

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Tiara Gose-Hardy (SBN 323823)
tgose@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
JOSE MARTINEZ

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

Attorneys for Plaintiff
JOSE MARTINEZ

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

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

Plaintiff,

vs.

SOUTHLAND ENERGY SYSTEMS, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 21STCV06911

*[Assigned for all purposes to the Hon. Stuart M.
Rice, Dept. SSC-1]*

**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: June 23, 2025
Time: 10:30 a.m.
Dept: SSC-1

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 23, 2025 at 10:30 a.m. in Department SSC-1 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Jose Martinez ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

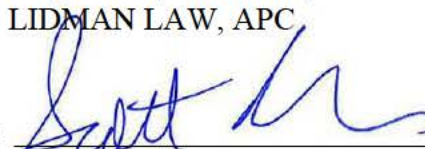
1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Jose Martinez as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Settlement (herein "Settlement");
5. Approving an award of [REDACTED] in attorneys' fees to Class Counsel;
6. Approving an award of [REDACTED] in costs to Class Counsel;
7. Approving an award of [REDACTED] in costs to Phoenix Class Action Administration Solutions for its settlement administration services;
8. Approving an incentive payment of [REDACTED] to Plaintiff Jose Martinez for his services as Class Representative;
9. Approving an award of [REDACTED] to the Labor & Workforce Development Agency ("LWDA");
10. Approving an award of [REDACTED] to PAGA Employees;
11. Approving Employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments estimated at a maximum rate of [REDACTED] at approximately [REDACTED]; and
12. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is based on this notice of motion, the attached memorandum of points and authorities attached hereto, the declarations of Scott M. Lidman Paul K. Haines, Milan Moore, Plaintiff Jose

1 Martinez,¹ and Mayra Gonzalez of Phoenix Class Action Administration Solutions, and the exhibits
2 attached thereto, the pleadings and other papers filed in this action, and on any further oral or
3 documentary evidence or argument presented at the time of hearing.

4
5 Dated: May 30, 2025

Respectfully submitted,
LIDMAN LAW, APC

6
7 By: 

8 Scott M. Lidman
9 Attorney for Plaintiff
10 JOSE MARTINEZ
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28 ¹ The declaration of Plaintiff Jose 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.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Martinez (“Plaintiff”) submits this memorandum of points and authorities in support
4 of his motion for final approval of the class action settlement (the “Settlement”) with Defendant Southland
5 Energy Systems (hereinafter “SES” or “Defendant”). The Settlement Class is defined as: all individuals
6 whom Defendant Southland Energy Systems classified as nonexempt employees and who worked for
7 Defendant in California at any time during the Class Period. Class Period means the period of time starting
8 February 19, 2017 and ending on June 3, 2024.

9 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
10 Member is approximately [REDACTED]. This is a favorable resolution of the highly disputed wage and hour
11 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
12 preliminary approval on February 14, 2025, nothing has changed to impact the propriety, fairness,
13 adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and
14 of their projected Settlement payments, no one has opted-out or submitted a written objection to the
15 Settlement.

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

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 On February 19, 2021, Plaintiff filed the instant putative class action complaint. *See* Declaration
26 of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On February 19, 2021, Plaintiff submitted a letter to the
27 California Labor & Workforce Development Agency (“LWDA”) regarding SES’s alleged Labor Code
28 violations and his intent to bring a claim for civil penalties under the Labor Code Private Attorneys

General Act (“PAGA”). *Id.* On May 21, 2021, after exhausting his administrative remedies, Plaintiff filed a First Amended Class and Representative Action Complaint for: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) engagement in unlawful business practices; and (7) liability 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 up until August 1, 2022, SES paid its piece-rate employees by way of piece-rate basis only, in which they were paid per service provided and not by the hour. *Id.* As such, SES’s piece-rate pay plan was the functional equivalent of the commission pay plan in *Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App 5th 98 (2017). Accordingly, the piece-rate employees are owed rest period premium wages per Labor Code section 226.7 for each workday in which they worked more than 3.5 hours, given SES’s failure to offer paid rest breaks and the failure to compensate these employees separately for these rest periods when taken. *Id.* Moreover, Plaintiff alleges that SES failed to compensate for tasks unrelated to units installed, including without limitation, hours spent cleaning and maintaining tools, performing administrative tasks, waiting for customers, and traveling between job sites. *Id.*

Plaintiff alleges that SES failed to pay all its employees for all hours worked as a result of its timekeeping practices. Lidman Decl., ¶ 13. Specifically, Plaintiff alleges that SES failed to compensate its piece-rate employees from August 1, 2022 through the end of the relevant time period for traveling to work sites. *Id.* Plaintiff estimates an underpayment of approximately 1 hour per shift. *Id.* Additionally, based on the data provided in connection with mediation, SES recorded its employees’ hours, but arguably the employees did not have the actual start and stop times recorded and/or paid for. *Id.* Plaintiff estimates approximately 5 minutes of unpaid time due to SES’s alleged rounding practices. *Id.* Plaintiff also contends that SES failed to properly calculate the regular rate of overtime because it failed to include any earned bonuses. *Id.*

1 Plaintiff alleges that as a result of the work demands imposed by SES and the timekeeping
2 policies, the Settlement Class Members were not provided a full uninterrupted 30-minute meal period
3 before the end of the fifth hour of work. Lidman Decl., ¶ 15.

4 Plaintiff alleges that as a result of the work demands imposed by SES, non-exempt employees
5 were not authorized and permitted to take duty-free net 10-minute rest periods. Lidman Decl., ¶ 17.
6 Specifically, Plaintiff alleges that piece-rate employees experienced at least one rest period violation on
7 every shift in excess of 3.5 hours after August 2022 given the work demands. *Id.* Moreover, it is alleged
8 that the hourly employees were also not authorized and permitted to take rest periods given the heavy
9 work duties imposed by SES. *Id.* Thus, Plaintiff alleges the Class Members experienced at least one rest
10 period violation on every shift worked in excess of 3.5 hours. *Id.*

11 As a result of the alleged unpaid wages and unpaid meal period and rest period premium wages
12 described above, Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor
13 Code § 226 and is thus liable for civil penalties under the Labor Code Private Attorney General Act
14 (“PAGA”). *See* Lidman Decl., ¶¶ 19-21.

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

18 **B. Mediation and Settlement**

19 Prior to mediation, the Parties propounded formal written discovery. Specifically, Plaintiff
20 propounded Special Interrogatories, Requests for Production of Documents, Form Interrogatories –
21 Employment Law and General. Lidman Decl., ¶ 24. Throughout formal discovery, SES produced over
22 20,000 pages of documents, including without limitation policies and procedures. *Id.* Plaintiff also took
23 the deposition of Defendant’s Person Most Qualified. *Id.* Additionally, SES produced a 20% sampling
24 of timekeeping and payroll data for the putative class (specifically 20% of the piece-rate employees and
25 20% of the hourly employees), as well as its wage and hour policies and other relevant documents and
26 information relevant to the claims alleged. *Id.*

1 In addition to the representative sampling, SEs produced key data points and all relevant written
2 wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff was provided
3 with the following:

- 4 • Plaintiff's personnel files and timekeeping and payroll documents;
- 5 • Key data points, including total number of employees, workweeks, and pay periods during the
6 relevant time period; and
- 7 • Exemplars of the wage statements provided during the relevant time period.

8 *Id.* This information coupled with the representative data sampling, enabled Plaintiff to extrapolate to the
9 entire class and aided in Plaintiff's creation of a class-wide exposure model for all the claims at issue,
10 including unpaid wages and penalties potentially owed for alleged minimum and overtime wages, meal
11 and rest period violations, and unpaid wages. *Id.* Ultimately, this discovery allowed the parties to assess
12 the merits and value of Plaintiff's claims and SES's defenses thereto. *Id.*

13 On January 18, 2024, a mediation was held with Hon. Russell Bostrom, Ret., a well-respected
14 wage and hour class action mediator. Lidman Decl., ¶ 25. During mediation, the parties vigorously
15 debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal
16 basis for the claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution. *Id.*

17 **C. Preliminary Approval of Settlement**

18 Plaintiff submitted the Class Action Settlement to the Court with his Motion for Preliminary
19 Approval on October 8, 2024. Lidman Decl., ¶ 26. On January 28, 2025, the court issued its Preliminary
20 Approval Checklist and requested supplemental briefing. On February 11, 2025, Plaintiff submitted
21 supplemental briefing addressing the issues identified by the court and an Amended Class Action
22 Settlement. On February 14, 2025, the Court signed an Order Granting Preliminary Approval of the
23 Settlement. *Id.*; Exh. A.

24 Plaintiff submitted the Settlement, Amended Settlement, and the Court's Order Granting
25 Preliminary Approval of the Settlement to the LWDA via the LWDA's website on October 8, 2024,
26 February 11, 2025 and February 15, 2025 respectively. See Lidman Decl., ¶ 40; Exhs. D-F. Plaintiff
27 will also provide the LWDA with a copy of the instant motion for final approval and supporting
28 documents, subject to the Court's sealing order, after the instant motion is filed and will file a

supplemental proof of service prior to the hearing. *See* Lidman Decl., ¶ 41.

On March 17, 2025, Phoenix mailed the Notice via U.S. first class mail, in English and Spanish, to all 110 Settlement Class members on the Class List who had until May 16, 2025 to request for exclusion, objections, and/or submit disputes. *See* Declaration of Mayra Gonzalez of Phoenix Class Action Administration Solutions. (“Gonzalez Decl.”), ¶¶ 5 and 9-11. As of the date of this filing, there have been **no requests for exclusion, no objections, and no disputes** received. *Id.* at ¶¶ 9-11. Plaintiff now respectfully submits the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class encompasses: all individuals whom Defendant Southland Energy Systems classified as nonexempt employees and who worked for Defendant in California at any time during the Class Period. Class Period means the period of time starting February 19, 2017 and ending on June 3, 2024. Lidman Decl., ¶ 27.

B. Monetary Terms of the Settlement

The Settlement provides for Defendant to pay a Gross Settlement Amount of [REDACTED]. *See* Gonzalez Decl., ¶ 13. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested Class Counsel attorneys' fees [REDACTED], and Class Counsel costs [REDACTED], requested Service Award to Plaintiff [REDACTED], the payment to the LWDA for its share of civil penalties [REDACTED], the requested Settlement Administration Costs [REDACTED], and employer’s side taxes [REDACTED]. *Id.* Based on these requested amounts, the Net Settlement Amount is calculated to be approximately [REDACTED]. *Id.*

An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the total Workweeks worked by each Participating Class Member during the Class Period. Settlement, ¶ 3.2.4.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties [REDACTED] by the total number of PAGA Pay Periods worked by all Aggrieved Employees, and (b) multiplying the result by the total PAGA Pay Periods

worked by each Aggrieved Employee. Each Aggrieved Employee assumes full responsibility and liability for any taxes owed on his or her Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

[REDACTED] of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portions"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The [REDACTED] of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the "Non-Wage Portions"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement, ¶ 3.2.4.1.

The Settlement provides that SES's payroll taxes shall be paid from the Gross Settlement Amount. Settlement ¶¶ 3.1 and 4.3. PSA has estimated SES's portion of payroll taxes at the max rate of [REDACTED].

C. Summary of Notice Process

1. Mailing of Notice Packets

On March 4, 2025, Defendant provided Phoenix with data files containing the names, last known mailing addresses, Social Security numbers, and workweeks for each Class Member during the Class Period. Gonzalez Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Class Notice to 110 Settlement Class Members on March 17, 2025 in English and Spanish. *Id.* at ¶ 5. Following the initial mailing, 0 Class Notices were returned to Phoenix by the Post Office, 0 Class Notices were requested, and 0 were re-mailed. *Id.* at ¶ 7. As of the date of filing this final approval motion, no Class Notice remains undeliverable because no forwarding address was provided and/or no new address could be located through Skip Trace. *Id.* at ¶ 8.

The deadline for Settlement Class Members to submit objections, requests for exclusion, or disputes was May 16, 2025. Gonzalez Decl., ¶¶ 9-11. As of the date of this filing, there were no requests for exclusion, no objections, and no disputes. *Id.* at ¶¶ 9-11. Accordingly, as of the date of this Motion, the participation rate amongst the Settlement Class Members is 100% and the average estimated payment is [REDACTED], with the highest estimated payment to a Settlement Class Member being [REDACTED], the

lowest estimated payment to a Settlement Class Member being [REDACTED]. *Id.* at ¶ 14.

D. Timing of Payments

SES shall fund [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Id.

The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Settlement ¶ 4.4.1.

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.

E. Notice of Judgment

As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class members, the final judgment entered by the Court and any changes to the Final Approval hearing date or location will be posted on the Settlement Administrator's website at <https://martinez-v-southland-energy-systems.phoenixcases.com>. *See* Gonzalez Decl., ¶5, Exh. A.

IV. ARGUMENT

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

Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members

1 share a community of interest, and questions of law and fact common to the class predominate over
2 questions unique to individual class members; (3) the representative's claims are typical of the class'
3 claims; and (4) the representative will fairly and adequately represent the class' interests. *See Richmond*
4 *v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

5 Here, this Court found that the Class meets all the requirements for class certification for
6 settlement purposes when it granted preliminary approval of the Settlement on February 14, 2025. *See*
7 *Lidman Decl.*, ¶ 26; Exh. A. After the Court entered an order granting preliminary approval, no events
8 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
9 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement
10 Class Member has requested for exclusion from the Settlement, no Settlement Class Member has objected
11 to any portion of the Settlement, and no Settlement Class Member has disputed the Settlement. *See*
12 *Gonzalez Decl.*, ¶¶ 9-11. This Court should therefore confirm its conditional certification of the
13 Settlement Class.

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

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

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

27 A settlement is presumptively fair where it is reached through arm's length bargaining, based on
28 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is

1 experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford*
2 *Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a
3 trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the
4 case. *Mallick v. Superior Court*, 89 Cal.App.3d 434 (1979). In exercising these powers, the overriding
5 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk, supra*, 48
6 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but
7 are not limited:

8 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
9 further litigation, the risk of maintaining class action status through trial, the amount
10 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.

11 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
12 to each case. *Id.* “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
13 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of
14 the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because
15 settlements inherently involve compromise, even settlements providing for substantially narrower relief
16 than likely would be obtained if the suit were successfully litigated can be reasonable because, “the public
17 interest may indeed be served by a voluntary settlement in which each side gives ground in the interest
18 of avoiding litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455
19 F.2d 101, 109 (7th Cir. 1972)).

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

25 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
26 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect
27 to Plaintiff’s piece-rate claims, SES contends that it compensated Settlement Class Members for all of
28 their time worked, including alleged “non-productive” time. Lidman Decl., ¶ 12. SES also contends that

1 any unpaid time was *de minimis* and therefore non-compensable. *Id.* SES further asserts that Plaintiff
2 would be unable to certify this class given the individualized inquiries that would be required to assess
3 time spent on “non-productive” activities. *Id.*

4 As for Plaintiff’s rounding claims, SES contends that it compensated Class Members for all of
5 their time worked. Lidman Decl., ¶ 14. SES also contends that any purported unpaid time was *de minimis*
6 and therefore non-compensable. *Id.* SES also contends that any bonuses paid were discretionary and
7 therefore, did not need to be included in any regular rate of pay for overtime purposes. *Id.* SES further
8 asserts that Plaintiff would be unable to certify a rounding class given the individualized inquiries that
9 would be required, and also that SES’s rounding policy/mechanism was, according to it, neutral on its
10 face and in its application. *Id.*

11 As for Plaintiff’s meal period claims, SES counters that it has always maintained a lawful meal
12 period policy and provided non-exempt employees with an opportunity to take legally compliant meal
13 periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the
14 result of employee choice, rather than any policy or practice of SES. Lidman Decl., ¶ 16. Further, SES
15 points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only
16 required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that
17 they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). *Id.* Finally,
18 SES contends Plaintiff’s meal period claim is not suited for class certification, since individual inquiries
19 would be required to assess which employees took non-compliant meal periods, how many meal periods
20 were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal
21 period or missed a meal period during a particular shift. *Id.*

22 As for Plaintiff’s rest period claims, SES contends that its policies and procedures authorized and
23 permitted Settlement Class Members to take all off-duty rest periods in compliance with California law.
24 Lidman Decl., ¶ 18. SES also argues that Plaintiff’s rest period claim is inherently unsuited for class
25 treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact
26 authorized and permitted to take a compliant rest period, which would evolve into an unmanageable series
27 of mini-trials. *Id.*

1 As for Plaintiff's claim for wage statement violations, SES argues that its alleged wage statement
2 violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or
3 any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by
4 Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 20.

5 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims, SES
6 argues that Plaintiff's PAGA claim will fail for the same reasons that her underlying claims will fail.
7 Lidman Decl., ¶ 22; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the
8 underlying causes of action fail, the derivative UCL and PAGA claims also fail."). SES also maintains
9 that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any
10 PAGA penalties if it were to find SES liable for any of Plaintiff's claims. See Lab. Code § 2699(e)(2);
11 *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of
12 PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx),
13 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).

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

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

22 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
23 number of Workweeks worked by all Participating Class Members during the Class Period, and (b)
24 multiplying the result by the total Workweeks worked by each Participating Class Member during the
25 Class Period. Settlement, ¶ 3.2.4.

26 This method of distribution compensates Settlement Class Members based on the estimated extent
27 of their injuries, as Settlement Class Members who worked more workweeks, would have been subject
28 to more of the alleged wage and hour violations than those who worked fewer weeks. Thus, the formula

for compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

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

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, as of the filing of this Motion, not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member have elected to opt-out of the Settlement. In addition, none of the 110 Class Notices were returned undeliverable. Gonzalez 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:

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

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

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

28 Here, Class Counsel’s fee request of [REDACTED] (one-third of the Gross Settlement Amount) is
fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
“regardless of whether the percentage method or the lodestar method is used, fee awards in class actions

1 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
2 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
3 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
4 small” and that in California, “courts usually award attorneys' fees in the 30-40% range in wage and hour
5 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
6 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
7 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
8 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 29. Thus, the percentage sought by
9 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

18 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
19 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
20 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
21 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
22 class actions such as this one, where the value of the benefit conferred to the class “can be monetized
23 with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of
24 the common fund to ensure that the fee awarded is reasonable and within the range of fees freely
25 negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th
26 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
27 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in
28 order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte*, 1 Cal.5th at 503-05.

1 In this case, Class Counsel have a lodestar of [REDACTED] which results in a multiplier of [REDACTED]
2 [REDACTED]. See Lidman Decl., ¶ 34. A general summary showing the
3 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 (24th Year Attorney)	\$900	[REDACTED]	[REDACTED]
Paul K. Haines (15th Year Attorney)	\$800	[REDACTED]	[REDACTED]
Milan Moore (9th Year Attorney)	\$650	[REDACTED]	[REDACTED]
Paralegals	\$175	[REDACTED]	[REDACTED]
Total Lodestar			[REDACTED]

10 The billing rates used are reasonable especially in light of the hourly rates identified based on
11 years of experience in the *Laffey* Matrix, submitted concurrently herewith. Lidman Decl., ¶ 35, Exh. C.
12 Based on the *Laffey* Matrix, the hourly rate for a 24th year attorney is \$997, the hourly rate for a 16th year
13 attorney is \$829, and the hourly rate for a 6th year attorney is \$508. *Id.* The fee award requested here is
14 justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an
15 uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis,
16 and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-
17 51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence
18 of supporting precedents, are proper considerations in awarding attorneys' fees).

19 First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a
20 current participation rate of 100%, and not a single Settlement Class Member has objected to the
21 Settlement or to Class Counsel's requested fees as of the date of this filing. See Gonzalez Decl., ¶¶ 9-11.
22 Additionally, the *average* settlement payment in this case of approximately [REDACTED] is in line with, and
23 above, settlement payments in similar wage and hour class action settlements. See, e.g., *Sorenson v.*
24 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action
25 settlement approved where average class member recovery was approximately \$60); *Schiller v. David's*
26 *Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that
27 average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*,
28

Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation for over four years. Lidman Decl., ¶ 31. During this time, Class Counsel have expended a total of [REDACTED] in actual costs and have devoted substantial time to this litigation and expect to incur approximately [REDACTED] 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.² Lidman Decl., ¶ 31; Exh. B. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's documents and policies, propounding formal discovery, opposing discovery motions, preparing for and taking depositions, analyzing Settlement Class Members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement Agreement, preparing the Motions for Preliminary and Final Approval, overseeing the settlement administration process, communicating with Settlement Class Members, and otherwise litigating this 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.

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² This includes total costs incurred by both law firms.

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

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

17
18 **D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and**
19 **Reasonable**

20 Class Counsel seek to be reimbursed a total of [REDACTED]³ in litigation costs. Class Counsel's
21 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
22 *See* Lidman Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
23 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
24 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*,
25 No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions
26

27 ³ Class Counsel have expended a total of [REDACTED] in actual costs and anticipates incurring costs in the amount
28 [REDACTED] 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 and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees*
2 *of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59
3 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497
4 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
5 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because
6 the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement
7 Class Member has objected to them, Plaintiff respectfully requests the Court should grant the request for
8 actual costs incurred.

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

10 Plaintiff also requests that the Court approve \$[REDACTED] in administration costs to the Settlement
11 Administrator, Phoenix. As detailed in the declaration of Mayra Gonzalez on Behalf of Phoenix Class
12 Action Administration Solutions submitted herewith, Phoenix performed duties in connection with this
13 Settlement that were integral in effectuating the Settlement and the Notice process. Among other things,
14 Phoenix calculated each Settlement Class Member’s individual settlement payment, updated addresses
15 contained in the class data supplied by Defendant, formatted Class Notices for mailing, mailed Class
16 Notices to all 110 Settlement Class Members in English and Spanish, kept the parties informed of any
17 objections or requests for exclusion, and have otherwise administered the Settlement. *See* Gonzalez
18 Decl., ¶¶ 2-17. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should
19 be finally approved.

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

22 Courts routinely approve service payments to compensate named plaintiffs for the services they
23 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
24 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in
25 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
26 \$50,000 service payment). In analyzing the requested service payment, courts consider the following
27 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the
28 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has

1 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,
2 and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's*
3 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
4 Cal.App.4th 785, 804.

5 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
6 [REDACTED] because request is reasonable given Plaintiff's efforts in this case and the risks he undertook
7 on behalf of Settlement Class Members. *See* Lidman Decl., ¶ 39; Declaration of Jose Martinez ("Martinez
8 Decl."), ¶¶ 6-12. Plaintiff gathered documents for use in the lawsuit, and worked with Class Counsel on
9 the case, including preparing for mediation and discussing the case, the merits, the defenses, and
10 settlement. *See* Lidman Decl., ¶ 39; Martinez Decl., ¶¶ 6 and 8. The class has benefited from Plaintiff's
11 actions as the average settlement amount is [REDACTED].

12 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
13 lawsuit could stigmatize him and/or affect future employment. *See* Lidman Decl., ¶ 39; Martinez Decl.,
14 ¶ 7. Plaintiff also understood the risk that he could be liable for Defendant's costs if he lost the case. *See*
15 Lidman Decl., ¶ 39; Martinez Decl., ¶ 7. Plaintiff accepted these risks and burdens because he wanted
16 Defendant to compensate it current and former employees for unpaid wages. Martinez Decl., ¶¶ 7.
17 Plaintiff estimates he spent 8-12 hours on activities related to this case. *Id.* at ¶ 8.

18 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
19 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendant
20 and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving
21 all rights and benefits afforded by Section 1542 of the California Civil Code.

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

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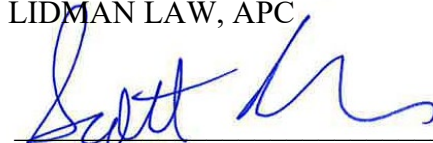
1 **V. CONCLUSION**

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

5
6 Dated: May 30, 2025

Respectfully submitted,
LIDMAN LAW, APC

7
8 By:



Scott M. Lidman
Attorney for Plaintiff
JOSE MARTINEZ