

HEATHER DAVIS, SBN 239372
heather@protectionlawgroup.com
AMIR NAYEBDADASH, SBN 232204
amir@protectionlawgroup.com
BRENDAN J. BURTON, SBN 323495
brendan@protectionlawgroup.com
SHADI SAHEBGHALAM, SBN 343403
shadi@protectionlawgroup.com
PROTECTION LAW GROUP, LLP
149 Sheldon Street
El Segundo, California 90245
Tel.: (424) 290-3095 / Fax: (866) 264-7880

Attorneys for Plaintiff
ADRIAN GOMEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ADRIAN GOMEZ, individually and on behalf
of others similarly situated, and as an
aggrieved employee and Private Attorney
General,

Plaintiff,

vs.

NEXT LEVEL CONSTRUCTION
SERVICES INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: CVRI2000753

*Assigned for All Purposes to the Hon.
Harold W. Hopp, Dept. 1*

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: May 22, 2025
Hearing Time: 8:30 AM
Department: 1

Complaint Filed: December 28, 2020
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on February 21, 2025, at 8:30 a.m., or as soon thereafter
3 as this matter may be heard, in Department 1 of the above-entitled Court, located at 4050 Main
4 Street, Riverside, California 92501, Plaintiff ADRIAN GOMEZ (“Plaintiff”) will apply to this
5 Court for an order granting final approval of the Joint Stipulation of Class Action and PAGA
6 Settlement (“Settlement” or “Settlement Agreement”) between Plaintiff and Defendant NEXT
7 LEVEL CONSTRUCTION SERVICES, INC. (“Defendant”). As part of that approval, Plaintiff
8 will request that the Court:

9 1. Grant final approval of the Settlement attached to the Declaration of Heather
10 Davis, Esq., on the grounds that the proposed settlement is fair, adequate, and reasonable because:

- 11 a. The non-reversionary Net Settlement Amount of \$28,930.37 will be paid out to
12 the Participating Class Members;
13 b. Proper Notice has been provided to all Class Members pursuant to the terms of the
14 Settlement;
15 c. Proper notice of the Settlement was provided to the California Labor and
16 Workforce Development Agency (“LWDA”) in accord with Labor Code 2699 *et*
17 *seq.*;
18 d. As of the filing of this motion, there have been no objections to the Settlement;
19 and
20 e. As of the filing of this motion, there are 274 Participating Class Members;

21 2. Award attorneys’ fees in the amount \$49,000.00 (35% of the Gross Settlement
22 Amount) to Protection Law Group, LLP;

23 3. Award costs in the amount of \$30,819.63 to Class Counsel for litigation costs and
24 expenses;

25 4. Award payment of \$8,750.00 to the Settlement Administrator for the costs of
26 settlement administration;

27 5. Award Class Representative Enhancement Payment of \$7,500.00 to Plaintiff;

28 6. Approve payment of \$15,000.00 for penalties pursuant to California Labor Code

1 Section 2698 *et. seq.* the Private Attorneys General Act of 2004 (“PAGA”) and the distribution
2 of seventy-five percent (75%) of these penalties (\$11,250.00) to the LWDA and twenty-five
3 percent (25%) of these penalties (\$3,750.00) to employees who worked within the PAGA Period
4 (“PAGA Members”); and

5 7. Order the funding and distribution of the Gross Settlement Amount in the manner
6 set forth in the Settlement.

7 The motion is based upon this Notice; the attached memorandum of points and authorities;
8 the Declaration of Heather Davis, Esq. and exhibits thereto; the Declaration of Adrian Gomez;
9 the Declaration of Lluvia Islas on behalf of Phoenix Class Action Administration Solutions and
10 exhibits thereto; the pleadings and other records on file with the Court in this matter, and any
11 other further evidence or argument that the Court may properly receive at or before the hearing.

12
13
14 DATED: April 23, 2025

Respectfully Submitted,

15 **PROTECTION LAW GROUP, LLP**

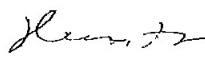
16 By: 
17 Heather Davis
18 Amir Nayebdadash
19 Brendan J. Burton
20 Shadi Sahebghalam
21 *Attorneys for Plaintiff*
22 ADRIAN GOMEZ
23
24
25
26
27
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff ADRIAN GOMEZ (“Plaintiff”) seeks final approval of a class action and PAGA settlement with Defendant NEXT LEVEL CONSTRUCTION SERVICES, INC. (“Defendant”) (collectively with Plaintiff, “the Parties”) and request the Court approve the settlement based on the following terms: (1) a Gross Settlement Amount of \$140,000.00; (2) attorneys’ fees in the amount of \$49,000.00 (35% of the Gross Settlement Amount); (3) actual litigation costs and expenses incurred by Class Counsel in the amount of \$30,819.63; (4) payment of \$15,000.00 for PAGA Penalties (75% of which shall be distributed to the LWDA and 25% to PAGA Members); (5) payment of \$8,750.00 to the Settlement Administrator, Phoenix Class Action Administration Solutions; and (6) Class Representative Incentive Payment of \$7,500.00 to Plaintiff. The result is a Net Settlement Amount (“NSA”) of \$28,930.37 that will be distributed to a Class of 274 Participating Class Members who worked for Defendant in California in a non-exempt position at any time from December 28, 2016, through September 6, 2023. Participating Class Members will receive an average Individual Settlement Payment of \$86.24 and a high payment of \$698.17. *See* Declaration of Lluvia Islas of Phoenix Class Action Administration Solutions (“Phoenix Decl.”) ¶13.

At Preliminary Approval, the Court established a presumption of fairness after extensively analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following notice of the proposed settlement to the Class. Out of the 275 Class Members, there have been zero objections to the terms of the settlement and one (1) request to be excluded from the Class. Phoenix Decl. ¶¶7-10. The lack of objections and participation by 99.63% of the Class Members is further evidence, in addition to the factors extensively analyzed at Preliminary Approval, that demonstrate the Settlement is a fair and reasonable result. Accordingly, the Court should approve the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant NEXT LEVEL CONSTRUCTION SERVICES, INC. (“Defendant”) is a full-service construction and demolition company. *See* Declaration of Heather Davis in Support of

1 Motion For Final Approval of Class Action and PAGA Settlement (“Davis Decl.”) ¶ 13.

2 Plaintiff Adrian Gomez worked for Defendant from approximately 2017 to approximately
3 March 2020. Davis Decl. ¶ 14.

4 On November 30, 2020, Plaintiff provided notice to the California Labor and Workforce
5 Development Agency (“LWDA”) and Defendant of his intent to seek civil penalties pursuant to
6 the Private Attorneys General Act (the “PAGA”) for Defendant’s violations of California wage
7 and hour laws. A true and correct copy of Plaintiff’s November 30, 2020, Notice to the LWDA is
8 attached hereto as **Exhibit 1**. Davis Decl. ¶ 15.

9 *The Action and Initial Discovery*

10 On December 28, 2020, Plaintiff filed his putative class action Complaint, Riverside
11 County Case No. CVRI2000753 (“Action”), alleging the following eight (8) causes of action
12 against Defendant Next Level Construction Services, Inc.: (1) Violation Of California Labor
13 Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation Of California Labor Code §§ 226.7 and
14 512(a) (Unpaid Meal Period Premiums); (3) Violation Of California Labor Code § 226.7 (Unpaid
15 Rest Period Premiums); (4) Violation Of California Labor Code §§ 1194, 1197 and 1197.1
16 (Unpaid Minimum Wages); (5) Violation Of California Labor Code §§ 201, 202 and 203 (Final
17 Wages Not Timely Paid); (6) Violation Of California Labor Code § 226(a) (Failure To Provide
18 Accurate Wage Statements); (7) Violation Of California Labor Code §§ 2800 and 2802 (Failure
19 To Reimburse Expenses); and (8) Violation Of California Business and Professions Code §
20 17200, *et seq.* Davis Decl. ¶ 16.

21 After more than sixty-five (65) days since the mailing for Plaintiff’s PAGA Notice Letter
22 and the LWDA not having indicated that it intended to investigate the violations discussed in the
23 PAGA Notice Letter, on February 4, 2021, Plaintiff filed a First Amended Class and
24 Representative Action Complaint, adding a ninth (9th) cause of action for civil penalties pursuant
25 to PAGA against Defendant. Davis Decl. ¶ 17.

26 On March 19, 2021, Defendant filed its Answer to Plaintiff’s First Amended Complaint.
27 Davis Decl. ¶ 18.

28 On or about June 8, 2021, Plaintiff served initial discovery on Defendant, consisting of (i)

1 Form Interrogatories – General, Set One; (ii) Special Interrogatories, Set One; (iii) Demand for
2 Production of Documents, Set One; (iv) a sample *Belaire-West* Notice for the Parties to meet and
3 confer about; and (v) a Deposition Notice for Defendant’s Person Most Qualified. Davis Decl. ¶
4 19.

5 On November 17, 2021, Defendant served its Responses to Plaintiff’s Form
6 Interrogatories, Special Interrogatories, and Demand for Production of Documents. Davis Decl.
7 ¶ 20.

8 *The Parties’ Mediation and Coordination Efforts*

9 While discovery was underway, the Parties continued to extensively meet and confer
10 regarding the claims, defenses, and merits of the case. After extensive meeting and conferring on
11 the discovery issues, the Parties met and conferred regarding attending private mediation and
12 agreed to staying formal discovery. The Parties agreed to attend global mediation for the Action
13 with Lynn Frank, Esq., a mediator with substantial experience handling wage-and-hour matters.
14 The Parties agreed to a mediation date of September 27, 2022. Davis Decl. ¶ 21.

15 Unfortunately, Defendant became unavailable to attend the September 27, 2022,
16 mediation with Lynn Frank, Esq. However, Defendant continued to represent its willingness to
17 go to mediation. Thereafter, the Parties met and conferred and agreed to attend private mediation
18 with Paul Grossman, Esq., another mediator with substantial experience handling wage-and-hour
19 matters. The Parties also agreed to continue the informal stay of the case pending mediation. The
20 Parties initially selected a date of February 28, 2023. Davis Decl. ¶ 22.

21 Mr. Grossman’s office became unavailable for the February 28, 2023, mediation.
22 Thereafter, the Parties agreed to a new mediation date with Paul Grossman, Esq., for March 31,
23 2023. The Parties continued to extensively meet and confer over the *Belaire-West* Notice issue,
24 as well as other aspects of the case. The Parties thereafter agreed to reduce this agreement to
25 writing in the form of a Joint Stipulation. Davis Decl. ¶ 23.

26 On March 13, 2023, the Parties executed and filed a Joint Stipulation Regarding Discovery
27 and Mediation. Davis Decl. ¶ 24.

28 ///

1 *Mediation and Moving for Preliminary Approval*

2 In advance of mediation, Defendant provided Plaintiff's Counsel with extensive informal
3 discovery including all relevant policies and handbooks in place during the Class Period, which
4 included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment
5 of wages and other relevant areas of investigation, a randomly selected 20% sampling of time
6 and payroll data for the putative class, and figures and information regarding the class size and
7 composition. The randomly-selected 20% sampling included records for putative class members
8 who were employed throughout different time periods during the Class Period, that is
9 representative of the Class. With this data for the Class, Plaintiff's Counsel were able to perform
10 a comprehensive damages analysis and estimate Defendant's potential violations, liability, and
11 exposure, including, and not limited to, analyzing time and pay data, considering potential meal
12 period violations, potential rest period violations, potential synthetic meal period recordings,
13 unpaid and rest period premiums, rounding, overtime and premium payments, etc. This discovery
14 and investigation allowed Plaintiff's Counsel to perform a comprehensive damages analysis and
15 estimate Defendant's potential liability. Davis Decl. ¶ 25.

16 After extensive review of the mediation documents and other information, on March 31,
17 2023, the Parties attended a full-day mediation. Davis Decl. ¶ 26.

18 At the March 31, 2023, mediation, Defendant represented to Plaintiff that it was
19 undergoing significant financial difficulties that would impact its ability to fund a class-wide
20 judgment and potentially proceed with litigation; Defendant represented it would not be able to
21 fund a settlement beyond the range contemplated by the Parties without it being destructive to the
22 business. Defendant provided financial records to Plaintiff who then provided them to an outside
23 financial expert to confirm Defendant's representations. Davis Decl. ¶ 27.

24 At the mediation, the Parties engaged in intensive settlement discussions during which
25 they debated their respective positions and exchanged views regarding the strengths and
26 weaknesses of the alleged claims, but despite the help of the mediator were unable to reach an
27 agreement. A mediator's proposal was issued to both Parties. Thereafter, the Parties agreed to
28 continue settlement negotiations and agreed to extend the terms of their mediation stipulation by

an additional thirty (30) days while the Parties continued their negotiations. Davis Decl. ¶ 28.

On May 8, 2023, pursuant to the Parties' mediation stipulation, the *Belaire-West* Notice was mailed to the Putative Class Members. Davis Decl. ¶ 29.

Following the March 31, 2023, mediation, the Parties undertook the arduous process of exchanging and evaluating additional information and continued settlement discussions through the mediator and were eventually able to reach an agreement to settle the matter. The Parties accepted a mediator's proposal to resolve this dispute on a class and representative basis for a Gross Settlement Amount of \$140,000.00. Davis Decl. ¶ 30.

Thereafter, the Parties worked diligently to negotiate and memorialize the terms of a long form settlement agreement. On April 9, 2024, after further discussions and several revisions to the agreement, the Parties entered into a fully executed Joint Stipulation of Class Action and PAGA Settlement and Release of Claims. Davis Decl. ¶ 31; Ex. 2.

Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Joint Stipulation of Class Action and PAGA Settlement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the LWDA via online filing at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> on April 19, 2024. Davis Decl. ¶ 32.

On September 16, 2024, the Court issued a tentative ruling granting Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement. Davis Decl. ¶ 33.

At the September 17, 2024, hearing on Plaintiffs' Motion for Preliminary Approval, the Court found on a preliminary basis that the settlement was fair, reasonable, and adequate.¹ Davis Decl. ¶ 34.

Now, following significant investigation into the alleged claims, and lengthy settlement discussions, Plaintiff hereby moves for final approval of the proposed Settlement Agreement and have notified the LWDA of the proposed Agreement. Davis Decl. ¶ 35.

///

¹ The Court signed the Order granting Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement on October 17, 2024.

THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION

The Settlement Administrator for this matter is Phoenix Class Action Administration Solutions (“Settlement Administrator”) as approved by the Court. Davis Decl. ¶ 45. My office provided the Settlement Administrator with the Court-approved text for the Class Notice on February 6, 2025. The Class Notice included the formula for determining the estimated sum to be paid to each individual from the Net Settlement and stated each Class Members’ estimated Individual Settlement Payment. Davis Decl. ¶ 46.

On February 13, 2025, Notice Packets were mailed to all 275 Class Members in English and Spanish. Phoenix Decl. ¶5; Ex. A. Initially, thirty-two (32) Notice Packets were returned to the Settlement Administrator. None of the thirty-two (32) returned Notice Packets included a forwarding address. The Settlement Administrator performed a skip trace on these thirty-two (32) Notice Packets. As a result of the skip trace, twenty-nine (29) updated addresses were obtained, and the Notice Packets were promptly re-mailed to those Settlement Class Members. Specifically, twenty-nine (29) were re-mailed as a result of the Settlement Administrator’s skip tracing efforts. In sum, twenty-nine (29) Notice Packets were re-mailed thus resulting in three (3) undeliverable Notices. Phoenix Decl. ¶¶6-7. Davis Decl. ¶ 48. To date, there have been zero (0) objections to the Settlement, one (1) request for exclusion, and zero (0) disputes. The deadline for Class Members to submit workweek disputes, request exclusion from, or object to the Settlement expired on April 14, 2025. Phoenix Decl. ¶¶8-10. Davis Decl. ¶ 49.

According to the terms of the Settlement Agreement, within thirty (30) calendar days of the Effective Date, Defendant will deposit Fifty Percent (50%) of the Gross Settlement Amount within fourteen (14) calendar days of the Effective Date, Defendant will deposit Fifty Percent (50%) of the Gross Settlement Amount (i.e., \$70,000.00) into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. The remaining Fifty Percent (50%) of the Gross Settlement Amount (i.e., \$70,000.00) will be paid to the QSF twelve (12) months after the Effective Date. Defendant may deposit the Gross Settlement Amount into the QSF at any time prior to the above referenced deadlines. *See* Settlement Agreement ¶60; Davis Decl. ¶ 50. Within fourteen (14) calendar days after Defendant completes funding of the Gross Settlement

1 Amount into the QSF (i.e., 12 months and 14 days after the Effective Date), the Settlement
2 Administrator will mail checks for: (a) the Individual Class Payments; (b) the Individual PAGA
3 Payments and the LWDA PAGA Payment; (c) the Class Representative Enhancement Payment;
4 (d) Class Counsel's Fees and Costs Payment; and (e) Settlement Administration Costs.
5 Disbursement of the Class Counsel Fees and Costs Payment and the Class Representative
6 Enhancement Payment shall not precede disbursement of Individual Class Payments and
7 Individual PAGA Payments. *See* Settlement Agreement ¶61; Davis Decl. ¶ 51.

8 **III. STANDARD OF REVIEW FOR FINAL APPROVAL**

9 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48
10 Cal.App.4th 1794 (1996). California courts look to federal authority for guidance with class action
11 settlements. *Id.* at 1801, n.7. "In general, questions whether a settlement was fair and reasonable,
12 whether certification of the class was proper, and whether the attorney fee award was proper are
13 matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91
14 Cal.App.4th 224, 234-35 (2001) (disapproved of on other grounds).

15 Accordingly, a court's decision to approve a class action settlement may be reversed only
16 upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
17 1026 (9th Cir. 1998). To determine whether the settlement is fair, courts consider relevant factors
18 such as "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of
19 further litigation, the risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed, the stage of the proceedings, the experience and
21 views of counsel, the presence of a governmental participant, and the reaction of the class
22 members to the proposed settlement." *Dunk*, 48 Cal.App.4th at 1801. "The list of factors is not
23 exclusive and the court is free to engage in a balancing and weighing of the factors depending on
24 the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245 (disapproved of on other
25 grounds).

26 In considering the class settlement, the court need not reach any ultimate conclusions on
27 the issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair*
28 *Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether

1 the settlement agreement is the best one that class members could have possibly obtained, but
2 whether the settlement taken as a whole is “fair, adequate, and reasonable.” *See Chavez v. Netflix,*
3 *Inc.*, 162 Cal.App.4th 43, 55 (2008). Even if the relief afforded by the proposed settlement is
4 substantially narrower than it would be if the lawsuit was to be successfully litigated, that is no
5 bar to a class settlement because the public interest may indeed be served by a voluntary
6 settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*
7 The burden is on the proponent of the settlement to show that it is fair and reasonable. *Id.* at 245
8 (disapproved of on other grounds). However, a presumption of fairness exists where: (1) the
9 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
10 sufficient to allow counsel and the court to act intelligently; (3) class counsel is experienced in
11 similar litigation; and (4) the percentage of objectors is small. *In re Microsoft I-V Cases*, 135
12 Cal.App.4th 706, 723 (2006).

13 **IV. THE SETTLEMENT IS PRESUMED FAIR**

14 Because this Court preliminarily approved the Settlement, it necessarily determined that
15 the Settlement appeared to be fair and reasonable. The same factors that allowed the Court to
16 preliminarily approve the Settlement apply here and are reinforced in these moving papers
17 including that: (1) the Settlement was reached through arm’s-length bargaining; (2) investigation
18 and discovery were sufficient to allow counsel and the court to act intelligently; and (3) Class
19 Counsel are experienced in similar litigation. Additionally, the reaction of the Class Members,
20 which was unknown at preliminary approval, also supports the reasonableness of the proposed
21 Settlement. *See generally*, Davis Decl. ¶¶ 36-44.

22 **A. The Settlement Was Reached Through Arm’s Length Bargaining.**

23 California courts recognize that “a presumption of fairness exists where . . . [a] settlement
24 is reached through arm’s-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245; *see also Clark v.*
25 *Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the Settlement was reached
26 following a full day of mediation with Paul Grossman, Esq., a mediator with substantial
27 experience involving wage and hour class actions. The mediation occurred only after substantial
28 informal discovery and extensive analysis of the claims at issue. These negotiations were at arm’s

length, non-collusive, and adversarial. Davis Decl. ¶¶ 36-44.

B. There was Sufficient Investigation and Discovery by Experienced Counsel.

Class Counsel conducted significant investigation into the claims alleged by Plaintiff before reaching a settlement in this matter. Class Counsel met with Plaintiff, conducted legal research regarding the applicable Labor Code Sections, and thoroughly researched Defendant's employment policies and practices and anticipated defenses. Prior to mediation, the Parties engaged in extensive discovery and Defendant informally produced the time records and payroll records for all Class Members, employee handbooks, and other relevant documents and information. This allowed Plaintiff to conduct a Class-wide analysis of Defendant's potential damages and intelligently and effectively analyze the strengths and weaknesses of the case and Defendant's potential exposure. The Parties extensively briefed these issues, provided this analysis to the mediator, and debated their respective positions. With the mediator's help the Parties were eventually able to reach an agreement to settle this matter based on their analysis and understanding of the case. Davis Decl. ¶ 25.

Moreover, the settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel's experience and the extensive investigation allowed Plaintiff to enter this Settlement aware of the risks associated with the case and permitted Class Counsel to negotiate an informed, reasonable, and intelligent Settlement. *See* Davis Decl. ¶¶ 2-12. After substantial discovery and investigation, it is Class Counsel's opinion that the settlement is in the best interest of the Class, the PAGA Members, and State of California because it provides for a guaranteed result over a reasonably short period of time as opposed to waiting years for the same, or possibly worse, result and will result in significant savings in costs. The substantial economic uncertainty of businesses during the COVID-19 pandemic only highlights the value of such a guaranteed result. Davis Decl. ¶ 35.

C. There Have Been No Objections and No Requests for Exclusion.

California courts have consistently found that a small number of objectors indicates the class's support for a settlement and strongly favors final approval. *See Wershba*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-

53 (final approval granted despite 9 objectors). Here, as of the filing of this Motion, no class member has objected to the settlement, one (1) member of the Settlement Class has requested to be excluded, and none have submitted a dispute. Phoenix Decl. ¶¶8-10. The lack of objections and one (1) request for exclusion to date speak volumes about the fairness, reasonableness, and adequacy of this Settlement.

V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

A. The Standard For Attorneys' Fees In A Class Action.

Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See Dunk*, 48 Cal.App.4th at 1808. The ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th 1253, 1270 (2005). Trial courts have wide latitude in assessing the value of attorneys' fees and their decisions will not be disturbed on appeal absent a manifest abuse of discretion. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Id.* at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in class and representative actions should approximate the probable terms of a contingent-fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases because "it better approximates the workings of the marketplace than the lodestar approach." *Id.*

B. A Fee Award Based on a Percentage of the Gross Settlement Amount is Appropriate.

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value made available to class members by the settlement. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977). The California Supreme Court has urged

trial courts to follow federal authority in this area. *See Green v. Obledo*, 29 Cal.3d 126, 146 (1981). The purpose of this equitable doctrine is to spread litigation costs among all beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d at 769.

Courts have consistently recognized that class litigation is necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify individual representation. Accordingly, in determining a reasonable common fund fee award, courts award fees to serve as an economic incentive for lawyers to engage in class litigation that will permit circumstances surrounding the case. Class Counsel risked substantial economic loss when they took the cases on a contingency basis, knowing that there would likely be a long battle with an aggressive defense firm. As a result of Class Counsel taking on this risk and the efforts of Class Counsel, the Settlement Class Members will now be able to recover for these claims that would otherwise have gone unaddressed. The requested fee therefore makes sense because (1) it is consistent with the private marketplace where contingent-fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of Class Counsel and absent Class Members in achieving the maximum possible resolution of the case; (3) it encourages the most efficient resolution of the litigation by providing an incentive for early, yet fair and reasonable settlement; and (4) reflects the work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters. As such, Class Counsel have obtained a fair recovery for the Class which justifies a fee award based on the percentage of the common fund. *See Davis Decl.* ¶¶ 63-68.

C. The Fee is Reasonable Based on the *Dunkel* Factors.

In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991), the court identified twelve factors to consider in awarding fees in a common fund case.² The court noted that, "the analysis in a common fund case focuses not on the Plaintiff's position as 'prevailing parties,' but on a showing that the fund conferring a benefit on the class resulted

² These factors include the (1) time and labor required, (2) difficulty involved, (3) skill required, (4) preclusion of employment, (5) customary fee, (6) contingent or fixed fee, (7) time limitations, (8) results obtained, (9) experience of the attorney, (10) undesirability of the case, (11) relationship with the client, and (12) awards in similar cases.

1 from their efforts” and thus in common fund cases “the monetary results achieved predominate
2 over all other criteria.” *Id.* at 774. Plaintiff will address some of the factors that are particularly
3 relevant here.

4 ***1. Time and Labor Required***

5 Class Counsel have aggressively litigated the cases from the initial pleading to the
6 settlement of this Action. Class Counsel researched defenses raised by Defendant, investigated
7 Defendant’s policies, practices, and procedures, and analyzed thousands pages of documents
8 including a large amount of time and payroll data. Class Counsel participated in case strategy and
9 analysis, drafted, reviewed, revised pleadings, prepared for and attended mediation, and
10 participated in settlement negotiations. Even after an agreement was reached in principle, Class
11 Counsel spent numerous hours drafting and revising the Settlement Agreement, drafting the
12 motion for preliminary approval, and coordinating the notice process with the Settlement
13 Administrator. This case consumed more than 342.10 hours in total. Davis Decl. ¶67, Ex. 3.
14 However, a settlement was finally achieved, despite all obstacles, because Class Counsel used
15 their complex wage-and-hour litigation experience and skills to obtain the Settlement.

16 ***2. The Skill Required to Perform Legal Services***

17 This matter also required substantial skill to litigate, and Class Counsel were required to
18 overcome numerous barriers in order to reach a settlement. Defendant denied liability, felt very
19 strongly about its ability to prevail, challenged the theories of Class Counsel, and mounted several
20 defenses that posed significant problems moving forward. Despite this, Class Counsel were able
21 to use their substantial experience in complex wage and hour litigation to convince Defendant to
22 attend mediation and discuss a potential settlement rather than proceed with further litigation.
23 Class Counsel’s skill and experience also allowed them to review and analyze a large amount of
24 time and payroll data, a complex process that took considerable time and energy in order to
25 determine Defendant’s underlying practices and potential damages. This settlement, against
26 experienced defense counsel and despite strong potential defenses, was possible because of Class
27 Counsel’s skill and experience.

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3. *The Value, Amount, and Results Achieved*

The Settlement represents a fair resolution of the Action given the risks inherent in litigating them through trial and possible appeals. Counsel obtained a non-reversionary Gross Settlement Amount of \$140,000.00, exclusive of employer-side payroll taxes. Although Class Counsel predicted that Plaintiff would prevail on all causes of action at trial, a number of risks reduced the Action's value. For instance, as discussed extensively in Plaintiff's Motion for Preliminary Approval, Defendant claimed there were substantial problems with Plaintiff's claims, including that its policies were legally-compliant, and raised issues with Plaintiff's meal break, rest break and off-the-clock claims regarding the necessity of individualized proof. Defendant contended these issues would prevent Plaintiff from successfully recovering on these claims which were a major focus of the litigation. Further, the financial difficulties that Defendant was facing made settlement prospects bleak. However, despite these challenges, Defendant agreed to a non-reversionary Gross Settlement Amount of \$140,000.00, meaning that on average the Participating Class Members will receive a payment of approximately \$86.24, and the highest payment will be approximately \$698.17. This is an outstanding result that in many instances exceeds the awards obtained in similar wage and hour settlements. *See Davis Decl.* ¶71.

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4. *Whether the Fee is Fixed or Contingent*

Whether the representation was provided on a contingency basis, as it was in these cases, is an important factor:

A contingent fee must be higher than a fee for the same legal services paid as they are performed [and] [...] compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions.
Cates v. Chiang, 213 Cal.App.4th 791, 823 (2013).

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The fact that these cases were litigated on a contingent basis strongly supports the award of attorneys' fees requested by Plaintiff. If Class Counsel had been unsuccessful, they would not have received any fee or recovered any portion of the expenses spent litigating the matters. Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained in this Action. If the COVID-19 crisis has made one thing clear, it is that economic uncertainty can arise swiftly and for reasons beyond any party's control. These are the

types of risks Class Counsel faced litigating these matters on a contingent basis and this risk is a relevant factor when considering the reasonableness of the requested fee. Davis Decl. ¶69.

D. The Fee is Reasonable Under a Lodestar Analysis.

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. This said, Courts have cautioned that the primary basis of the fee award in common fund cases remains the percentage of the fund method and have cautioned that class counsel should not necessarily receive a lesser fee for achieving a speedy and timely result for class members in need of immediate relief. *See e.g. Vizcaino v. Microsoft Corp.*, 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts have noted that “it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement.” *Id.* (quoting *Camden I Condominium Ass’n*, 946 F.2d at 773-74.)

Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-32 (2001). Counsel are entitled to compensation for every hour reasonably spent on the matter. *See Id.* at 1133.

1. Counsel Spent a Reasonable Amount of Time

Reasonableness of hours is assessed by “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, these cases were highly contested and required a significant amount of time and labor. Defendant raised significant defenses and denied liability. Class Counsel invested significant time and labor into these matters even before the lawsuits were filed to investigate Defendant’s policies, practices, business model, and merits-based issues. Class Counsel undertook significant efforts and did substantial research and investigation both prior to and after the filing of these lawsuits. Class Counsel also undertook significant preparation in order to resolve these matters prior to mediation. Class Counsel gathered and analyzed data from thousands of pages of documents

1 which took substantial time to review and analyze. After an agreement was reached in principle,
2 Class Counsel spent significant time negotiating terms of the settlement to obtain the best possible
3 outcome for the Class. Class Counsel conservatively worked a total of 342.10 hours on the Action.
4 *See Davis Decl. ¶67, Ex. 3.* Accordingly, Class Counsel spent a reasonable amount of time on the
5 Action. Class Counsel diligently took all steps necessary to ensure these matters were litigated
6 effectively and efficiently. Accordingly, the time spent on the Action was reasonable.

7 ***2. Class Counsel's Hourly Rate is Reasonable***

8 Both California and federal courts recognize that attorneys should be compensated for
9 providing representation on a contingency basis and for taking on the risks associated with said
10 representation, as well as being provided with financial incentives to enforce important rights and
11 protections like those at issue in this Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding
12 attorneys' fees, the aim is to mirror "the established practice in the private legal market of
13 rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
14 normal hourly rates for winning contingency cases." *See Id.*

15 As previously discussed, Class Counsel have been actively involved in the Action from
16 the filing of the initial complaints to completing these final approval papers. Class Counsel
17 invested time and bore the risk that there could have been no recovery. Ultimately, Class Counsel
18 was successful in reaching a settlement of \$140,000.00 on behalf of the Class. To date, the
19 lodestar for Class Counsel is approximately \$222,365.00. *See Davis Decl. ¶67, Ex. 4.* However,
20 Class Counsel are only seeking thirty-five percent (35%) of the common fund (*i.e.*, \$49,000.00).
21 *Id.* Accordingly, in light of the value provided to the Settlement Class, Class Counsel respectfully
22 request the Court award attorneys' fees of \$49,000.00 to Class Counsel.

23 **VI. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

24 Class Counsel request the reimbursement of the costs incurred litigating this Action in the
25 amount of \$30,819.63. These costs include filing fees, mediation fees, and others. These costs
26 also include \$300.00 in anticipated future costs associated with the filing of this motion, the filing
27 of reports regarding the disbursement of the settlement, and the completion of these proceedings.
28 *See Davis Decl. ¶74, Ex 4.* These costs are less than the \$35,000.00 contemplated under the

1 Settlement, meaning an additional \$4,180.37 will be distributed to the Participating Class
2 Members. Davis Decl. ¶74.

3 **VII. THE REQUESTED REPRESENTATIVE ENHANCEMENT PAYMENT IS**
4 **FAIR AND REASONABLE**

5 Named plaintiff in class action lawsuits are eligible for reasonable enhancement payments
6 as compensation “for the expense or risk they have incurred in conferring a benefit on other
7 members of the class.” *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles*, 186
8 Cal.App.4th 399, 412 (2010). The criteria courts may consider in determining whether to make
9 an incentive award include: (1) the risks faced by the class representative; (2) the difficulties
10 encountered; (3) the time spent; (4) the duration of the litigation; and (5) the personal benefit (or
11 lack thereof) to the class representative. *See Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294,
12 299 (N.D. Cal. 1995); (approving \$50,000.00 enhancement); *In re Online DVD Rental*, 779 F.3d
13 934, 947-48 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments
14 where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs.,*
15 *Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to
16 be “fair and reasonable”); *Miller v. CEVA Logistics USA, Inc.*, 2015 WL 4730176, at * 9 (E.D.
17 Cal. Aug. 10, 2015) (approving service award of \$15,000 to each plaintiff).

18 Here, a Class Representative Enhancement Payment to Plaintiff in the amount of
19 \$7,500.00 is fair and appropriate. Plaintiff invested significant time into bringing these claims and
20 assisting Class Counsel with the development of the Action. Plaintiff spent substantial time
21 searching for relevant documents, speaking with Class Counsel, and helping Class Counsel
22 prepare for mediation. Plaintiff actively attempted to obtain information that would benefit the
23 Settlement Class. Prior to signing the Settlement Agreement, Plaintiff reviewed the agreement,
24 asked questions, and discussed the settlement, and the amendments, with Class Counsel. Davis
25 Decl. ¶75; *see* Gomez Decl. ¶¶2-5. As a result of Plaintiff’s actions, Plaintiff helped recover
26 thousands of dollars for his fellow Class Members. These services unquestionably merit the
27 requested Enhancement Payment of \$7,500.00.

28 Further, in addition to the substantial time spent helping Class Counsel litigate the Action,
Plaintiff also faced substantial risk to his future employment by serving as the named

representative in an employment lawsuit. Plaintiff still chose to bring this litigation on behalf of others and has put others interests ahead of his own. Plaintiff also agreed to enter into a broader individual release than that agreed to by the other Class Members. Davis Decl. ¶76. Despite this, Plaintiff has not received any compensation to date and will not without Court approval. However, Plaintiff should be compensated for his efforts he made on behalf of others and the broader release he has agreed to enter into as part of the Settlement. Davis Decl. ¶¶77-78.

VIII. PAYMENT TO THE SETTLEMENT ADMINISTRATOR

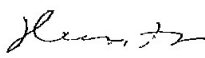
The Settlement Agreement calls for the award of \$8,750.00 to the Settlement Administrator, Phoenix Class Action Administration Solutions, for the costs associated with administration of the settlement. The Settlement Administrator is a necessary third-party who has performed substantial services on behalf of the Class, and this payment of \$8,750.00 should be approved by the Court. Davis Decl. ¶80; *see generally* Phoenix Decl.

IX. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the Motion for Final Approval and enter Judgment in this Action pursuant to the terms of the Settlement.

DATED: April 23, 2025

PROTECTION LAW GROUP, LLP

By: 
Heather Davis
Amir Nayebdadash
Brendan J. Burton
Shadi Sahebghalam
Attorneys for Plaintiff
ADRIAN GOMEZ