

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel.: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
JOSE AGUILAR

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
JOSE AGUILAR

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

JOSE AGUILAR, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

KNE, LLC, a California limited liability
company, dba H2O LOGISTICS; and DOES 1
through 100,

Defendants.

Case No.: 20STCV05676

*[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: September 16, 2021
Time: 10:00 a.m.
Dept.: SSC-14

Action Filed: February 13, 2020
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 September 16, 2021 at 10:00 a.m. in Department 14 of the above-entitled Court, located at 312 N. Spring
4 Street, Los Angeles, California 90012, Plaintiff Jose Aguilar (“Plaintiff”), individually and on behalf of
5 a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Confirming the certification of the Settlement Class for settlement purposes under Section
7 382 of the California Code of Civil Procedure;
- 8 2. Confirming the appointment of Plaintiff Jose Aguilar as Class Representative for settlement
9 purposes;
- 10 3. Confirming the appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
11 Lidman Law, APC and Paul Haines of Haines Law Group, APC, as Class Counsel for
12 settlement purposes;
- 13 4. Granting final approval of the Amended Stipulation of Settlement (“Settlement”);
- 14 5. Approving an award of \$33,333.33 in attorneys’ fees to Class Counsel;
- 15 6. Approving an award of \$4,732.78 in costs to Class Counsel;
- 16 7. Approving an award of \$3,500.00 in costs to Phoenix Settlement Administrators for its
17 settlement administration services;
- 18 8. Approving a service award of \$5,000.00 to Plaintiff Jose Aguilar for his services as Class
19 Representative;
- 20 9. Approving an award of \$7,500.00 to the Labor & Workforce Development Agency
21 (“LWDA”); and
- 22 10. Entering final judgment in the form of the [Proposed] Order Granting Plaintiff’s Motion for
23 Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

24 This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the
25 supporting declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Jose
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1 Aguilar¹, Elizabeth Kruckenberg of Phoenix Settlement Administrators, and the exhibits attached
2 thereto; the Settlement; all other pleadings and papers on file in this action; and on any further oral or
3 documentary evidence or argument presented at the time of hearing.

4
5 Dated: August 11, 2021

Respectfully submitted,
LIDMAN LAW, APC

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8 By:



Scott M. Lidman
Attorney for Plaintiff
JOSE AGUILAR

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27 ¹ The declaration of Plaintiff Jose Aguilar was previously submitted on December 29, 2020 in
28 connection with Plaintiff's Motion for Preliminary Approval. Mr. Aguilar's declaration is re-filed in
connection with the instant motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Aguilar (“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 Defendant KNE,
5 LLC dba H2O Logistics (hereinafter “H2O” or “Defendant”) on behalf of the Settlement Class defined
6 as: “all current and former non-exempt, hourly employees of Defendant KNE, LLC dba H2O Logistics
7 who worked in California at least one (1) day at any time from February 13, 2016 through May 6, 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 \$1,481.74 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 May 6, 2021, nothing has changed to impact the
13 propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice of
14 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 February 13, 2020, Plaintiff filed a putative class action complaint against H2O in Los Angeles
27 County Superior Court. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On May 4, 2020,
28 Plaintiff filed a First Amended Class and Representative Action Complaint. *Id.* Plaintiff’s primary

1 allegations are that H2O: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages
2 owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally
3 required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to pay all final
4 wages upon separation of employment; (7) unlawfully deducted from earned wages; (8) engaged in
5 unlawful business practices; and (9) is liable for civil penalties under the Labor Code Private Attorneys
6 General Act of 2004 (“PAGA”). *Id.*

7 **A. Plaintiff’s Claims**

8 As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of
9 liability are related to H2O’s alleged unlawful wage and timekeeping policies and practices. Lidman
10 Decl., ¶¶ 11-24. Specifically, Plaintiff alleges that he and other Settlement Class members were not paid
11 for all time worked because H2O unlawfully rounded/shaved Plaintiff’s time such that Plaintiff was
12 routinely underpaid. Lidman Decl., ¶ 11. A review of Plaintiff’s time punch data confirmed that H2O
13 rounds hours worked. *Id.* Specifically, on average, Plaintiff alleges that he was underpaid approximately
14 12 minutes per shift or approximately one (1) hour per workweek. *Id.*

15 Plaintiff also alleges that that he and Settlement Class members were not provided with all legally-
16 compliant first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 13.
17 Specifically, Plaintiff alleges that due to the work demands imposed by H2O, Plaintiff and Settlement
18 Class members were provided late, short and otherwise unlawful meal periods. *Id.* From the records
19 produced by H2O in connection with mediation, it appeared that H2O had a 40% meal period
20 noncompliance rate. *Id.*

21 Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to
22 take all required rest periods due to H2O’s rest period policies and practices that fail to authorize and
23 permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 15.
24 Specifically, Plaintiff alleges that due to the work demands imposed by H2O, he and other non-exempt
25 employees were unable to take all required rest periods. *Id.* From the records produced in connection
26 with mediation, 100% of the shifts worked were in excess of 3.5 hours. *Id.*

27 Plaintiff alleges that he and other Settlement Class members were not paid all of their earned
28 wages. Lidman Decl., ¶ 17. Specifically, Plaintiff alleges that H2O paid his earned wages on an ATM

1 Card, without his voluntary authorization. *Id.* As a result, Plaintiff contends that he was unable to access
2 his earned wages without paying a fee of approximately \$3.00, in violation of Labor Code section 212.
3 *Id.*

4 As a result of the alleged unpaid wages described above, Plaintiff alleges that H2O issued
5 inaccurate wage statements in violation of Labor Code § 226, failed to pay all wages upon termination,
6 and is liable for civil penalties under the Labor Code Private Attorney General Act (“PAGA”). Lidman
7 Decl., ¶¶ 19-24.

8 As explained *infra* and in Plaintiff’s Motion for Preliminary Approval, H2O denies Plaintiff’s
9 claims and asserts several affirmative defenses, both on the merits and with respect to class certification.

10 **B. Mediation and Settlement**

11 In connection with the Parties’ arms-length and direct negotiations between counsel, H2O
12 informally produced the putative class list with the hire and termination dates, hourly rates, and pay
13 periods, Plaintiff’s timekeeping and payroll records, as well as all of its wage and hour policies and other
14 relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 26. After a detailed
15 review of the records and other documents and policies produced by H2O, Class Counsel drew on their
16 extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This
17 discovery allowed the parties to assess the merits and value of Plaintiff’s claims and H2O’s defenses
18 thereto, if a settlement could not be reached. *Id.*

19 The Parties engaged in extensive direct arm-length negotiations. Lidman Decl., ¶ 27. Due to the
20 relatively small size of the putative class, counsel for the Parties believed attempts at direct negotiations
21 were appropriate so that money that would have been spent on an expensive, experienced mediator could
22 instead be used to pay an eventual settlement if it could be reached. *Id.* During settlement discussions,
23 the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s
24 claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in principle on
25 a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and
26 executed the Stipulation of Settlement (“Settlement”). *Id.*

27 **C. Preliminary Approval of Settlement**

28 Plaintiff submitted the Settlement to the Court with his Motion for Preliminary Approval on

December 29, 2020. Lidman Decl., ¶ 28. Plaintiff also submitted the Settlement to the LWDA. Lidman Decl., ¶ 42, Exh. D. On May 6, 2021, after the Parties’ filed supplemental briefing and an Amended Settlement agreement to address issues identified in the Court’s tentative ruling, the Court granted preliminary approval. Lidman Decl., ¶ 28, Exh. A (Order Granting Preliminary Approval dated May 11, 2021). Plaintiff submitted the Order Granting Preliminary Approval on May 14, 2021 to the LWDA. Lidman Decl., ¶ 43, Exh. E.

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

On May 21, 2021, the Court-approved Notice Packets (consisting of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Settlement Award) in English were sent to 31 Settlement Class members, who had until July 5, 2021 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Elizabeth Kruckenberg of Phoenix Settlement Administrators (“Kruckenberg Decl.”), ¶ 9. As of the date of this filing, there have been **no objections**, **no disputes** and **no opt-outs**. *Id.*, ¶¶ 14-16. Plaintiff now respectfully submits the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class encompasses “current and former non-exempt, hourly employees of Defendant KNE, LLC dba H2O Logistics who worked in California at least one (1) day at any time from February 13, 2016 through May 6, 2021.” Lidman Decl., ¶ 29.

B. Monetary Terms of the Settlement

The Settlement requires H2O to pay a Gross Settlement Amount (“GSA”) of \$100,000.00. Kruckenberg Decl., ¶ 17. The Net Settlement Amount (“NSA”) is the amount remaining from the GSA after deducting requested attorneys’ fees (\$33,333.33) and verified costs (\$4,732.78), proposed Class Representative Service Award to Plaintiff (\$5,000.00), Settlement Administration costs (\$3,500.00), and PAGA payment to the LWDA (\$7,500.00). Based on these requested amounts, the NSA is calculated to be approximately **\$45,933.89**. Kruckenberg Decl., ¶ 17; Lidman Decl., ¶ 33, Exh. B.

Each Settlement Class member's Individual Settlement Award will be based on the following formula:

- i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of pay periods worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member's total pay periods worked as a non-exempt employee during the Class Period, and the denominator of which is the total pay periods worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period.
- ii. Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employees' number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees.

Payments to Settlement Class members will be classified as sixty-seven percent (67%) as penalties and interest; and thirty-three percent (33%) as wages to be reported on a W-2 form. Settlement, ¶ 5.E.

H2O will pay the employer's share of payroll taxes separately and apart from the Gross Settlement Amount. See Settlement, ¶ 4.D; Kruckenberg Decl., ¶ 19.

C. Summary of Notice Process

1. Mailing of Notice Packets

On May 10, 2021, H2O provided Phoenix Settlement Administrators ("PSA") with data files with the names, last known addresses, phone numbers, social security numbers, positions held, the dates of employment and the estimated number of workweeks worked by each Settlement Class member while employed during the Class Period. Kruckenberg Decl., ¶ 6.

1 After performing address updates and verifications, PSA mailed the Notice Packets (consisting of
2 the Notice of Pendency of Class Action and Proposed Settlement and Notice of Settlement Award) to the
3 31 Settlement Class members on May 21, 2021. *Id.*, ¶¶ 8-9. Following the initial mailing, three (3)
4 Notice Packets were returned to PSA as undeliverable. *Id.*, ¶ 10. As a result of a skip trace, forwarding
5 address provided by the Post Office, or re-mail requests from Counsel or Class Members, three (3) Notice
6 Packets were re-mailed. *Id.*, ¶ 12. As of the date of filing this final approval motion, zero (0) Notice
7 Packet remain undeliverable with no forwarding address, and where no new address could be located
8 through skip trace. *Id.*, ¶ 13.

9 The deadline for Settlement Class members to submit objections, requests for exclusion, or
10 disputes was July 5, 2021. Kruckenberg Decl., ¶ 9.

11 As of the date of this filing, there were no objections, no disputes, and no Settlement Class
12 members have elected to opt-out of the Settlement. *Id.*, ¶¶ 14-16. Accordingly, as of the date of this
13 Motion, the participation rate amongst the Settlement Class members is 100% and the average estimated
14 payment is \$1,481.74, with the highest estimated payment to a Settlement Class member being \$3,561.72,
15 the lowest estimated payment to a Settlement Class member being \$83.73, and the median amount being
16 \$1,193.35. *Id.*, ¶¶ 14-20.

17 **D. Timing of Payments**

18 With the exception of the Settlement Administrator's fees, if required by the Settlement
19 Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement
20 fund set up by the Settlement Administrator for the benefit of participating Settlement Class members.
21 Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within thirty
22 (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the Court's final approval
23 of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the
24 time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or
25 (c) the final resolution of any appeal that has been filed. *See* Settlement, ¶ 4.B.

26 Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount
27 with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award
28 amounts and provide the same to counsel for review and approval. Within seven (7) calendar days of

approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. Settlement, ¶ 5.D.

E. Uncashed Funds

Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member. Settlement ¶ 5.F; Lidman Decl., ¶ 26.

IV. ARGUMENT

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

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

Here, this Court found that the Settlement Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on May 6, 2021. *See* Lidman Decl., ¶ 28; Exh. A. After the court entered an order granting preliminary approval, no events have cast doubt on the propriety of this determination. In fact, the reaction of the Settlement Class members thus far to the Settlement has been strongly in support of the Settlement, with no Settlement Class members objecting to any portion of the Settlement and no Settlement Class members electing to opt-out of the Settlement. *See* Kruckenberg Decl., ¶¶ 13-16. This Court should therefore confirm its conditional certification of the Settlement Class.

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

California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*

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

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

11 A settlement is presumptively fair where it is reached through arm's-length bargaining, based on
12 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
13 experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford*
14 *Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a
15 trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the
16 case. *Mallick v. Superior Court*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the
17 overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*,
18 *supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider
19 include, but are not limited to:

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

25 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
26 to each case and give due regard to "what is otherwise a private consensual agreement between the
27 parties." *Id.*

28 "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

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

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

10 As detailed in Plaintiff’s Motion for Preliminary Approval, there is significant risk of non-
11 certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example,
12 with respect to Plaintiff’s claim for unpaid wages for unlawfully rounding hours, H2O contends that it
13 compensated non-exempt employees for all of their time worked. Lidman Decl., ¶ 12. H2O also contends
14 that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-
15 compensable. *Id.* H2O further assert that Plaintiff would be unable to certify a rounding class given the
16 individualized inquiries that would be required, given that its rounding mechanism was, according to
17 H2O, allegedly facially neutral and also did not mean that employees were actually working when clocked
18 in. *Id.*

19 As for Plaintiff’s meal period claim, H2O counters that it has always provided non-exempt
20 employees with an opportunity to take legally compliant meal periods, and any non-compliant meal
21 periods reflected in employee timekeeping records were solely the result of employee choice, rather than
22 any policy or practice of H2O. Lidman Decl., ¶ 14. H2O points out that under *Brinker Restaurant Corp.*
23 *v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal
24 periods, not “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*, 53
25 Cal.4th at 1038 (rejecting “ensure” standard). Finally, H2O contends Plaintiff’s meal period claim is not
26 suited for class certification, since individual inquiries would be required to assess which employees took
27 non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why
28 a particular employee took a non-compliant meal period or missed a meal period during a particular shift.

1 *Id.*

2 As for Plaintiff's rest period claim, H2O contends it has always maintained and enforced lawful
3 rest period policies and practices, and that Settlement Class Members were authorized and permitted to
4 take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 16. Further, H2O argues
5 that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized
6 inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a
7 compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.*

8 As for Plaintiff's claim unlawful deduction from earned wages, H2O argues that it did not require
9 Plaintiff or the other Settlement Class members to receive their earned wages on an ATM Card. Lidman
10 Decl., ¶ 18. H2O contends that Plaintiff voluntarily requested his wages be paid on an ATM Card. *Id.*
11 Further, H2O contends that Plaintiff was the only employee that ever received his funds via an ATM
12 Card, and no other Settlement Class Member was implicated. *Id.*

13 As for Plaintiff's wage statement claim, H2O that meal and rest period claims cannot support a
14 claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App.
15 5th 444, review granted and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g.,*
16 *Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-
17 9). Lidman Decl., ¶ 20. H2O further argues that its alleged wage statement violations could not be shown
18 to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed]
19 injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
20 imposition of penalties. *Id.*

21 As for Plaintiff's claim for waiting time penalties, H2O asserts it has strong defenses to the waiting
22 time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding
23 imposition of penalties. Lidman Decl., ¶ 22. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute
24 that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12
25 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt
26 precluded imposition of waiting time penalties over contested wages owed). *Id.*

27 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims, H2O
28 argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail.

Lidman Decl., ¶ 24; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). H2O also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find H2O liable for any of Plaintiff’s claims. *Id.*

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

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

Individual settlement payments will be calculated based on the number of pay periods worked by each Settlement Class member. *See* Settlement ¶ 5.B. This method of distribution compensates Settlement Class members based on the estimated extent of their injuries, as Settlement Class members who worked more weeks, would have been subject to more of the alleged wage and hour violations than those who worked fewer weeks. Thus, the formula for compensating Settlement Class members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

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

Class members’ response to a settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a “particularly impressive” favorable response from class members). Here, as of the filing of this Motion, not a single Settlement Class member has objected to the Settlement, not a single Settlement Class member has elected to opt-out, and zero (0) of the 31 Notice Packets were returned undeliverable. Kruckenberg Decl., ¶¶ 14-18. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

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

3 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
4 their attorneys’ fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
5 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
6 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
7 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
8 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra,*
9 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court
10 confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), that “[t]he percentage of fund
11 method survives in California class action cases.” Specifically, the *Laffitte* Court held:

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

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

Laffitte also held that trial courts have discretion to assess reasonableness of fee awards with tools

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

8 Here, Class Counsel’s fee request of \$33,333.33 (one-third of the Gross Settlement Amount) is
9 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
10 “regardless whether the percentage method or the lodestar method is used, fee awards in class actions
11 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
12 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
13 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
14 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
15 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
16 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
17 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
18 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 31. Thus, the percentage sought by
19 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

28 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,

supra, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In class actions such as this one, where the value of the benefit conferred to the class “can be monetized with a reasonable degree of certainty,” 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 \$91,732.50 without the use of any multiplier, which is over 2.75 times the \$33,333.33 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	53.4	\$40,050.00
Elizabeth Nguyen (16th Year Attorney)	\$650	27.6	\$17,940.00
Paul K. Haines (15th Year Attorney)	\$650	18.8	\$12,220.00
Milan Moore (6th Year Attorney)	\$400	47.9	\$19,160.00
Paralegals	\$175	13.5	\$2,362.50
Total Lodestar			\$91,732.50

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

8 First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a
9 current participation rate of 100%, and not a single Settlement Class member has objected to the
10 Settlement or to Class Counsel’s requested fees as of the date of this filing. *See* Kruckenberg Decl., ¶¶
11 11-16. Additionally, the *average* settlement payment in this case of approximately \$1,481.74 is in line
12 with, and above, settlement payments in similar wage and hour class action settlements. *See, e.g.,*
13 *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class
14 action settlement approved where average class member recovery was approximately \$60); *Schiller v.*
15 *David’s Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding
16 that average payment to class members of less than \$200 was a “good” result); *Williams v. Centerplate,*
17 *Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013)
18 (granting final approval of class action settlement where average recovery for each class member was
19 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted
20 legal battle, in the face of serious defense challenges and an uncertain legal landscape confirms the
21 strength of the results achieved.

22 As discussed above, this case presented significant risk as to both class certification and merits
23 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
24 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
25 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
26 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
27 compensation for over one year of work. Lidman Decl., ¶ 33. During this time, Class Counsel have
28 expended \$3,732.78, in actual costs, have devoted substantial time to this litigation and expect to incur

1 approximately \$1,000.00 in future costs for filing the instant motion, filing the final declaration regarding
2 distribution of settlement, continued Case Anywhere fees, service and messenger fees, postage fees,
3 and/or LACourtConnect costs for future appearances.² Lidman Decl., ¶ 33, Exh. B. Class Counsel's
4 efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal
5 research, reviewing H2O's documents and policies, analyzing Settlement Class members' timekeeping
6 and payroll records, preparing for and engaging in direct negotiations, negotiating and revising the long-
7 form Settlement and Amended Settlement Agreement, preparing the Motions for Preliminary and Final
8 Approval, overseeing the settlement administration process, communicating with Settlement Class
9 members, and otherwise litigating this case. See Lidman Decl., ¶ 32. Given the considerable potential
10 for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits
11 issues, the contingent risk borne by Class Counsel was great. Lidman Decl., ¶ 35.

12 Class Counsel's previous experience in litigating wage and hour class actions also supports the
13 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
14 hour class action litigation, with substantial experience litigating claims for meal and rest period
15 violations, and related penalties. See Lidman Decl., ¶¶ 3-8; Declaration Elizabeth Nguyen ("Nguyen
16 Decl."), ¶¶ 3-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. They have been certified as class
17 counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the
18 strengths and weaknesses of the case against H2O and the reasonableness of the Settlement. See Lidman
19 Decl., ¶ 30. Practice in the narrow field of wage and hour litigation requires skill and knowledge
20 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class
21 action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their
22 skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

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

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

1 reasonable, and adequate and should be approved.

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

4 Class Counsel have incurred \$4,732.78³ (including anticipatory fees and expenses related to the
5 instant motion) in litigation costs. Class Counsel's request is fair, adequate, and reasonable, as all of these
6 costs are documented and reasonably incurred. *See* Lidman Decl., ¶ 33; Exh. B. Moreover, the costs
7 Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d
8 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be
9 charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal.
10 2011)("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-
11 paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust*
12 *v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re*
13 *Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation
14 expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight
15 delivery costs are reimbursable). Because the expense reimbursements requested by Class Counsel were
16 reasonably incurred, and no Settlement Class member has objected to them, Plaintiff respectfully requests
17 the Court should grant the request for actual costs incurred.

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

19 Plaintiff also requests that the Court approve \$3,500.00 in administration costs to the Settlement
20 Administrator, Phoenix Settlement Administrators. As detailed in the declaration of Elizabeth
21 Kruckenberg on Behalf of Phoenix Settlement Administrators submitted herewith, PSA performed duties
22 in connection with this Settlement that were integral in effectuating the Settlement and the Notice process.
23 Among other things, PSA calculated each Settlement Class member's individual settlement payment,
24 updated addresses contained in the class data supplied by H2O, formatted Notice Packets for mailing in
25 English, mailed Notice Packets to all 31 Settlement Class members, kept the parties informed of any
26 objections or requests for exclusion, and have otherwise administered the Settlement. *See* Kruckenberg

27
28 ³ This amount includes the anticipated costs of \$1,000.00 for filing fees, continued Case Anywhere fees,
service and messenger fees, postage fees, and/or LACourtConnect costs for future court appearances.

Decl., ¶¶ 2-21. For these reasons, PSA’s requested 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 \$5,000.00 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 Jose Aguilar (“Aguilar Decl.”), ¶ 9. Plaintiff gathered documents for use in the lawsuit, and attended several meetings with Class Counsel discussing the case, the merits, the defenses, and the overall fairness of the settlement reached. *See* Lidman Decl., ¶ 41; Aguilar Decl., ¶¶ 6-8. The class has benefited from Plaintiff’s actions as the average settlement amount is **\$1,481.74**.

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. Aguilar 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 15 to 20 hours on activities related to this case. *Id.* at ¶ 7. 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.D.

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* Kruckenberg Decl., ¶ 16. Thus, the service award to Plaintiff is appropriate and justified as part of
6 the Settlement and should be finally approved.

7 **V. CONCLUSION**

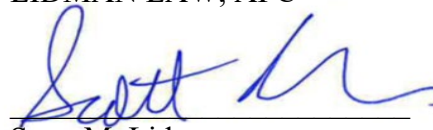
8 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant Plaintiff's
9 motion in its entirety and adopt the [Proposed] Order Granting Plaintiff's Motion for Final Approval of
10 Class Action Settlement and Final Judgment submitted herewith.

11 Based on the terms of the agreement, Plaintiff proposes the deadline to the Settlement
12 Administrator declaration regarding the disbursement be set for June 1, 2023, which takes into account
13 the one-year hold period required by the State Controller's Office after the 180-day expiration date.

14
15 Dated: August 11, 2021

Respectfully submitted,
LIDMAN LAW, APC

16
17 By:



18 Scott M. Lidman
19 Attorney for Plaintiff
20 JOSE AGUILAR
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