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

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

Plaintiff,  
  
vs.

R C FURNITURE, INC., a California  
corporation; and DOES 1 through 100, inclusive,  
  
Defendants.

Case No. 21STCV00874

*[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: March 7, 2024  
Time: 10:00 a.m.  
Dept.: SSC-14

Action Filed: January 7, 2021  
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 March  
3 7, 2024 at 10:00 a.m. in Department SSC-14 of the above-entitled Court, located at 312 N. Spring Street,  
4 Los Angeles, California 90012, Plaintiff Jose Carlos Martinez (“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 382  
7 of the California Code of Civil Procedure;
- 8 2. Confirming the appointment of Plaintiff Jose Carlos Martinez as Class Representative for  
9 settlement purposes;
- 10 3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC, and  
11 Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
- 12 4. Granting final approval of the Stipulation of Settlement (herein “Settlement”);
- 13 5. Approving an award of \$275,000.00 in attorneys’ fees to Class Counsel;
- 14 6. Approving an award of \$15,167.60 in costs to Class Counsel;
- 15 7. Approving an award of \$7,750.00 in costs to Phoenix Class Action Administration Solutions  
16 for its settlement administration services;
- 17 8. Approving an incentive payment of \$10,000.00 to Plaintiff Jose Carlos Martinez for his  
18 services as Class Representative;
- 19 9. Approving an award of \$15,000.00 to the Labor & Workforce Development Agency  
20 (“LWDA”); and
- 21 10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action  
22 Settlement and Final Judgment filed concurrently herewith.

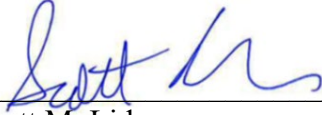
23 This Motion is based on this notice of motion, the attached memorandum of points and authorities  
24 attached hereto, the declarations of Scott M. Lidman, Paul K. Haines, Milan Moore, Plaintiff Jose Carlos  
25 Martinez,<sup>1</sup> and Lluvia Islas of Phoenix Class Action Administration Solutions, and the exhibits attached  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The declaration of Plaintiff Jose Carlos Martinez was originally filed with this Court in connection with the Motion  
for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant  
Motion.

1 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary  
2 evidence or argument presented at the time of hearing.

3  
4 Dated: February 6, 2024

Respectfully submitted,  
LIDMAN LAW, APC

5  
6 By: 

7 Scott M. Lidman  
8 Attorney for Plaintiff  
9 JOSE CARLOS MARTINEZ  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Carlos Martinez (“Plaintiff”) submits this memorandum of points and authorities in  
4 support of his motion for final approval of the class action settlement (the “Settlement”) with Defendant  
5 R C Furniture, Inc. (hereinafter “R C Furniture” or “Defendant”). The Settlement Class is defined as: all  
6 individuals who were employed by Defendant R C Furniture, Inc. and classified as hourly, non-exempt  
7 employees at any time between January 7, 2017 through November 7, 2022.

8 In this non-reversionary Settlement, the average settlement payment to each Settlement Class  
9 Member is approximately \$2,559.70. This is a favorable resolution of the highly disputed wage and hour  
10 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted  
11 preliminary approval on September 20, 2023, nothing has changed to impact the propriety, fairness,  
12 adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and  
13 of their projected Settlement payments, no one has opted-out or submitted a written objection to the  
14 Settlement.

15 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the Class  
16 continues to meet the requirements for class certification for settlement purposes under Code of Civil  
17 Procedure section 382; (2) the Settlement warrants final approval because it is a fair, adequate, and  
18 reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class  
19 Counsel’s attorneys’ fees and costs, Plaintiff’s Service Award, payment to the Labor Workforce  
20 Development Agency (“LWDA”), and settlement administration costs are all fair, adequate, and  
21 reasonable. For these reasons, Plaintiff respectfully requests that this Court enter the [Proposed] Order  
22 of Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 On January 7, 2021, Plaintiff filed the instant putative class action complaint. *See* Declaration  
25 of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On January 7, 2021, Plaintiff submitted a letter to the  
26 California Labor & Workforce Development Agency (“LWDA”) and R C Furniture of his intention of  
27 filing a PAGA claim based on the labor code violations as alleged in his complaint. *Id.* Thereafter, on  
28 May 19, 2021, after exhausting his administrative remedies, Plaintiff filed a First Amended Class and

Representative Action Complaint adding a cause of action for civil penalties under the PAGA. Plaintiff's primary claims/allegations are that R C Furniture: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages upon termination; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"). *Id.*

**A. Plaintiff's Claims**

As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary theories of liability are related to Defendant's alleged failure to pay for all time worked and failure to provide Settlement Class Members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶ 11. Specifically, Plaintiff alleges that he and Settlement Class members were not fully compensated for all of their time worked. *Id.* Plaintiff alleges R C Furniture would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. *Id.* Plaintiff also alleges that this time shaving and/or rounding practice utilized by R C Furniture was not-even handed over time and would almost exclusively round and shave in R C Furniture's favor such that the employees were routinely underpaid for their time worked and it appeared on average to be an underpayment of approximately 25 minutes per week. *Id.* Moreover, for the most recent portion of the relevant time period, Plaintiff contends that R C Furniture required Plaintiff and the other non-exempt employees submit to COVID-19 related temperature checks, that took about 4 minutes per day and was uncompensated. *Id.*

Plaintiff alleges that he and Settlement Class members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 13. Specifically, Plaintiff alleges that R C Furniture utilized a bell signaling system for meal periods, with the bell ringing exactly thirty minutes apart. This means that Plaintiff and the other non-exempt employees did not receive a full 30-minute meal period because they were required to be back at their workstations ready to work before the second bell. *Id.* As such, Plaintiff alleges that he and other non-exempt employees were not provided a full uninterrupted 30-minute meal period because they had to

1 return from their meal periods early and be at their workstations ready to commence work. *Id.* Moreover,  
2 it appears R C Furniture did not require its non-exempt employees to clock in and out for meal periods.  
3 Instead, Plaintiff alleges that R C Furniture automatically deducted 30 minutes of work time for purported  
4 meal periods whether or not a compliant meal period was actually taken when employees remained on  
5 the work premises. *Id.*

6 Plaintiff alleges that he and Settlement Class Members were also not authorized and permitted to  
7 take all required rest periods due to R C Furniture's rest period policies and practices. Lidman Decl., ¶  
8 15. Specifically, Plaintiff alleges that R C Furniture required its non-exempt employees to remain on the  
9 work premises to receive a paid rest period. Thus, Plaintiff alleges that by prohibiting its non-exempt  
10 employees from leaving the work premises during rest periods, R C Furniture is failing to relinquish its  
11 control in violation of California law.

12 As a result of the alleged unpaid wages and unpaid meal period and rest period premium wages  
13 described above, Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor  
14 Code § 226, failed to pay all wages to Settlement Class Members upon their separation of employment,  
15 and is thus liable for civil penalties under the Labor Code Private Attorney General Act ("PAGA"). *See*  
16 Lidman Decl., ¶¶ 17-21.

17 As explained *infra* and in Plaintiff's Motion for Preliminary Approval, Defendant denies  
18 Plaintiff's claims and asserts several affirmative defenses, both on the merits and with respect to class  
19 certification.

## 20 **B. Mediation and Settlement**

21 Prior to mediation, Plaintiff propounded one set of written discovery including, Special  
22 Interrogatories, Requests for Production of Documents, Form Interrogatories, Employment Law and Form  
23 Interrogatories, General. Lidman Decl., ¶ 24. In response to Plaintiff's Requests for Production of  
24 Documents, R C Furniture produced over 1,500 pages of information related to Plaintiff's employment  
25 and Defendant's wage and hour policies and procedures. *Id.* The Parties also completed the *Belaire-West*  
26 opt out privacy notice, and as a result Plaintiff received the contact information for the putative class  
27 members that did not opt out of the disclosure. *Id.*

28 //

1 In addition, in advance of mediation, R C Furniture produced timekeeping and payroll data for  
2 Plaintiff and 46 other putative class members from 2017 – July 2021, which is an approximate 25%  
3 sample. R C Furniture also produced its wage and hour policies and other relevant documents and  
4 information relevant to the claims alleged. *Id.* Accordingly, a sample of this group is representative of  
5 the entire Settlement Class and is statistically significant and reliable for purposes of evaluating a potential  
6 settlement. *See e.g., Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016) (The Supreme Court held  
7 that statistical evidence was admissible to prove liability and damages across a class, thereby allowing it  
8 to support class action certification) In *Tyson*, a case involving a class of employees claiming that they  
9 did not receive statutorily mandated overtime pay for time spent “donning and doffing protective gear,”  
10 the court upheld the use of statistical evidence to calculate the additional time class members spent  
11 donning and doffing, even though differences in the type of gear worn meant that plaintiffs may have  
12 taken different amounts of time to don and doff. *Id.* at pp. 1042, 1048–1409.

13 Here, the statistical analysis of the time punch and payroll data was used for the limited purpose  
14 of determining predominance of rounding and meal period violations in support of Plaintiff’s claims that  
15 R C Furniture had policies and practices of not paying for all time worked and failed to provide all legally  
16 compliant meal periods. Indeed, the time punch data included actual time punches and rounded paid  
17 hours, which allowed Plaintiff to conduct a rounding analysis and conclude R C Furniture’s rounding  
18 practice was widespread and during the entire relevant time period. *Id.* Moreover, from the time and  
19 payroll data, Plaintiff was able to determine that R C Furniture did not require its employees to record  
20 meal periods but rather automatically deducted 30 minutes of work time for purported meal periods. The  
21 Settlement Class members worked at the same facility, did similar work, and were paid under the same  
22 wage and hour policies. Given these circumstances, the experiences of the 25% sampling, it can be  
23 probative as to the experiences of all of the Settlement Class. *Lubin v. The Wackenhut Corp.* (2016) 5  
24 Cal.App.5th 926, 938 (As in *Tyson*, under these circumstances the percentage of the subset of employees  
25 who signed meal agreements lacking the required revocation language during a given time period is  
26 probative as to the percentage of the class that signed meal agreements lacking the required revocation  
27 language.) Further, if all Settlement Class members brought lawsuits for unpaid wages and/or meal period  
28 violations, they would rely on timekeeping records similar to the ones in this sampling which also supports

1 a finding that the sampling is statistically reliable. *Id.*

2 Moreover, R C Furniture also provided a class list for Plaintiff to calculate the necessary metrics,  
3 including without limitation, class size, number of workweeks and pay periods. After the detailed review  
4 of the documents and data produced by R C Furniture, Class Counsel drew on their extensive experience  
5 in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed  
6 the parties to assess the merits and value of Plaintiff's claims and R C Furniture's defenses thereto.

7 On August 10, 2022, after extensive research and analysis, a mediation was held with Jeffrey  
8 Ross, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 25. During mediation, the  
9 parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's  
10 claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in principle on  
11 a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and  
12 executed the Stipulation of Settlement ("Settlement"). *Id.*

13 **C. Preliminary Approval of Settlement**

14 Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary  
15 Approval on March 2, 2023. Lidman Decl., ¶ 26. On August 24, 2023, the Court granted preliminary  
16 approval and subsequently on September 20, 2023 signed an Order Granting Preliminary Approval of  
17 the Settlement. *Id.*; Exh. A.

18 Plaintiff submitted the Settlement and the Court's Order Granting Preliminary Approval of the  
19 Settlement to the LWDA via the LWDA's website on March 2, 2023 and September 21, 2023  
20 respectively. *See* Lidman Decl., ¶ 40; Exhs. D and E. Plaintiff will also provide the LWDA with a copy  
21 of the instant motion for final approval and supporting documents after the instant motion is filed and  
22 will file a supplemental proof of service prior to the hearing. *See* Lidman Decl., ¶ 41.

23 On September 26, 2023, Phoenix mailed the Notice via U.S. first class mail, in English and  
24 Spanish, to all 194 Settlement Class members on the Class List who had until November 10, 2023 to  
25 request for exclusion, objections, and/or submit disputes. *See* Declaration of Lluvia Islas of Phoenix  
26 Class Action Administration Solutions. ("Islas Decl."), ¶¶ 5 and 9-11. *Id.* at ¶¶ 6. As of the date of this  
27 filing, there have been **no requests for exclusion**, **no objections**, and **no disputes** received. *Id.* at ¶¶ 9-  
28 11. Plaintiff now respectfully submits the Settlement for this Court's final approval.

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

2 **A. Settlement Class Definition**

3 The Settlement Class encompasses: all individuals who were employed by Defendant R C  
4 Furniture, Inc. and classified as hourly, non-exempt employees at any time between January 7, 2017  
5 through November 7, 2022. Lidman Decl., ¶ 27.

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

7 The Settlement provides for Defendant to pay a Gross Settlement Amount of \$825,000.00. *See*  
8 Islas Decl., ¶ 13. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount  
9 after deducting requested Class Counsel attorneys' fees (\$275,000.00), and Class Counsel costs  
10 (\$15,167.60), requested Service Award to Plaintiff (\$10,000.00), the payment to the LWDA for its share  
11 of civil penalties (\$15,000.00), and the requested Settlement Administration Costs (\$7,750.00). *Id.* Based  
12 on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$502,082.40**.  
13 *Id.*

14 The Net Settlement Amount, shall be allocated to Settlement Class Members who worked during  
15 the Class Period, as follows: An Individual Class Payment calculated by (a) dividing the Net Settlement  
16 Amount by the total number of Workweeks worked by all Participating Class Members during the Class  
17 Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶  
18 3.2.e.

19 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of  
20 the Aggrieved Employees' 25% share of PAGA Penalties \$5,000.00 by the total number of PAGA Period  
21 Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result  
22 by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full  
23 responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.d.

24 For purposes of calculating applicable taxes and withholdings, 50% of each Participating Class  
25 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion").  
26 The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 50% of  
27 each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for  
28 interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage

1 withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 3.2.e.i.

2 Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the  
3 Gross Settlement Amount. Settlement, ¶ 3.1.

4 **C. Summary of Notice Process**

5 **1. Mailing of Notice Packets**

6 On September 20, 2023, Defendant provided Phoenix with data files containing the names, last  
7 known mailing addresses, Social Security numbers, and workweeks for each Class Member during the  
8 Class Period. Islas Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the  
9 Notice Packet to 194 Settlement Class Members on September 26, 2023 in English and Spanish. *Id.* at ¶  
10 5. Following the initial mailing, 8 Notice Packets were returned to Phoenix by the Post Office and 7 were  
11 re-mailed. *Id.* at ¶ 7. As of the date of filing this final approval motion, 1 Notice Packet remains  
12 undeliverable because no forwarding address was provided and/or no new address could be located  
13 through Skip Trace. *Id.* at ¶ 8.

14 The deadline for Settlement Class Members to submit objections, requests for exclusion, or  
15 disputes was November 7, 2023. Salinas Decl., ¶¶ 9-11. As of the date of this filing, there were no  
16 requests for exclusion, no objections, and no disputes. *Id.* at ¶¶ 9-11. Accordingly, as of the date of this  
17 Motion, the participation rate amongst the Settlement Class Members is 100% and the average estimated  
18 payment is \$2,559.70, with the highest estimated payment to a Settlement Class Member being  
19 \$6,864.47, the lowest estimated payment to a Settlement Class Member being \$22.51. *Id.* at ¶ 14.

20 **D. Timing of Payments**

21 Defendant shall deposit the Gross Settlement Amount and the amounts necessary to fully pay  
22 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully  
23 pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 15  
24 calendar days after the Effective Date. *See* Settlement, ¶ 4.3. Effective Date means the date by when both  
25 of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of  
26 the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following  
27 occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters  
28 Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the

1 deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is  
2 filed, the day after the appellate court affirms the Judgment and issues a remittitur. Settlement, ¶ 1.20.

3 After disbursement, Settlement Class Members will have at least 180 days to cash their checks.  
4 See Lidman Decl., ¶ 28; Settlement ¶ 4.4.1. Funds remaining unclaimed will be distributed to the  
5 California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class  
6 Member. See Lidman Decl., ¶ 28; Settlement ¶ 4.4.3.

7 **E. Notice of Judgment**

8 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class  
9 members, the final judgment entered by the Court and any changes to the Final Approval hearing date or  
10 location will be posted on the Settlement Administrator's website at  
11 <https://www.phoenixclassaction.com/rc-furniture/>. See Islas Decl., ¶5, Exh. A.

12 **IV. ARGUMENT**

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

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

21 Here, this Court found that the Class meets all the requirements for class certification for  
22 settlement purposes when it granted preliminary approval of the Settlement on August 24, 2023. See  
23 Lidman Decl., ¶ 26; Exh. A. After the Court entered an order granting preliminary approval, no events  
24 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement  
25 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement  
26 Class Member has requested for exclusion from the Settlement, no Settlement Class Member has objected  
27 to any portion of the Settlement, and no Settlement Class Member has disputed the Settlement. See  
28

Salinas Decl., ¶¶ 9-11. 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 Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members have the opportunity to be heard with respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

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

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

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

*Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case. *Id.* "In the context of a settlement agreement, the test is not the maximum amount plaintiffs

1 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of  
2 the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because  
3 settlements inherently involve compromise, even settlements providing for substantially narrower relief  
4 than likely would be obtained if the suit were successfully litigated can be reasonable because, “the public  
5 interest may indeed be served by a voluntary settlement in which each side gives ground in the interest  
6 of avoiding litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455  
7 F.2d 101, 109 (7th Cir. 1972)).

8 Here, the Settlement resulted from extensive arm’s length settlement negotiations between  
9 qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate,  
10 and reasonable for all Settlement Class Members. While Plaintiff maintains that his claims are  
11 meritorious, Plaintiff acknowledges that his position includes substantial risks and uncertainty, which  
12 justifies a downward departure from the maximum exposure that Plaintiff’s calculated each claim carried.

13 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification  
14 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect  
15 to Plaintiff’s unlawful rounding claims, R C Furniture contends that it compensated Settlement Class  
16 Members for all of their time worked. Lidman Decl., ¶ 12. R C Furniture also contends that its rounding  
17 practices were lawful, and any unpaid time for rounding and/or temperature checks was *de minimis* and  
18 therefore non-compensable. *Id.* R C Furniture further asserts that Plaintiff would be unable to certify a  
19 rounding class given the individualized inquiries that would be required, and also that R C Furniture’s  
20 rounding policy/mechanism was, according to it, neutral on its face and in its application. *Id.*

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

individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.*

As for Plaintiff's rest period claims, R C Furniture contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 16. R C Furniture also argues that Plaintiff's rest period claim is without merit because requiring employees to remain on the premises is not unlawful, and the claim is otherwise inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.*

As for Plaintiff's claim for wage statement violations, R C Furniture further argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 18.

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

Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims, R C Furniture argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 22; *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."). R C Furniture 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 R C Furniture liable for any of Plaintiff's claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135

1 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-  
2 01487 RGK (OPx), 2011 WL 7563047, at \*4 (reducing PAGA penalties from \$2.8 million to \$500,000).  
3 *Id.*

4 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also  
5 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further  
6 litigation. Lidman Decl., ¶ 23. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted  
7 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages  
8 figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,  
9 adequate, and reasonable in view of them. *Id.*

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

12 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total  
13 number of Workweeks worked by all Participating Class Members during the Class Period and (b)  
14 multiplying the result by each Participating Class Member's Workweeks. *See* Settlement, ¶ 3.2.e. This  
15 method of distribution compensates Settlement Class Members based on the estimated extent of their  
16 injuries, as Settlement Class Members who worked more workweeks, would have been subject to more  
17 of the alleged wage and hour violations than those who worked fewer weeks. Thus, the formula for  
18 compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages  
19 and penalties that could be recovered by them.

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

21 Class members' response to a settlement is relevant in evaluating whether it merits final approval.  
22 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a  
23 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85  
24 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a  
25 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion,  
26 not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member  
27 have elected to opt-out of the Settlement. In addition, only 1 of the 194 Notice Packets were returned  
28

undeliverable. Islas Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

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

Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover their attorneys’ fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman Decl., ¶ 38.

The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), that “[t]he percentage of fund method survives in California class action cases.” Specifically, the *Laffitte* Court held:

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

*Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery;

1 and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities*  
2 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) (“The percentage-of-recovery method is generally favored  
3 in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards  
4 counsel for success and penalizes it for failure.”) (citation omitted).

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

13 Here, Class Counsel’s fee request of \$275,000.00 (one-third of the Gross Settlement Amount) is  
14 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,  
15 “regardless of whether the percentage method or the lodestar method is used, fee awards in class actions  
16 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);  
17 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at \* 7 (C.D. Cal. July 27,  
18 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively  
19 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour  
20 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452  
21 at \* 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in  
22 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience  
23 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 29. Thus, the percentage sought by  
24 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

25 Next, as stated, under the lodestar method the court computes the “lodestar” amount by  
26 multiplying the number of hours reasonably expended by each attorney or legal staff member by their  
27 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances  
28 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty

of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez, 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*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of \$202,722 which results in an approximate 1.36 multiplier compare to the \$275,000.00 fee request. *See* Lidman Decl., ¶ 34. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. *Id.*

| Name                                  | Rate  | Hours | Pre-Multiplier Lodestar |
|---------------------------------------|-------|-------|-------------------------|
| Scott M. Lidman (23rd Year Attorney)  | \$900 | 84.3  | \$75,870                |
| Elizabeth Nguyen (16th Year Attorney) | \$800 | 32.7  | \$26,160                |
| Paul K. Haines (15th Year Attorney)   | \$800 | 21.9  | \$17,520                |
| Milan Moore (6th Year Attorney)       | \$650 | 118.4 | \$76,960                |
| Paralegals                            | \$175 | 35.5  | \$6,212.50              |
| <b>Total Lodestar</b>                 |       |       | <b>\$202,722</b>        |

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. Lidman Decl., ¶ 35, Exh. C. Based on the *Laffey* Matrix, the hourly rate for a 24<sup>rd</sup> year attorney is \$997, the hourly rate for a 16<sup>th</sup> year

1 attorney is \$829, and the hourly rate for a 6<sup>th</sup> year attorney is \$508. *Id.* The fee award requested here is  
2 justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an  
3 uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis,  
4 and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-  
5 51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence  
6 of supporting precedents, are proper considerations in awarding attorneys' fees).

7 First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a  
8 current participation rate of 100%, and not a single Settlement Class Member has objected to the  
9 Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Islas Decl., ¶¶ 9-11.  
10 Additionally, the *average* settlement payment in this case of approximately \$2,559.70 is in line with, and  
11 above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v.*  
12 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action  
13 settlement approved where average class member recovery was approximately \$60); *Schiller v. David's*  
14 *Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at \*18 (E.D. Cal. 2012) (finding that  
15 average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*,  
16 Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at \*4 (S.D. Cal. 2013) (granting  
17 final approval of class action settlement where average recovery for each class member was  
18 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted  
19 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the  
20 strength of the results achieved.

21 As discussed above, this case presented significant risk as to both class certification and merits  
22 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class  
23 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation  
24 and expending considerable effort, all while working on a pure contingency basis. Since undertaking  
25 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any  
26 compensation for over three years. *Lidman Decl.*, ¶ 31. During this time, Class Counsel have expended  
27 a total of \$14,717.60 in actual costs and have devoted substantial time to this litigation and expect to incur  
28 approximately \$450.00 in future costs for filing the final declaration regarding distribution of settlement,

Case Anywhere fees, service and messenger fees, postage fees, and/or online fees to retrieve conformed copies of documents.<sup>2</sup> Lidman Decl., ¶ 31; Exh. B. Class Counsel’s efforts have included conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, propounding formal written discovery, analyzing timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. *See* Lidman Decl., ¶ 30. Moreover, Class Counsel have expended time, effort, and money that they could have expended on less risky cases instead. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great. Lidman Decl., ¶¶ 30-33.

Class Counsel’s previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with substantial experience litigating claims for meal and rest period violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration of Scott M. Lidman (“Lidman Decl.”), ¶¶ 3-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 3-8. They have been certified as class counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 32. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding Defendant’s requirement to “provide” meal periods and “authorize and permit” rest periods, and the propriety of statutory penalties, to name just a few. Lidman Decl., ¶¶ 11-32. Thus, Class Counsel’s requested fee award is fair, reasonable, and adequate and should be approved.

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<sup>2</sup> This includes total costs incurred by both law firms.

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

3           Class Counsel seek to be reimbursed a total of \$15,167.60<sup>3</sup> in litigation costs. Class Counsel's  
4 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.  
5 See Lidman Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely  
6 approved by courts. See, e.g., *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover  
7 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*,  
8 No. 05-03759 CW, 2011 WL 825713, at \* 3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions  
9 and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees*  
10 *of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59  
11 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497  
12 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal  
13 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because  
14 the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement  
15 Class Member has objected to them, Plaintiff respectfully requests the Court should grant the request for  
16 actual costs incurred.

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

18           Plaintiff also requests that the Court approve \$7,750 in administration costs to the Settlement  
19 Administrator, Phoenix. As detailed in the declaration of Lluvia Islas on Behalf of Phoenix Class Action  
20 Administration Solutions submitted herewith, Phoenix performed duties in connection with this  
21 Settlement that were integral in effectuating the Settlement and the Notice process. Among other things,  
22 Phoenix calculated each Settlement Class Member's individual settlement payment, updated addresses  
23 contained in the class data supplied by Defendant, formatted Notice Packets for mailing, mailed Notice  
24 Packets to all 194 Settlement Class Members in English and Spanish, kept the parties informed of any  
25 objections or requests for exclusion, and have otherwise administered the Settlement. See *Islas* Decl., ¶¶  
26 2-17. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be

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28           <sup>3</sup> Class Counsel have expended a total of \$14,717.60 in actual costs and anticipates incurring costs in the amount  
of \$450.00 for filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and  
messenger fees, postage fees, and/or online fees to retrieve conformed copies of documents.

1 finally approved.

2 **F. Plaintiff's Requested Service Award Is Fair, Adequate, and Reasonable in View of**  
3 **Plaintiff's Efforts and the Risks that He Assumed on Behalf of the Class**

4 Courts routinely approve service payments to compensate named plaintiffs for the services they  
5 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,  
6 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in  
7 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving  
8 \$50,000 service payment). In analyzing the requested service payment, courts consider the following  
9 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the  
10 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has  
11 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,  
12 and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's*  
13 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175  
14 Cal.App.4th 785, 804.

15 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of  
16 \$10,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook  
17 on behalf of Settlement Class Members. *See* Lidman Decl., ¶ 39; Declaration of Jose Carlos Martinez  
18 (“Martinez Decl.”), ¶¶ 6-12. Plaintiff gathered documents for use in the lawsuit, and worked with Class  
19 Counsel on the case, including preparing for mediation and discussing the case, the merits, the defenses,  
20 and settlement. *See* Lidman Decl., ¶ 39; Martinez Decl., ¶¶ 6 and 8. The class has benefited from  
21 Plaintiff's actions as the average settlement amount is \$2,559.70.

22 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the  
23 lawsuit could stigmatize him and/or affect future employment. *See* Lidman Decl., ¶ 39; Martinez Decl.,  
24 ¶ 7. Plaintiff also understood the risk that he could be liable for Defendant's costs if he lost the case. *See*  
25 Lidman Decl., ¶ 39; Martinez Decl., ¶ 7. Plaintiff accepted these risks and burdens because he wanted  
26 Defendants to compensate their current and former employees for unpaid wages. Martinez Decl., ¶¶ 7.  
27 Plaintiff estimates he spent 7-10 hours on activities related to this case. *Id.* at ¶ 8.

28 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 Defendants

1 and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving  
2 all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Lidman Decl., ¶ 39;  
3 Settlement ¶ 3.2.1.

4 Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff,  
5 no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See* Islas  
6 Decl., ¶ 10. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and  
7 should be finally approved.

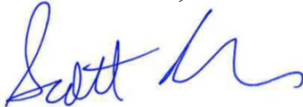
8 **V. CONCLUSION**

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

12  
13 Dated: February 6, 2024

Respectfully submitted,  
LIDMAN LAW, APC

14  
15 By:



16 Scott M. Lidman  
17 Attorney for Plaintiff  
18 JOSE CARLOS MARTINEZ  
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