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

FRANZ CHAVEZ HIDALGO, an
individual; on behalf of himself and all
others similarly situated;

Plaintiff,

v.

OROZCO'S AUTO SERVICE, INC., a
California Corporation; SERVANDO
OROZCO, an individual; CINDY
OROZCO, an individual; and DOES 1 to
100, inclusive;

Defendants.

Case Number: 22STCV21211

[Honorable Stuart M. Rice; Department 1]

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

*[Filed concurrently with Declaration of Sarkis
Sirmabekian; Declaration of Taylor Mintzer; and
[Proposed] Order]*

Hearing:

Date: January 22, 2024

Time: 10:30 a.m.

Dept.: 1

Complaint Filed: June 29, 2022

TO ALL PARTIES HEREIN AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 22, 2024 at 10:30 a.m., or as soon thereafter as the matter can be heard in Department 1 of this Court, located at 312 N. Spring St., Los Angeles, CA 90012, Plaintiff Franz Chavez Hidalgo, (“Plaintiff”) individually and on behalf of a similarly situated class of individuals (the “Class Members”), will and hereby does, move this Court for the following:

1. Final approval and certification of the Class as described in the Class Action Settlement and Release (“Settlement Agreement” or “Settlement”) (attached as Exhibit “1” to the Declaration of Sarkis Sirmabekian filed concurrently herewith (“Sirmabekian Decl.”) and final approval of the Settlement reached by Plaintiff, on behalf of himself and the approximately 119 Class Members who were non-exempt employees of Defendant and worked for Defendant in California from April 2, 2017 to May 11, 2022 in exchange for \$130,000.00 (“Gross Settlement Amount”) to be paid by Defendant.

2. Final approval of the Gross Settlement Amount of \$130,000.00.

3. Final approval of Franz Chavez Hidalgo as named Plaintiff.

4. Final approval of Sarkis Sirmabekian of Sirmabekian Law Firm, P.C. and Sarkis Sirmabekian of Sirmabekian Law Firm, P.C. as “Class Counsel.”

5. Final approval of the settlement of claims as set forth in the Settlement Agreement.

6. Final approval of the Settlement Administration Costs in the amount of \$10,000.00 with payment coming out of the Gross Settlement Amount (“Settlement Administration Costs”).

7. Final approval of the payment of the Class Representative Service Awards to the named Plaintiff in the amount of \$6,500.00 each, with payment coming out of the Gross Settlement Amount.

8. Final approval of the application for payment to Class Counsel of reasonable attorneys’ fees in the amount of \$43,333.33 and litigation Costs in an amount of \$5,000.00, with both coming out of the Gross Settlement Amount.

9. Final approval of the allocation of \$10,000.00 for settlement of penalties under the Private Attorney General Act (“PAGA”) with \$7,500.00 (75%) of that amount to be paid to the

1 State of California's Labor & Workforce Development Agency ("LWDA") and the remaining
2 \$2,500.00 (25%) to be included as part of the Net Settlement Amount to be made available for
3 distribution to the Allegedly Aggrieved Employees employed during the PAGA Period.

4 10. Final approval of the Net Settlement Amount, which shall be distributed to
5 Allegedly Aggrieved Employees according to the terms of the Settlement preliminarily approved
6 by the Court.

7 This motion is based upon this Notice, the attached Memorandum of Points and Authorities,
8 Declarations of Sarkis Sirmabekian, Declaration of Plaintiff Franz Chavez Hidalgo, and
9 Declaration of Taylor Mintzer of Phoenix Settlement Administrators (the "Settlement
10 Administrator" or "PSA") in support thereof and all matters of which this Court may take judicial
11 notice, including all pleadings in this matter, and such evidence and argument as the Court may
12 permit at the hearing.

13
14 Respectfully Submitted,
15 SIRMABEKIAN LAW FIRM, P.C.

16 DATED: December 26, 2023

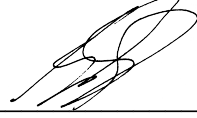
17 By: 
18 SARKIS SIRMABEKIAN, ESQ.
19 Attorney for Plaintiff and the
20 proposed Class
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court should grant final approval of the Settlement of the claims of this lawsuit
4 against Defendant, a copy of which is attached as “Exhibit 1” to the Declaration of Sarkis
5 Sirmabekian (“Sirmabekian Decl.”). Including the named Plaintiff, the Class consists of 119 Class
6 Members, all of whom are/were hourly non-exempt employees of Defendant within the State of
7 California any time during the Class Period.

8 Given the uncertainty and risk faced by the named Plaintiff and Defendant, the Gross
9 Settlement Amount of \$130,000.00, which will result in an average pre-tax payment of
10 approximately \$505.60 to each Participating Class Member is fair, adequate, and reasonable. The
11 Court should therefore grant final approval of the Settlement.

12 **II. SUMMARY OF THE FACTS**

13 On June 29, 2022, Plaintiff filed a class action complaint against Defendants in the
14 Superior Court of the State of California, County of Los Angeles, on behalf of himself and all
15 others similarly situated. Plaintiff’s complaint alleged claims for (1) Violation of Private Attorney
16 General Act of 2004, California Labor Code § 2698, *et seq.*, (2) failure to pay minimum wage
17 (Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198, *et seq.*); (3) failure to pay overtime
18 compensation (Cal. Lab. Code §§ 1198 & 510, *et seq.*); (4) failure to pay meal period
19 compensation (Cal. Lab. Code §§ 226.7, 512(a) & 1198, *et seq.*); (5) failure to pay rest period
20 compensation (Cal. Lab. Code §§ 226.7 & 1198, *et seq.*); (6) failure to furnish accurate wage and
21 hour statements (Cal. Lab. Code § 226); (7) failure to maintain accurate payroll records Cal. Lab.
22 Code § 226, 1174(d) and 1198, *et seq.* (8) failure to pay wages upon discharge (Cal. Lab. Code
23 §§ 201 & 202, *et seq.*); (9) failure to indemnify (Cal. Lab. Code § 2802); (10) Unfair Competition
24 (Business and Professions Code § 17200, *et seq.*); and Sirmabekian Decl. ¶ 5.

25 In general, and as set forth in detail in the Motion for Preliminary Approval of Class
26 Action Settlement, Class Counsel investigated the facts of the class action, conducted an extensive
27 review and analysis of the voluminous documents exchanged through formal and informal
28 discovery, interviewed Class Members and diligently pursued an investigation of the class claims

1 against the Defendant. *Id.* at ¶¶ 6.

2 Defendant denies any liability or wrongdoing of any kind associated with the claims
3 alleged in the class action, and further contend that, for purposes other than settlement, this action
4 is not appropriate for class treatment. *Id.* at ¶ 7. Defendant contends, among other things, that it
5 complied at all times with the applicable state and federal law. *Id.* Based upon this extensive,
6 independent investigation and evaluation, the named Plaintiff and Class Counsel believe that the
7 proposed Settlement Agreement is fair, reasonable and adequate, and is in the best interest of the
8 Class Members in light of all known facts and circumstances, including the risk of denial of a
9 motion for class certification, the defenses asserted by Defendant, and any potential appellate
10 issues likely to result. *Id.*

11 The Parties participated in a private mediation session with the Nikki Tolt, Esq. of ACT
12 Mediation on May 11, 2022, and resolved the matter at the mediation. Sirmabekian Decl. ¶ 8.
13 Through the mediator, the parties discussed at length the strength and weakness of their respective
14 positions, and the likelihood of the named Plaintiff being able to certify the class claims and
15 prevail at trial. *Id.* The Parties entered into a Memorandum of Understanding regarding the
16 material terms for a proposed class action settlement that would fully resolve this matter. *Id.*
17 Ultimately, the Settlement Agreement was executed pursuant to the terms reached at mediation
18 and as set forth in the Memorandum of Understanding. *Id.*

19 **III. SUMMARY OF THE PROPOSED ORDER**

20 **A. The Class**

21 In connection with preliminary approving the Settlement, the Court conditionally defined
22 the Class as “All persons employed by OAS in California and classified as current and former
23 hourly non-exempt employees who worked for OAS during the period from April 2, 2017 through
24 May 11, 2022”. Sirmabekian Decl. ¶ 9.

25 On August 10, 2023, Notice Packets were mailed to 119 Class Members with addresses
26 contained in the Class List via First Class mail or updated via NCOA. Declaration of Mitzner
27 Regarding Notice and Settlement Administration (“Mitzner Decl.”) ¶¶ 3-5. As of the date of the
28 Mitzner Decl., Phoenix Settlement Administrators received no objections to the Settlement, no

1 Requests for Exclusion from the Settlement, and no disputes to the Settlement. *Id.* at ¶¶ 8-10.
2 Notice was mailed to Class Members in both English and Spanish in order to ensure maximum
3 clarity and understanding by all Class Members. *Id.* at ¶ 5.

4 **B. The Settlement Fund and the Payment of Claims**

5 By way of this Motion, Plaintiff request that the Court award the amounts set forth herein
6 - which include the requested Settlement Administration Costs of \$6,500.00, Attorneys' fees of
7 \$43,333.33 and litigation costs in the amount of \$5,000.00, the Class Representative Service
8 Awards of \$5,000.00 to the named Plaintiff, and the \$10,000.00 PAGA Allocation, \$7,500.00 of
9 which will be paid to the LWDA (i.e. LWDA Payment).

10 Under the terms of this Settlement, the highest settlement share to be paid to Participating
11 Class Members is approximately \$2,440.00 and the average settlement share to be paid to
12 Participating Class Members is \$505.60. Mitzner Decl. ¶ 13. Class Counsel will give notice to
13 the LWDA of any order issued by the Court.

14 **C. Release of Claims**

15 Plaintiff and his or her respective former and present spouses, representatives, agents,
16 attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released
17 Parties from all claims, transactions, occurrences [that occurred during the Class Period],
18 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged,
19 based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or
20 reasonably could have been, alleged based on facts contained in the Operative Complaint,
21 Plaintiff's PAGA Notice, [or ascertained during the Action and released under 6.2, below].
22 ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this
23 Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits,
24 social security benefits, workers' compensation benefits that arose at any time, or based on
25 occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or
26 law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
27 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
28 notwithstanding such different or additional facts or Plaintiff's discovery of them.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,

1 which reads: A general release does not extend to claims that the creditor or releasing party does
2 not know or suspect to exist in his or her favor at the time of executing the release,
3 and that if known by him or her would have materially affected his or her settlement
4 with the debtor or Released Party. Settlement Agreement ¶ 6.1.

5 All Participating Class Members, on behalf of themselves and their respective former
6 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
7 release Released Parties from (i) all claims that were alleged, or reasonably could have been
8 alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in
9 Section 6.3 of this Agreement, Participating Class Members do not release any other claims,
10 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
11 Housing Act, unemployment insurance, disability, social security, workers' compensation, or
12 claims based on facts occurring outside the Class Period. Settlement Agreement ¶ 6.2.

13 All Non-Participating Class Members who are Aggrieved Employees are deemed to
14 release, on behalf of themselves and their respective former and present representatives, agents,
15 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
16 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
17 Period facts stated in the Operative Complaint and the PAGA Notice. Settlement Agreement ¶
18 6.3.

19 **IV. THE NOTICE PROCEDURE AND SETTLEMENT ADMINISTRATION**

20 This Court approved the form and content of the Notice Packet used to inform Class
21 Members of their rights concerning participation in the Settlement. Order Approving Plaintiff's
22 Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval
23 Order") ¶ 3. Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator
24 mailed Notice Packets to 119 Class Members on August 10, 2023. Mitzner Decl. ¶ 5. As of the
25 date of the Mitzner Decl., only two (2) Notice Packets are considered undeliverable. *Id.* at ¶ 7. In
26 total, only 16 Notice Packets were returned to PSA. *Id.* at ¶ 6. For the 16 Notice Packets returned
27 from the Post Office without a forwarding address, PSA attempted to locate a current mailing
28 address using TransUnion TLOxp, one of the most comprehensive address databases available
for skip tracing. *Id.* Of the 16 Notice Packets that were skip traced, 16 updated addresses were
obtained and the Notice Packet was promptly re-mailed to those Class Members via first class

1 mail. *Id.*

2 The Notice Packet and the means by which it was disseminated to the Class Members
3 satisfy the California Rules of Court, Rule 3.766(d), which states:

4 The content of the class notice is subject to court approval. If class members are to
5 be given the right to request exclusion from the class, the notice must include the
6 following: (1) A brief explanation of the case, including the basic contentions or
7 denials of the parties; (2) A statement that the court will exclude the member from
8 the class if the member so requests by a specified date; (3) A procedure for the
9 member to follow in requesting exclusion from the class; (4) A statement that the
10 judgment, whether favorable or not, will bind all members who do not request
11 exclusion; and (5) A statement that any member who does not request exclusion
12 may, if the member so desires, enter an appearance through counsel.

13 The Notice Packet further satisfies California Rules of Court, Rule 3.769(f) which states:

14 If the court has certified the action as a class action, notice of the final approval
15 hearing must be given to the class members in the manner specified by the court.
16 The notice must contain an explanation of the proposed settlement and procedures
17 for class members to follow in filing written objections to it and in arranging to
18 appear at the settlement hearing and state any objections to the proposed settlement.

19 A review of the Notice Packet disseminated to Class Members reveals that it contained all
20 of the required components. Specifically, it includes: (1) the definition of the Class; (2) a
21 description of the substantive issues and proceedings to date; (3) a neutral description of the
22 Settlement; (4) the amount of attorneys' fees and costs sought; (5) information regarding the right
23 to opt out of the Settlement, the procedure for doing so and the date by which such action must
24 be taken; (6) information regarding the right to challenge one's number of workweeks, the
25 procedure for doing so and the date by which such action must be taken; (7) information regarding
26 the right to participate in the Settlement, the procedure for doing so and the date by which such
27 action must be taken, if any; (8) information regarding the right to file an objection to the
28 Settlement, the procedure for doing so and the date by which such action must be taken; (9) the
consequences of participating in the Settlement, including the fact that one will be bound by the
judgment; (10) the date, time and place of the final approval hearing; (11) the identity of the
named Plaintiff; and (12) contact information of Class Counsel and the Settlement Administrator.

1 Sirmabekian Decl. ¶ 22. The Notice Packet provided all necessary information to Class Members.
2 Sirmabekian Decl. ¶ 23.

3 The Notice Packet includes all required information and thus satisfies all necessary
4 requirements, resulting in the best practicable notice under the circumstances. See *Phillips*
5 *Petroleum Co. v. Shutts* 472 U.S. 797, 811-12 (1985) (explaining that "best practicable" notice
6 provides a description of the litigation and an explanation of the right to opt out or object); *In re*
7 *Cell phone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1390-91 (2010) (upholding a
8 short-form notice that simply directed class members to a website for full details of a settlement).

9 The Class List contained data for 119 Class Members. From the 119 Class Members
10 identified on the Class List, there is a 100% participation rate. More specifically, of the 119 Class
11 Members identified on the Class List, there are no objections to the Settlement, no disputes to the
12 Settlement, and no Requests for Exclusion from the Settlement. Mitzner Decl. ¶¶ 8-11. This
13 speaks to the fairness of the Settlement. See, e.g. *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-
14 19 (3d Cir. 1990) (explaining that 29 objections out of a 281-member class "strongly favors
15 settlement").

16 According to the terms of the Settlement preliminarily approved by the Court, the Gross
17 Settlement Amount is inclusive of all payments to Participating Settlement Class Members, the
18 Class Representative Service Awards to the Named Plaintiff, Settlement Administration Costs to
19 the Settlement Administrator, Class Counsels' attorneys' fees and costs, the payment to the
20 LWDA, and employment taxes, including the employee FICA, FUTA, and SDI contributions, on
21 the wage portion of the Individual Settlement Payments. The Gross Settlement Amount does not
22 include the employer's share of payroll taxes on the portion of payments to Class Members
23 allocated as wages, which Defendant shall be separately responsible for paying. Sirmabekian Decl.
24 ¶ 10-11.

25 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

26 The Court has already found that the Settlement is "fair, adequate, and reasonable to the
27 Class. Sirmabekian Decl. ¶ 24. The Settlement provides a meaningful benefit to Participating
28 Class Members, with approximate average pre-tax Individual Settlement Payments of \$505.60

(and the highest Individual Settlement Payment of \$2,440.00), which is a very favorable recovery for the claims at issue in this case. Sirmabekian Decl. ¶ 25.

Court approval is required for any settlement of a class action. See California Rules of Court, Rule 3.769; *In re Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009). Trial courts have broad powers and discretion to determine whether proposed class settlements should be approved. *7-Eleven Owners for Fair Franchising v. Southland Corp.* 85 Cal. App. 4th 1135, 1146 (2000); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). The ultimate test for final court approval of a class settlement is whether the agreement "is fair, reasonable, and adequate." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001). In this regard, the California Court of Appeal explains:

The trial court must determine whether a class action settlement is fair and reasonable, and has broad discretion to do so. That discretion is to be exercised through the application of several well-recognized factors. The list, which 'is not exhaustive and should be tailored to each case, includes 'the strength of Plaintiff, case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement'...

'The most important factor is the strength of the case for Plaintiff on the merits, balanced against the amount offered in settlement.'

Clark v. Am. Residential Servs. LLC, 175 Cal. App. 4th 785, 799 (2009) (internal citations omitted). See also *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008). An informed evaluation of a proposed settlement also requires "an understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Clark, supra* at 799 (citing *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 120 (2008)).

As a threshold matter, a class settlement is presumed to be fair when "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th 1146 (quoting *Dunk v. Ford Motor* 48 Cal. App. 4th 1794, 1802 (1996)). Additionally, in

evaluating the fairness of a settlement, "[d]ue regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk*, 48 Cal. App. 4th at 1801. Accordingly, a court should take into account the informed recommendations of counsel and the parties. *Vulcan Soc'y of Westchester County, Inc. v. Fire Dep't of the City of White Plains*, 505 F. Supp. 955, 961 (S.D.N.Y. 1981). As explained below, this case has been handled by experienced class-action counsel on all sides, who conducted arms-length settlement negotiations and eventually reached an agreement on an overall amount that was fair and reasonable. Sirmabekian Decl. ¶ 26. Indeed, respective counsel and their clients all agree that the proposed Settlement is fair, adequate, and reasonable, and that the chosen distribution mechanism ensures an appropriate allocation of the overall Settlement. *Id.*

A. Strengths and Weakness of the Action

As set forth in detail in the Plaintiff's Motion for Preliminary Approval, given the reasonable arguments that can be made by the parties, settlement was an attractive option for both sides. In general, the named Plaintiff contends that Defendant violated the California Labor Code by maintaining company-wide employment practices that, among other things, deprived Class Members of minimum wages, overtime wages, meal period compensation and/or rest period compensation. Sirmabekian Decl. ¶ 27. For example, Plaintiff allege that they, along with other Class Members, routinely worked periods of eight hours or more per work day, without receiving overtime compensation and were not provided with a 30-minute meal period for every five hours worked. Sirmabekian Decl. ¶ 28. Defendant denies Plaintiff's allegations in full and maintains that it engaged in no unlawful activities whatsoever. *Id.*

Here, Settlement is an attractive option for the Class Members. Sirmabekian Decl. ¶ 29. As set forth in the Motion for Preliminary Approval, Class Counsel reviewed the extensive materials provided by Defendant and acknowledges that Defendant would likely argue that analysis of alleged unpaid minimum wages, overtime wages, meal period compensation and/or rest period compensation would require an individualized inquiry of each employee to determine whether there was any meal period liability that would then require payment of the meal period premiums, such that class certification would not be proper for these claims. *Id.*

1 This is also true in light of the fact that Plaintiff realize that penalties are extremely
2 discretionary, and are subject to immense reduction by the Court, based on various factors that
3 are different with each court. Sirmabekian Decl. ¶ 30. It is additionally important to note that
4 Defendant will claim penalties are derivative of the alleged failure to pay minimum wage,
5 overtime, meal period, and rest period claims, as described above. *Id.* Should Plaintiff fail to
6 prevail on the claims for damages, then the Class would not be entitled to penalties. *Id.* This
7 decreases the chances of ultimately obtaining an award of penalties, and factored into Plaintiff's
8 analysis of weighing risks and benefits of settlement at this juncture. *Id.* Defendant will contend
9 that wage statement penalties were not the result of a "knowing and intentional failure" by
10 Defendant to comply with *Cal. Lab. Code* § 226(a) as required by the statute, and that the
11 employees did not suffer injury for purposes of recovering penalties as required under *Cal. Lab.*
12 *Code* §226(e)(2)(B)(i) and (ii). *Id.*

13 In regards to Plaintiff's PAGA claims, Settlement is again an attractive option, given that
14 the Court would have discretion to reduce such an award based on whether the amount of the
15 award would be "unjust, arbitrary and oppressive, or confiscatory." *Cal. Lab. Code* § 2699(e)(2).
16 Sirmabekian Decl. ¶ 31.

17 **B. The Risk, Expense, Complexity, and Duration of Class Litigation**

18 As a class action, this case presented a clear risk of lengthy and expensive litigation.
19 Defendant denies that the litigation would have been appropriate for class treatment under *Code*
20 *of Civil Procedure* § 382, except pursuant to a settlement. This action was first commenced on
21 June 22, 2022, and by the time the Court hears this Motion, the parties will have been litigating
22 the matter for over a year. Sirmabekian Decl. ¶ 32. It would most likely be at least another two
23 years before this case even went to trial. *Id.* In the absence of settlement, the parties would have
24 to complete discovery, the named Plaintiff would also have to file a motion for class certification,
25 and the parties may file cross-motions for summary judgement-all lengthy and expensive
26 processes. *Id.*

27 From the outset, Defendant made it clear that they would vigorously defend themselves
28 against the class claims, including opposing class certification. Sirmabekian Decl. ¶ 33. Class

Counsel carefully reviewed and assessed the state of the law on the payment of minimum wages, overtime wages, meal and rest period compensation, and class certification in California. Sirmabekian Decl. ¶ 34. In light of the uncertainty, expense, duration, and complexity of litigation, the named Plaintiff elected to resolve and settle this dispute. *Id.*

It is the assessment of Class Counsel that, absent settlement, the Class would likely have been certified (if at all) only after a marathon of briefs. Sirmabekian Decl. ¶ 35. Furthermore, Defendant's proffered defenses were likely to have presented a serious challenge to the merits of some of the claims in the case. *Id.* As stated above, there are substantial risks and uncertainty in the case with respect to the relief sought. *Id.* In addition, it would have been difficult to present evidence and testimony with respect to events that occurred years ago, as witnesses' recollections would not be fresh and documents might be difficult to secure. *Id.* Simply put, relief for Class Members, if achievable, would have come years from now if the litigation were pursued. *Id.* The Settlement eliminates that uncertainty and time delay, advances the interests of the Class Members, and is consistent with the public policies underlying the enforcement of labor laws. *Id.*

As mentioned above, the negotiated Settlement provides relief to the Class Members considering that a less amount of time would be required to obtain a judgment after trial. Sirmabekian Decl. ¶ 36. Indeed, to ultimately prevail, the Class would have to be certified, time-consuming and expensive discovery would be needed, the named Plaintiff may have to successfully oppose a summary-judgment and/or other substantive motions, the named Plaintiff would have to win at trial, and would have to survive all post-trial motions and appeals. *Id.* The cost of these hurdles would be substantial and would take several years. *Id.* There is no question that on balance, the Settlement, which provides Class Members with a very favorable recovery for the claims at issue in this case greatly outweighs the prospects of proceeding to a trial in the distant future with an uncertain outcome. *Id.*

C. The Amount Offered in the Settlement

The named Plaintiff and Defendant, and their respective attorneys, conducted serious, good-faith, and non-collusive negotiations to settle this dispute. Sirmabekian Decl. ¶ 37. The parties engaged the services of a private mediator to help bring the matter to closure. *Id.* In the

1 end, a compromise was reached that is now before the Court. The Settlement will create a Gross
2 Settlement Amount of \$130,000.00 to be distributed to Class Members, as well as to pay
3 attorneys' fees and costs, the Class Representative Service Awards to the Named Plaintiff,
4 Settlement Administration Costs, LWDA and PAGA payments. *Id.* On average, Participating
5 Class Members will receive an estimated pre-tax payment of \$505.60, which is a substantial
6 recovery for the Class Members. Mitzner Decl. ¶ 13. On average all Allegedly Aggrieved
7 Employees employed during the PAGA Period will receive an average payment of \$38.46.
8 Mitzner Decl. ¶ 14. Indeed, under the Ninth Circuit opinion in *Rodriguez v. West Publishing*
9 *Corp.*, 563 F.3d 948 (9th Cir. 2009), class settlements of this nature should focus on the recovery
10 of actual losses rather than on the recovery of penalties. Viewed in that light, the Settlement is
11 entirely reasonable.

12 In deciding to settle the claim for \$130,000.00, the named Plaintiff exercised their best
13 business judgment, specifically considering that a large portion of those damages stemmed from
14 penalties, which would not be recoverable absent proving liability. Sirmabekian Decl. ¶ 39.
15 Plaintiff also considered the costs involved and the risks inherent in continuing litigation. *Id.*
16 Specifically, the named Plaintiff anticipated taking multiple depositions of Defendant's owners,
17 directors, and other witnesses in order to meet their burden for class certification should this case
18 not have settled when it did. *Id.* The named Plaintiff have already made substantial investments
19 litigating to this point, expending substantial money towards court fees, litigation costs, and the
20 cost of mediation. *Id.* The named Plaintiff felt that a settlement which guaranteed recovery, rather
21 than continued litigation without any guarantees of success was fair and reasonable. *Id.*

22 **D. Sufficient Investigation Was Conducted to Allow an Informed Decision**

23 In this matter, the parties engaged in substantial informal discovery, permitting the named
24 Plaintiff to make an informed evaluation of the Settlement. Sirmabekian Decl. ¶ 40. Defendant
25 provided the named Plaintiff with relevant information regarding the employment records of
26 Plaintiff and the Class. *Id.* Nevertheless, the law is clear that exhaustive, protracted, and costly
27 discovery need not be conducted in a class action before a settlement can be reached. *7-Eleven*
28 *Owners for Fair Franchising, supra* at 1150. In other words, "[i]n the context of class action

1 settlements, 'formal discovery is not a Necessary ticket to the bargaining table' where the parties
2 have sufficient information to make an informed decision about settlement." *Linney v. Cellular*
3 *Alask P'ship* 151 F.3d 1234, 1239 (9th Cir. 1998). Here, there was more than sufficient
4 investigation to warrant the Settlement.

5 **E. The Class Members Are Represented by Competent and Experienced**
6 **Counsel**

7 Class Counsel Sarkis Sirmabekian of Sirmabekian Law Firm, P.C. and Sarkis
8 Sirmabekian of Sirmabekian Law Firm, P.C. are experienced attorneys who specializes in
9 employment litigation and class actions, and are of the opinion that the Settlement is fair,
10 adequate, and a result of lengthy and detailed analysis. Sirmabekian Decl. ¶ 41. Furthermore,
11 Class Counsel believes that the Net Settlement Amount made available to Participating Class
12 Members represents a substantial percentage of the probable monetary relief that would be
13 recovered after the completion of protracted discovery, full trial, and all appeals. *Id.*

14 **F. The Notice Program and the Reaction of Class Members**

15 This Court approved the content of the Notice Packet used to inform Class Members of
16 their rights to participate in the Settlement. This Court also approved Phoenix Settlement
17 Administrators to act as the Settlement Administrator. The Mitzner Decl. filed herewith provides
18 the detailed settlement-administration report, including a statement that there have been no
19 objections or disputes, and no requests for exclusion from the Settlement.

20 **VI. THE REQUESTED SERVICE AWARDS TO THE NAMED PLAINTIFF ARE**
21 **REASONABLE**

22 Plaintiff in class action lawsuits are eligible for reasonable incentive payments as
23 compensation "for the expense or risk they have incurred in conferring a benefit on other members
24 of the class." *Munoz V. BCI Coca-Cola Bottling Company of Los Angeles* 186 Cal.App.4th 399,
25 412 (2010). Courts routinely grant approval of class action settlement agreements containing
26 enhancements for the class representatives, which are necessary to provide incentive to represent
27 the class, and are appropriate given the benefit the class representatives help to bring about for
28 the class. Class Representative Service Awards are especially appropriate where the plaintiff is a

1 present or past employee whose present position or employment credentials or recommendation
2 may be at risk by reason of having prosecuted the suit, and therefore lends his or her name and
3 efforts to the prosecution of litigation at some personal peril. *Id.*

4 The Settlement provides that the named Plaintiff shall receive Class Representative
5 Service Awards in the amount of \$5,000.00 each in recognition of their efforts and risks in
6 prosecuting this matter. The requested Awards are intended to recognize: (1) the substantial time
7 and effort expended on behalf of the Class; (2) the risks faced as a result of bringing this action;
8 (3) the fact that Plaintiff put the interest of the Class Members ahead of their own; and (4) the
9 substantial benefit conferred upon the Class as a result of their actions.

10 The named Plaintiff meets this test. During the course of this Action, the named Plaintiff
11 actively participated in making decisions in this case, including settlement. (See Declaration of
12 Plaintiff Franz Chavez Hidalgo filed in support of this Motion). He performed a number of tasks,
13 including the following: (a) participating in meetings and telephone calls, including a full day
14 mediation session; (b) provided information about witnesses and other Class Members; (c)
15 searched for and produced relevant documents; (d) reviewed documents; (f) participated in
16 settlement negotiations; (g) reviewed settlement documents; and (h) reviewed declarations in
17 support of this motion. *Id.* The named Plaintiff faced the real risk that future employers may not
18 hire them because they lent their names as the named Plaintiff in this case. The requested Service
19 Awards are thus reasonable under California law. *Clark v. American Residential Services,*
20 *LLC* 175 Cal.App.4th 785, 805-806 (2009). Because this Action would not have been possible
21 without their participation, the Court should acknowledge and reward the named Plaintiff for their
22 significant contribution.

23 **VII. CLASS COUNSEL IS ENTITLED TO RECOVER ITS REASONABLE FEES AND**
24 **COSTS INCURRED ON BEHALF OF THE CLASS**

25 Class Counsel's request for Attorneys' Fees in the amount of \$43,333.33 which constitutes
26 one-third of the \$130,000.00 Gross Settlement Amount, is well within the range of reasonableness
27 under applicable standards. Based thereon, Class Counsel respectfully requests that the Court
28 enter an order approving the attorneys' fees requested.

1 **A. Legal Standard for Awarding Attorneys' Fees in a Class Action Settlement**

2 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
3 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
4 *Beneficial Cal., Inc.* 82 Cal.App.4th 19, 41 (2000) (citations omitted) & *Ketchum v. Moses* 24
5 Cal. 4th 1122, 1132 (2001) ("The experienced trial judge is the best judge of the value of
6 professional services rendered in his court Where the amount of a settlement is a "certain easily
7 calculable sum of money"). California courts may calculate attorneys' fees as a reasonable
8 percentage of the settlement created. *Dunk, supra* at 1808. The "percentage fee" approach is
9 preferred in class actions because "it better approximates the workings of the marketplace than
10 the lodestar approach." *Lealao, supra* at 49. California law provides that an award of attorneys'
11 fees should be equivalent to fees paid in the legal marketplace to compensate for the result
12 achieved and risk incurred. *Id.* at 47. Fee awards that are too small will "chill the private
13 enforcement essential to the vindication of many legal rights and obstruct the representative
14 actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at
15 53. Therefore, fees in class actions should approximate the probable terms of a contingent fee
16 contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 48.

17 **B. The Percentage Fee Method Is Appropriate**

18 California and federal courts have long recognized that an appropriate method for
19 determining the award of attorneys' fees is based on a percentage of the total value of benefits
20 afforded to class members by the settlement.; *Vincent v. Hughes AirWest, Inc.* (9th Cir. 1977) 557
21 F.2d 759, 769 & *Serrano v. Priest* (1977) 20 Cal.3d 25, 34. The purpose of this equitable doctrine
22 is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary
23 does not bear the entire burden alone. *Vincent, supra* at 769. The propriety of calculating and
24 awarding attorneys' fees as a percentage of a monetary fund that has, by litigation, been preserved
25 or recovered for the benefit of others, was confirmed by the California Supreme Court in *Laffitte*
26 *v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480. There, the Court ruled that while trial courts have
27 discretion to conduct a lodestar-cross-check on a percentage fee, they also retain the discretion to
28

1 forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested
2 percentage fee. *Id.*

3 California courts have consistently recognized that class litigation is increasingly
4 necessary to protect the rights of individuals whose injuries and/or damages are too small to
5 economically justify individual representation. Accordingly, in determining a reasonable
6 common fund fee award, courts award fees to serve as an economic incentive for lawyers to bring
7 class action litigation in order to achieve increased access to the judicial system for meritorious
8 claims and to enhance deterrents to wrongdoing. This is especially true in situations where the
9 multiple similar alleged wrongs would not be economically feasible to pursue individually, such
10 as in this case. See A: Conte, *Attorney Fee Awards*, 2nd Ed. 1993, 104, p.6. Compensating class
11 counsel in class litigation on a percentage fee basis also makes good sense because it aligns the
12 interests of class counsel and absent class members in achieving the maximum possible resolution
13 of the case; and it encourages the most efficient and expeditious resolution of the litigation by
14 providing an incentive for early, yet reasonable, settlement.

15 Furthermore, a percentage fee award is not dependent on a determination of the actual
16 amount claimed out of the common fund by those entitled-it is the creation of the fund that is the
17 crucial fact. The California Supreme Court has expressly held that "it is equitable that [the
18 attorney's compensation and expenses should come from the entire fund saved for all classes
19 concerned before it is distributed." *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274,
20 284. Also see *Lealao*, *supra* at 51 ("in a traditional common fund case, [a percentage-based fee]
21 may be calculated on the basis of the total fund made available rather than the actual payments
22 made to the class."

23 Like most other class action attorneys representing employees, Class Counsel here took
24 on this case on a contingency basis, and in doing so, faced the prospect of a drawn-out battle with
25 Defendant, who ended up retaining prominent counsel, with heavy resources, to defend it in this
26 matter. Besides risking no compensation for investing valuable and significant time, Class
27 Counsel also took on the risk of not recouping its litigation expenses, if the results were
28 unsuccessful. See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002) (discussing the risks

of engaging in litigation without certainty of compensation). The successful results achieved in this case merits that Class Counsel be justly awarded for taking on these significant risks.

C. The Attorneys' Fees Requested Are Reasonable

The amount of Attorney's fees sought by Class Counsel falls well within the zone of reasonableness whichever method this Court applies to evaluate the attorneys' fees requested. In *Laffitte v. Robert Half International Inc.*¹ Cal.5th 480 (2016), the California Supreme Court joined "the overwhelming majority" of the nation's courts in holding that judges may award fees in class actions as a percentage of a common fund created for the class' benefit (the "percentage of the recovery method"). The Court made clear that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

i. The Requested Attorneys' Fees Are Well Within the Range of Reasonableness Under the "Percentage of the Fund" Method

The amount of attorneys' fees sought here - which is approximately 1/3 of the total Gross Settlement Amount - are well within the range deemed reasonable under the "percentage of the fund" method in similar wage and hour cases. Under the "percentage of the fund" approach, "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003) (quoting *Boeing Co.*, 444 U.S. at 478). "When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required; (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases." *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482,492 (E.D. Cal. 2010).

Applying the above standards, the attorneys' fees requested here amounting to approximately 1/3 of the total Gross Settlement Amount are reasonable. It is important to underscore that the claims at issue here carried a risk of loss at the appellate stage, class certification stage or on the merits. Notwithstanding these risks, Class Counsel (who undertook

1 representation on a contingency basis and advanced all litigation costs) was able to resolve the
2 class claims with a reasonable settlement. See e.g. *Wade v. Minatta Transp. Co.*, 2012 U.S. Dist.
3 LEXIS 12056, *34 (N.D. Cal. Feb. 1, 2012) ("there are a number of circumstances that justify
4 increasing the fee award beyond the 25% benchmark" including the fact the settlement amount is
5 "not merely the product of a large class, but reflects the work performed by Plaintiff's counsel.").

6 Moreover, the percentage sought by Class Counsel (i.e. 1/3) is consistent with judicially
7 approved awards in other similar wage and hour cases. See e.g. *Downs v. US Foodservice, Inc.*,
8 Case No. 3: 10-cv-02163 EMC (N.D. Cal., September 4, 2012); *Bond v. Ferguson Enterprises,*
9 *Inc.*, 2011 WL 2648879, * 12 (E.D. Cal., June 30, 2011) (awarding attorney's fees amounting to
10 30% of a \$2.25 million settlement in a trucker meal break class action, and concluding "Plaintiff
11 request for a multiplier of 1.75 of its lodestar is reasonable."); *Knight v. Red Door Salons, Inc.*,
12 2009 U.S. Dist. LEXIS 11149 (N.D. Cal. Feb. 2, 2009) (awarding 30% of a \$500,000 common
13 fund in attorneys' fees in a wage and hour class action); *Martin v. FedEx Ground Package System,*
14 *Inc.*, 2008 WL 5478576, *8 (N.D. Cal.) (trucker meal break class action where the court approved
15 attorneys' fees of 1/3 of common fund stating, *inter alia*, "[because the lodestar cross check
16 revealed a relatively low multiplier of 1.48, the court is satisfied that counsel's requested fee award
17 is not unreasonable").

18 Thus, applying the above standards here, the attorneys' fees request for 1/3 of the total
19 Gross Settlement Amount are well within the zone of reasonable attorneys' fees awards for the
20 quality of services Class Counsel rendered and the results obtained for the Class.

21 **ii. The Requested Attorneys' Fees Are Also Well Within the Zone of**
22 **Reasonableness Under the Lodestar Method**

23 While the percentage fee approach is endorsed as the better approximation of the workings
24 of the marketplace than the lodestar approach, when a common fund is involved, courts may also
25 use the lodestar method to "cross-check" the results of the other. See *Laffitte, supra* at 505
26 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure
27 of the time spent by counsel into the trial court's reasonableness determination..."). Importantly,
28 "the lodestar calculation ... does not override the trial court's primary determination of the fee as

1 a percentage of the common fund and thus does not impose an absolute maximum or minimum
2 on the potential fee award." *Id.* The lodestar is calculated based on reasonable hours at prevailing
3 hourly rates for each attorney and counsel is entitled to compensation for every hour reasonably
4 spent on the matter. *Ketchum, supra* 1131-1133. The reasonableness of hours is assessed by "the
5 entire course of the litigation, including pretrial matters, settlement negotiations, discovery,
6 litigation tactics, and the trial itself." *Vo v. Las Virgenes Municipal Water Dist.* 79 Cal.App.4th
7 440, 447 (2000). In awarding attorneys' fees, the aim is to mirror "the established practice in the
8 private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a
9 premium over their normal hourly rates for winning contingency cases." *Ketchum, supra* at 1132-
10 33.

11 Here, Class Counsels' lodestar to date totals \$74,040.00 (not including the time required
12 to bring this matter to close). *Sirmabekian Decl.*, ¶¶ 42, 54. The reasonableness of Class Counsels'
13 lodestar is bolstered by the fact that Class Counsel: (1) maintained contemporaneous, detailed
14 time records, and (2) used hourly billing-rates commensurate with rates of practitioners with
15 similar experience within the California legal market, as well as rates approved as reasonable in
16 similar cases. *Id.*

17 **iii. Class Members Do Not Oppose the Requested Attorneys' Fees**

18 Another significant factor bearing on the reasonableness of the fees sought is that,
19 subsequent to receiving notice of the amount of the attorneys' fee sought, no Class Member filed
20 an objection. "The absence of objections or disapproval by class members to Class Counsel's fee
21 request further supports finding the fee request reasonable." *In re Heritage Bond Litig.*, 2005 U.S.
22 Dist. LEXIS 13555, *71 (C.D. Cal. June 10, 2005).

23 **D. The Recovery of Litigation Costs Incurred is Reasonable**

24 Class Counsel also requests reimbursement from the common fund for out of pocket
25 expenses incurred by it during this litigation, in the amount of \$5,000.00. Class Counsel is entitled
26 to recover "those out-of- pocket expenses that would normally be charged to a fee paying client."
27 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).
28

1 In the Sirmabekian and Sirmabekian declarations filed in support of this Motion for Final
2 Approval, Class Counsel detail the costs and expenses totaling to the amount sought. *Sirmabekian*
3 *Decl., Exh. 2; Sirmabekian Decl. ¶ 54.* Class Counsel's costs ended up totaling \$6,690.83, an
4 amount greater than \$5,000.00. *Id.*

5 **VIII. CONCLUSION**

6 It is respectfully submitted that the Settlement is fair, reasonable, and adequate. Under the
7 terms of the Settlement, Participating Class Members will receive on average approximately
8 \$505.60 - an amount that represents a favorable recovery for the claims at issue in this case.
9 Likewise, all Allegedly Aggrieved Employees employed during the PAGA period will receive
10 \$83.96 on average. This Settlement is particularly significant in light of the difficulty inherent in
11 certifying this case for class-wide treatment. The Court should therefore grant final approval and
12 order distribution of the Settlement funds.

13
14
15 DATED: December 26, 2023

Respectfully Submitted,
SIRMABEKIAN LAW FIRM

16 By: 
17 SARKIS SIRMABEKIAN, ESQ.
18 Attorney for Plaintiff Cynthia
19 Aroche, Carlos Diaz Moreno, and
20 David Abraham Lopez on behalf of
21 themselves and the proposed Class
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PROOF OF SERVICE
(§ 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States of America; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 3435 Wilshire Boulevard, Suite 1710, Los Angeles, California 90010.

On the below-indicated date, I served the following document:
PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;
on the interested parties in said action by placing:

___X,___ a true and correct copy,

and addressed as set forth on the attached Service List and delivered by one or more of the means set forth below:

☒ **BY ELECTRONIC SERVICE IN LIEU OF SERVICE BY MAIL, EXPRESS MAIL, OVERNIGHT DELIVERY, OR FACSIMILE TRANSMISSION:** In accordance with California Code of Civil Procedure section 1010.6, I caused the document to be sent to the person(s) below at the e-mail address(es) listed below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED: December 26, 2023
At Los Angeles, California

Grigor Gregg Sirmabekhian
Grigor Gregg Sirmabekhian

SERVICE LIST

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Labor and Workforce Development Agency Department of Industrial Relations LWDA Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, California 94612	<i>Labor and Workforce Development Agency ("LWDA") filed/served online at:</i> https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html