded to written discovery requests from TK Service, discussed the case, the merits, the defenses, and the overall fairness of the settlement reached. *See* Lidman Decl., ¶ 41; Nunez Decl., ¶¶ 6-8. The class has benefited from Plaintiff's actions as the average settlement amount is \$2,370.23.

Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize his and/or affect future employment. Nunez Decl., ¶¶ 5-7. Plaintiff also understood the risk that he could be liable for Defendant's costs if he lost the case. Plaintiff accepted these risks and burdens because he wanted Defendant to compensate its current and former employees for unpaid wages. Plaintiff estimates he spent approximately 40 to 45 hours on activities related to this case. *Id.* at ¶ 9. Moreover, Plaintiff has agreed to release, in addition to the released claims included within the Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendant and the Released Parties.

1 Plaintiff's release includes unknown claims, and that he is, as a result, waiving all rights and benefits
2 afforded by Section 1542 of the California Civil Code. *See* Settlement, 3.C.

3 Additionally, after receiving notice of the proposed Class Representative Service Award for
4 Plaintiff, no Settlement Class member has objected to the proposed award, as of the date of this filing.
5 *See* Salinas Decl., ¶ 16. Thus, the service award to Plaintiff is appropriate and justified as part of the
6 Settlement and should be finally approved.

7 **V. NOTICE OF FINAL JUDGMENT**

8 Notice of the Court's final judgment will also be posted on the Settlement Administrator's
9 website. *See* Class Notice.

10 **VI. CONCLUSION**

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

14 Based on the terms of the agreement, Plaintiff proposes the deadline to the Settlement
15 Administrator declaration regarding the disbursement be set for April 28, 2023.

16
17 Dated: May 20, 2022

Respectfully submitted,
LIDMAN LAW, APC

18
19 By: 
20 Scott M. Lidman
21 Attorney for Plaintiff
22 RAUL NUNEZ
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