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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA

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

Plaintiff,

vs.

READY ROAST NUT COMPANY, L.L.C., a
California limited liability company; and DOES
1 through 100, inclusive,

Defendants.

Case No. MCV084692

*[Assigned for All Purposes to Hon. Katherine
Rigby, Dept. 45]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, CLASS
REPRESENTATIVE SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: August 7, 2023
Time: 8:30 a.m.
Dept.: 45

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 August 7, 2023 at 8:30 a.m. in Department 45 of the above-entitled Court, located at located at 200 South “G” Street, Madera, California 93637, Plaintiff Magali 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 Magali Martinez as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman, Elizabeth Nguyen, 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 Class Action and PAGA Settlement (hereinafter the “Settlement”);
5. Approving an award of \$108,333.33 in attorneys’ fees to Class Counsel;
6. Approving an award of \$8,773.55 in costs to Class Counsel;
7. Approving an award of \$10,000.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving a service award of \$5,000.00 to Plaintiff Magali Martinez for her services as Class Representative;
9. Approving an award of \$7,500.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Order Granting Plaintiff’s Motion for Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is made on the following grounds: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the

1 requested awards of attorneys' fees and costs, service award, LWDA payment, and settlement
2 administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed]
3 Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment
4 submitted concurrently herewith should be entered so as to give finality to, and allow for disbursements
5 from, the Settlement.

6 This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the
7 supporting declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff
8 Magali Martinez¹, Kevin Lee of Phoenix Settlement Administrators, and the exhibits attached thereto; the
9 Settlement; all other pleadings and papers on file in this action; and on any further oral or documentary
10 evidence or argument presented at the time of hearing.

11
12 Dated: July 13, 2023

Respectfully submitted,
LIDMAN LAW, APC

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15 By:



Scott M. Lidman
Attorney for Plaintiff
MAGALI MARTINEZ

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28 ¹ The declaration of Plaintiff Magali 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 her declaration
with the instant Motion.

TABLE OF CONTENTS

I.	INTRODUCTION.....	8
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	9
	A. Plaintiff’s Claims.....	9
	B. Mediation and Settlement.....	11
	C. Preliminary Approval of Settlement.....	11
III.	SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS.....	12
	A. Settlement Class Definition.....	12
	B. Monetary Terms of the Settlement.....	12
	C. Summary of Notice Process	13
	1. Mailing of Notice Packets	13
	D. Timing of Payments	14
	E. Uncashed Funds	14
	F. Notice of Judgment	14
IV.	ARGUMENT	14
	A. This Court Should Confirm its Conditional Certification of the Settlement Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382	14
	B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims	15
	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.....	15
	2. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Participating Class Member Will Be Paid	

	Based on the Extent of His or Her Injury	19
3.	The 100% Participation Rate Further Confirms that the Settlement is Fair, Adequate, and Reasonable	19
C.	The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check	20
D.	The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable.....	25
E.	The Court Should Finally Approve the Requested Administration Costs.....	25
F.	This Court Should Finally Approve Plaintiff's Requested Service Award Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that She Assumed on Behalf of the Class	26
V.	CONCLUSION	26

TABLE OF AUTHORITIES

Federal Cases

<i>Air Line Stewards, etc., Local 550 v. American Airlines, Inc.,</i> 455 F.2d 101 (7th Cir. 1972)	16
<i>Ashker v. Sayre,</i> 2011 WL 825713 (N.D. Cal. 2011)	25
<i>Cicero v. DirectTV, Inc.,</i> No. EDCV 07-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010).....	21
<i>Fleming v. Covidien Inc.,</i> Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	18
<i>Harris v. Marhoefer,</i> 24 F.3d 16 (9th Cir. 1994)	25
<i>In re Immune Response Securities Litigation,</i> 497 F. Supp. 2d 1166 (S.D. Cal. 2007).....	25
<i>In re Rite Aid Corp. Securities Litigation,</i> 396 F.3d 294 (3d Cir. 2005).....	20
<i>Jones v. Spherion Staffing,</i> No. LA-CV-11-06462-JAK(JCx) 2012 WL 3264081 (C.D. Cal. 2012)	18
<i>Rawlings v. Prudential-Bache Properties, Inc.,</i> (6th Cir. 1993) 9 F.3d 513	20
<i>Schiller v. David's Bridal, Inc.,</i> 2012 WL 2117001 (E.D. Cal. 2012).....	23
<i>Sorenson v. PetSmart, Inc.,</i> Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)	23
<i>Trustees of Const. Indust. & Laborers Health & Welfare Trust v. Redland Ins. Co.,</i> 460 F.3d 1253 (9 th Cir. 2006)	25
<i>Van Vranken v. Atlantic Richfield Co.,</i> 901 F. Supp. 294 (N.D. Cal. 1995)	26
<i>Vizcaino v. Microsoft Corp.,</i> 290 F.3d 1043 (9th Cir. 2002)	23
<i>Williams v. Centerplate, Inc.,</i> 2013 WL 4525428 (S.D. Cal. 2013)	23
<i>Williams v. Costco Wholesale Corp.,</i> No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 (S.D. Cal. July 7, 2010).....	21

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.,</i> 85 Cal.App.4th 1135 (2000)	19
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1	<i>Bell v. Farmers Ins. Exchange</i>	
	115 Cal.App.4th 715 (2004)	26
2	<i>Brinker Restaurant Corp. v. Superior Court,</i>	
3	53 Cal. 4th 1004 (2012)	17
4	<i>Chavez v. Netflix, Inc.,</i>	
	162 Cal.App.4th 43 (2008)	21
5	<i>City of Oakland v. Oakland Raiders,</i>	
6	203 Cal.App.3d 78 (1988)	22
7	<i>Coalition for L. County Planning etc. Interest v. Bd. of Supervisors,</i>	
	76 Cal.App.3d 241 (1977)	22
8	<i>Consumer Privacy Cases,</i>	
9	175 Cal.App.4th 545 (2009)	22
10	<i>Dunk v. Ford Motor Co.,</i>	
	48 Cal.App.4th 1794 (1996)	16, 19
11	<i>Kao v. Joy Holiday,</i>	
12	12 Cal.App.5th 947 (2017)	18
13	<i>Ketchum v. Moses,</i>	
	24 Cal.4th 1122 (2001)	21
14	<i>Laffitte v. Robert Half Int'l, Inc.,</i>	
15	1 Cal.5th 480 (2016)	20, 21, 22
16	<i>Malibu Outrigger Bd. of Governors v. Superior Court,</i>	
	103 Cal.App.3d 573 (1980)	15
17	<i>Mallick v. Superior Court,</i>	
18	89 Cal.App.3d 434 (1979)	16
19	<i>Maria P. v. Riles,</i>	
	43 Cal.3d 1281 (1987)	20
20	<i>Price v. Starbucks Corp.</i>	
21	192 Cal.App.4th 1136 (2011)	18
22	<i>Richmond v. Dart Industries, Inc.,</i>	
	29 Cal.3d 462 (1981)	15
23	<i>Serrano v. Priest,</i>	
24	20 Cal.3d 25(1977)	20, 21
25	<i>Serrano v. Unruh,</i>	
	32 Cal.3d 621 (1982)	20
26	<i>Stambaugh v. Superior Court,</i>	
27	62 Cal.App.3d 231 (1976)	15

1	<i>Thayer v. Wells Fargo Bank,</i>	
	92 Cal.App.4th 819 (2001)	21
2	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
3	203 Cal.App.4th 1112 (2012)	18
4	<i>Wershba v. Apple Computer, Inc.,</i>	
	91 Cal.App.4th 224 (2001)	16, 20
5	<i>Westside Community for Independent Living, Inc. v. Obledo,</i>	
6	33 Cal.3d 348 (1983)	20
7	Statutes	
	Cal. Civ. Proc. § 382	14
8	Cal. Lab. Code § 226(e)	18, 20
	Cal. Lab. Code § 2699(e)(2)	18
9	Cal. Lab. Code § 2699(g)	20
10	Regulations	
	8 Cal. Code Regs. § 13520	18

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Magali Martinez (“Plaintiff”) submits this memorandum of points and authorities in
4 support of her motion for final approval of the class action settlement (the “Settlement”) with Defendant
5 Ready Roast Nut Company, L.L.C (hereinafter referred to as “Ready Roast” or “Defendant”) on behalf
6 of the Settlement Class defined as: “All former non-exempt employees of Defendant Ready Roast Nut
7 Company, L.L.C. who worked for Defendant at any time in California during the period of August 23,
8 2016 through September 27, 2020.” In this non-reversionary Settlement, all participating Settlement
9 Class members will receive **automatic** payments without the need to submit a claim form, resulting in an
10 average settlement payment of approximately \$410.07 to each participating Settlement Class member.
11 This is a favorable resolution of the highly disputed wage and hour claims in this case and the significant
12 litigation risks that Plaintiffs faced.

13 Since this Court granted preliminary approval on March 3, 2023, nothing has changed to impact
14 the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice
15 of the Settlement and of their projected Settlement payments, no Settlement Class member has opted out
16 of the Settlement and not a single Settlement Class member filed an objection to any portion of the
17 Settlement.

18 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the
19 Settlement Class continues to meet the requirements for class certification for settlement purposes under
20 Code of Civil Procedure § 382; (2) the Settlement warrants final approval because it is a fair, adequate,
21 and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class
22 Counsel’s attorneys’ fees and costs, Plaintiff’s Class Representative Service Award, payment to the Labor
23 Workforce Development Agency (“LWDA”), and settlement administration costs are all fair, adequate,
24 and reasonable.

25 In light of the foregoing, Plaintiff respectfully requests that this Court enter the [Proposed] Order
26 Granting Plaintiff’s Motion for Final Approval of Class Action Settlement and [Proposed] Final Judgment
27 submitted concurrently herewith.
28

II. FACTUAL AND PROCEDURAL BACKGROUND

On February 17, 2021, Plaintiff filed the instant putative class action complaint. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. After exhausting her administrative requirements under the PAGA, Plaintiff filed a First Amended Class and Representative Action Complaint on June 17, 2021 adding one cause of action for civil penalties under the PAGA. On September 12, 2022, Plaintiff submitted to the LWDA a supplemental letter alleging additional claims against Defendant and expressing her intent to further amend the operative complaint in the Action to seek civil penalties for these additional claims. *Id.* On October 17, 2022, pursuant to a September 27, 2022 Order from the Court, Plaintiff filed a Second Amended Complaint, the operative complaint in the action, alleging the following claims: (i) failure to provide meal periods; (ii) failure to authorize and permit rest periods; (iii) failure to provide accurate, itemized wage statements; (iv) failure to timely pay all wages upon termination; (v) failure to pay all minimum wages; (vi) failure to pay all overtime wages; (vii) failure to reimburse necessary business expenses; (viii) unfair competition; and (ix) violations of the 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 Ready Roast’s alleged failure to pay Settlement Class members for all time worked and its alleged failure provide Settlement Class members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶¶ 16-30. Specifically, Plaintiff alleges that she and Settlement Class members were not fully compensated for all of their time worked. Lidman Decl., ¶ 17. Plaintiff alleges she would spend approximately 5 minutes before her scheduled start time putting on her protective gear and approximately 5 minutes after her scheduled end time taking off her protective gear. *Id.* Despite being under Ready Roast’s direction and control during these times, Plaintiff alleges Ready Roast required employees to don/doff off-the-clock. *Id.* As a result of Defendant’s failure to properly track the time worked by Plaintiff and other non-exempt employees, Plaintiff contends that Defendant failed to pay Plaintiff and other non-exempt employees for all minimum and overtime wages owed. *Id.*

Plaintiff alleges that she and Settlement Class Members were not provided with all legally-required meal periods in compliance with California law due to Defendant’s unlawful meal period policies/practices. Lidman Decl., ¶ 19. Due to Plaintiff’s job duties, Plaintiff was often prevented from

1 taking meal periods that commenced before the end of the 5th hour of work and/or which were at least
2 30 minutes in length. Specifically, Plaintiff alleges that Ready Roast had a policy of requiring its
3 employees to clock out/in for their meal periods, even when they could not actually take them. *Id.* As
4 such, the reliability and accuracy of the timesheets are questionable. *Id.*

5 Plaintiff alleges that she and other Settlement Class Members were not authorized and permitted
6 to take all required rest periods due to Ready Roast's rest period policies/practices which fail to authorize
7 and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 21.
8 Specifically, Plaintiff alleges she worked shifts in excess of 3.5 hours, but was not authorized or permitted
9 to take a ten-minute paid rest period for every four (4) hour period worked, *or major fraction thereof* as
10 a result of the work demands imposed by Defendant. *Id.* In addition, Defendant's policy and practice
11 required employees to remain on the work premises during rest periods, failing to relinquish all control
12 of employees and restricting their movement during required rest periods, and thereby failed to authorize
13 and permit off-duty rest periods. *Id.*

14 Plaintiff alleges that Ready Roast failed to reimburse her and Settlement Class members for
15 necessary business expenditures, including the use of their personal cellular phones for work purposes,
16 as required under Labor Code section 2802. Lidman Decl., ¶ 23. Plaintiff contends that Ready Roast
17 also required her and other non-exempt employees to spend about \$60.00 on protective shoes and did not
18 reimburse them.

19 Plaintiff further alleges that Ready Roast issued inaccurate wage statements in violation of Labor
20 Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages described
21 above. Lidman Decl., ¶ 25. Specifically, Plaintiff contends that this conduct violated Labor Code §
22 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked
23 and the rate at which they were being paid. *Id.*

24 Plaintiff alleges that Ready Roast is also liable for waiting time penalties under Labor Code
25 section 203 as a result of its failure to pay all wages upon separation of employment. Lidman Decl., ¶ 27.

26 Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code
27 violations. Lidman Decl., ¶ 29.

28 As explained *infra* and in Plaintiff's Motion for Preliminary Approval, Ready Roast denies

1 Plaintiff's claims, maintains that it has consistently compensated Settlement Class Members in
2 accordance with all applicable laws, and asserts several affirmative defenses, both on the merits and with
3 respect to class certification.

4 **B. Mediation and Settlement**

5 After agreeing to participate in mediation, Defendant informally produced time records and payroll
6 data for the putative class as well as its wage and hour policies and other relevant documents and
7 information relevant to the claims alleged in advance of mediation. Lidman Decl., ¶ 11. Plaintiff
8 conducted an analysis of the payroll data and time records produced by Defendant. After the detailed
9 review of the payroll and time records and other documents and policies produced by Defendant, Class
10 Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of
11 Plaintiff's case. *Id.*

12 On May 6, 2022, after extensive research and analysis, including a detailed analysis of Defendant's
13 potential exposure by Plaintiff, a mediation was held with Mark J. Keppler, a well-respected wage and
14 hour class action mediator. Lidman Decl., ¶ 12. During mediation, the Parties vigorously debated their
15 opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the
16 claims and defenses, as well as the legal basis for the claims and defenses. *Id.* The Parties also discussed
17 Defendant's financial condition considering it had not been in operation (and sold all of its assets) as of
18 September 27, 2020. *Id.* The Parties were unable to reach a settlement at mediation. *Id.*

19 After the Parties' unsuccessful mediation, Ready Roast produced information and records
20 regarding its financial condition. *Id.* As a result of the foregoing, Plaintiff's counsel confirmed that Ready
21 Roast's representations regarding its financial condition and ability to pay issues were supported by the
22 financial documents and other information provided by Ready Roast during mediation and further
23 settlement discussions. *Id.* Ultimately, after months of further settlement negotiations, the Parties agreed
24 in principle on a class-wide resolution. *Id.* Thereafter, in the weeks that followed, the Parties signed the
25 Settlement. Additionally, as part of the agreement, Ready Roast provided a declaration, which was filed
26 with Plaintiff's Motion for Preliminary Approval, verifying under oath and confirming its representations
27 concerning its financial condition.

28 **C. Preliminary Approval of Settlement**

Plaintiff filed the Settlement to the Court with her Motion for Preliminary Approval on February

7, 2023. Lidman Decl., ¶ 13. On February 7, 2023, Plaintiff also submitted the Settlement to the LWDA. Lidman Decl., ¶ 42, Exh. D.

On March 3, 2023, the Court granted preliminary approval of the class action settlement, approving the Amended Settlement. Lidman Decl., ¶ 13, Exh. A (Order Granting Preliminary Approval). Plaintiff submitted to the LWDA the Order Granting Preliminary Approval on March 8, 2023. Lidman Decl., ¶ 43, Exh. E.

On April 4, 2023, the Court-approved Class Notice was sent to 446 Settlement Class members. The Settlement Class members had until June 3, 2023 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Kevin Lee of Phoenix Settlement Administrators (“Lee Decl.”), ¶ 8. As of the date of this filing, there have been **no objections, no disputes** and **zero opt-outs**. *Id.*, ¶¶ 8-10.

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 approved at the preliminary approval stage encompassed “[a]ll former non-exempt employees of Defendant Ready Roast Nut Company, L.L.C. who worked for Defendant at any time in California during the period of August 23, 2016 through September 27, 2020.” The total number of workweeks at issue in the Settlement was 40,420.08. Lee Decl., ¶ 3. Because the escalator clause was not triggered (which was triggered only if the number of workweeks exceeded 41,800), the Gross Settlement Amount was not increased.

B. Monetary Terms of the Settlement

The Settlement requires to pay a Gross Settlement Amount (“GSA”) of \$325,000.00. Lee Decl., ¶ 12. The Net Settlement Amount (“NSA”) is the amount remaining from the GSA after deducting requested attorneys’ fees (\$108,333.33) and verified costs (\$8,773.55), proposed Class Representative Service Award to Plaintiff (\$5,000.00), Settlement Administration costs (\$10,000.00), and PAGA payment to the LWDA (\$7,500.00). Based on these requested amounts, the NSA is calculated to be approximately \$185,393.12. Lee Decl., ¶ 12; Lidman Decl., ¶ 34, Exh. B.

The Individual Settlement Awards shall be determined as follows:

- i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall

1 receive a proportionate settlement share based upon the number of weeks worked as a non-
2 exempt employee during the Class Period, the numerator of which is the Settlement Class
3 member's total weeks worked as a non-exempt employee during the Class Period, and the
4 denominator of which is the total weeks worked as non-exempt employees by all
5 Settlement Class members (who do not opt out) who worked during the Class Period. *See*
6 Settlement, ¶ 5.B.i.

- 7 ii. PAGA Amount: Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) of the
8 Gross Settlement Amount has been designated as the "PAGA Amount" as described above.
9 Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the
10 number of workweeks that he or she worked during this PAGA Period which will be
11 calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the
12 PAGA Employee's number of workweeks worked as a non-exempt employee during this
13 time period, and the denominator of which is the total number of workweeks worked by all
14 PAGA Employees. *See* Settlement, ¶ 5.C.

15 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
16 allocated as follows: 33.33% as wages and paid via IRS Form W-2 with all appropriate deductions and
17 66.67% as penalties and interest and paid via IRS Form 1099 issued to each Class Member and PAGA
18 Employee. Settlement, ¶ 5.E. The Settlement provides that the employer's share of payroll taxes shall
19 be paid separately from, and in addition to, the Gross Settlement Amount. Settlement ¶ 9.

20 **C. Summary of Notice Process**

21 **1. *Mailing of Notice Packets***

22 On March 15, 2023, Ready Roast provided Phoenix Settlement Administrators ("PSA")
23 containing names, last known addresses, phone numbers, social security numbers, positions held, and
24 dates of employment which allowed the Settlement Administrator to calculate workweeks as a non-
25 exempt employee by each Settlement Class member while employed during the Class Period and PAGA
26 Period. Lee Decl., ¶ 6. After performing address updates and verifications, PSA mailed the Class Notice
27 to the 446 Settlement Class members on April 4, 2023. *Id.*, ¶¶ 7-8. Following the initial mailing, 37
28 Class Notices were returned to PSA as undeliverable. *Id.*, ¶ 9. As a result of a skip trace, forwarding
addresses provided by the Post Office, or re-mail requests from Counsel or Class Members, 37 Class
Notices were re-mailed. *Id.*, ¶ 11. As of the date of filing this final approval motion, one (1) Class Notice
remains undeliverable with no forwarding address, and where no new address could be located through
skip trace. *Id.*, ¶ 12.

1 Settlement Class members had until June 3, 2023 to submit objections, requests for exclusion, or
2 disputes. Lee Decl., ¶ 8.

3 As of the date of this filing, there were no objections, no disputes, and no Settlement Class member
4 has elected to opt-out of the Settlement. *Id.*, ¶¶ 8-10. Accordingly, as of the date of this Motion, the
5 participation rate amongst the Settlement Class members is 100% and the average estimated payment is
6 \$410.07, with the highest estimated payment to a Settlement Class member being \$967.00. *Id.*, ¶¶ 11-19.

7 **D. Timing of Payments**

8 The Gross Settlement Amount has already been deposited by Defendant into a qualified settlement
9 fund set up by the Settlement Administrator for the benefit of participating Settlement Class members
10 and PAGA Employees. If the Settlement is not finally approved by the Court, the Gross Settlement
11 Amount shall be returned to Defendant. Settlement ¶ 4.B.

12 **E. Uncashed Funds**

13 Each Employee who receives a portion of the PAGA Amount must cash the check(s) within 180
14 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class
15 members and/or PAGA employees whose checks were not cashed within 180 days after mailing will
16 escheat to the California Secretary of State - Unclaimed Property Fund under the unclaimed property laws
17 in the name of the Settlement Class member and/or PAGA Employee. Settlement ¶ 6.F; Lidman Decl.,
18 ¶ 31.

19 **F. Notice of Judgment**

20 As stated in the Notice of Pendency of Class Action and Proposed Settlement mailed to
21 Settlement Class members, the final judgment entered by the Court will be posted by the Settlement
22 administrator on the Settlement Administrator's website at
23 (<https://www.phoenixclassaction.com/martinez-v-ready-roast-nut-company/>). See Lee Decl., Exh. A.

24 **IV. ARGUMENT**

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

28 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its

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

6 Here, this Court found that the Settlement Class meets all the requirements for class certification
7 for settlement purposes when it granted preliminary approval of the Settlement on March 3, 2023. *See*
8 *Lidman Decl.*, ¶ 13; Exh. A. Subsequent to the Court's order granting preliminary approval, no events
9 have cast doubt on the propriety of this determination and, in fact, the reaction of the Settlement Class
10 members thus far to the Settlement has been strongly in support of the Settlement, with no Settlement
11 Class members objecting to any portion of the Settlement and no Settlement Class members electing to
12 opt-out of the Settlement. *See Lee Decl.*, ¶¶ 8-10. This Court should therefore confirm its conditional
13 certification of the 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***
27 ***Risks of Continued Litigation***

28 A settlement is presumptively fair where it is reached through arm's-length bargaining, based on

1 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
2 experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford*
3 *Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a
4 trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the
5 case. *Mallick v. Superior Court*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the
6 overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*,
7 *supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider
8 include, but are not limited to:

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

14 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
15 to each case and give due regard to “what is otherwise a private consensual agreement between the
16 parties.” *Id.*

17 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs might
18 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
19 circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements
20 inherently involve compromise, even settlements providing for substantially narrower relief than likely
21 would be obtained if the suit were successfully litigated can be reasonable because, “the public interest
22 may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding
23 litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109
24 (7th Cir. 1972)).

25 Here, the Settlement resulted from extensive arm’s length settlement negotiations between
26 qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate,
27 and reasonable for all Settlement Class members. While Plaintiff maintains that her claims are
28 meritorious, Plaintiff acknowledges that her position includes substantial risks and uncertainty, which

1 justifies a downward departure from the maximum exposure that Plaintiff’s calculated each claim carried.
2 Further, as stated above, Ready Roast’s financial condition and ability to pay an eventual judgment was
3 a large factor in the settlement decision.

4 As detailed in Plaintiff’s Motion for Preliminary Approval, there is significant risk of non-
5 certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example,
6 with respect to Plaintiff’s claim that Ready Roast failed to pay for all hours worked, Ready Roast contends
7 that it compensated Settlement Class members for all of their time worked and any unpaid time was *de*
8 *minimis* and therefore non-compensable. Lidman Decl., ¶ 18. Ready Roast further asserts that Plaintiff
9 would be unable to certify an off the clock class given the individualized inquiries that would be required.
10 Further, Ready Roast contends that Plaintiff’s assessment of the overtime claim is incorrect. *Id.*

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

22 As for Plaintiff’s rest period claim, Ready Roast contends it has always maintained and enforced
23 lawful rest period policies and practices, and that Settlement Class Members were authorized and
24 permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 22. Ready
25 Roast argues that Plaintiff’s rest period claims are inherently unsuited for class treatment as it requires an
26 individualized inquiry into whether each Settlement Class member was in fact authorized and permitted
27 to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.*

28 As for Plaintiff’s unreimbursed business expenses claim, Ready Roast contends that any

1 purportedly necessary expenses incurred by employees were minimal. Lidman Decl., ¶ 24. Ready Roast
2 also argues that this claim is not suitable for class treatment, it maintained a lawful expense
3 reimbursement policy, Plaintiff did not submit a request to be reimbursed, and individualized
4 determinations would be required as to how often each employee used their personal cellular phone and/or
5 replaced their protective shoes. *Id.*

6 As for Plaintiff's wage statement claim, Ready Roast argued that meal and rest period claims
7 could not support a claim for wage statement penalties. Lidman Decl., ¶ 26. Ready Roast further argues
8 that its alleged wage statement violations could not be shown to be "knowing and intentional," and that
9 Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage
10 statement violations, as required by Lab. Code § 226(e) for imposition of penalties. *Id.* Further, since
11 Ready Roast sold and closed its operations on September 27, 2020, it contended that the liability period
12 for the wage statement claim was substantially truncated.

13 As for Plaintiff's waiting time penalty claim, Ready Roast asserts it has strong defenses to the
14 waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding
15 imposition of penalties. Lidman Decl., ¶ 28. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute
16 that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12
17 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt
18 precluded imposition of waiting time penalties over contested wages owed).

19 As for Plaintiff's PAGA claim, Ready Roast argues that Plaintiff's PAGA claim will fail for the
20 same reasons that her underlying claims will fail. Lidman Decl., ¶ 30. *see Price v. Starbucks Corp.*
21 (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL
22 and PAGA claims also fail."). Ready Roast also maintains that, given its good faith defenses, this Court
23 would exercise its discretion to substantially reduce any PAGA penalties if it were to find Ready Roast
24 liable for any of Plaintiff's claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
25 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien*
26 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA
27 penalties from \$2.8 million to \$500,000). *Id.* Further, since Ready Roast sold and closed its operations
28 on September 27, 2020, it contended that the liability period for the PAGA civil penalty claim was

1 substantially truncated.

2 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also
3 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
4 litigation. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff carefully vetted the claims
5 at issue and conducted a detailed statistical analysis of class-wide data to arrive at the calculated damages
6 figures. Thus, while these risks are far from exhaustive, coupled with Ready Roast’s dire financial
7 condition, they demonstrate that the Settlement is fair, adequate, and reasonable in view of them.

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

11 Individual settlement payments will be calculated based on the number of workweeks worked by
12 each Settlement Class member. See Settlement ¶ 6.B. This method of distribution compensates
13 Settlement Class members based on the estimated extent of their injuries, as Settlement Class members
14 who worked more workweeks, would have been subject to more of the alleged wage and hour violations
15 than those who worked fewer shifts. Thus, the formula for compensating Settlement Class members is
16 fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by
17 them.

18 ***3. The 100% Participation Rate Further Confirms that the Settlement is Fair,***
19 ***Adequate, and Reasonable***

20 Class members’ response to a settlement is relevant in evaluating whether it merits final approval.
21 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
22 fairness presumption. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
23 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
24 “particularly impressive” favorable response from class members). Here, as of the filing of this Motion,
25 not a single Settlement Class member has objected to the Settlement, only one Settlement Class member
26 has elected to opt-out, and only 1 of the 446 Class Notices were returned undeliverable. Lee Decl., ¶¶ 12-
27 19. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair,
28 adequate, and reasonable.

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

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

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

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

1 in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
2 counsel for success and penalizes it for failure.’”) (citation omitted).

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

11 Here, Class Counsel’s fee request of \$108,333.33 (one-third of the Gross Settlement Amount) is
12 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
13 “regardless whether the percentage method or the lodestar method is used, fee awards in class actions
14 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
15 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
16 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
17 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
18 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
19 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
20 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
21 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 32. Thus, the percentage sought by
22 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

23 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
24 multiplying the number of hours reasonably expended by each attorney or legal staff member by their
25 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then can enhance
26 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
27 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24
28 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, supra*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of \$152,067.50 which is significantly more than the \$108,333.33 fee request. Lidman Decl., ¶ 37. A summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. *Id.*, Exh. C.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (25 th Year Attorney)	\$750	81.4	\$61,050
Elizabeth Nguyen (17 th Year Attorney)	\$650	50.4	\$37,760
Paul K. Haines (16th Year Attorney)	\$675	25.7	\$17,347.50
Milan Moore (7th Year Attorney)	\$450	72.1	\$32,445

Paralegals	\$175	19.8	\$3,465
Total Lodestar			\$152,067.50

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees). First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Lee Decl., ¶¶ 8-10. Additionally, the *average* settlement payment in this case of approximately \$410.07 is in line with, and above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, 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 two years of work. *Lidman Decl.*, ¶ 36. During this time, Class Counsel have expended \$8,323.55, in actual costs, have devoted substantial time to this litigation and expect to incur

1 approximately \$450 in future costs for filing the instant motion, filing the final declaration regarding
2 distribution of settlement, service and messenger fees, postage fees, parking, mileage, and/or costs for
3 future appearances. Lidman Decl., ¶ 34, Exh. B. Class Counsel's efforts have included conducting pre-
4 filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's
5 documents and policies, analyzing Settlement Class Members' timekeeping data and payroll records,
6 preparing for and attending mediation, reviewing Ready Roast's financials, engaging in months of direct
7 negotiations, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise
8 litigating the case. *See* Lidman Decl., ¶ 33. Given the considerable potential for adverse outcomes in
9 this case, including, but not limited to losing on class certification and/or merits issues., the contingent
10 risk borne by Class Counsel was great. Lidman Decl., ¶ 35.

11 Class Counsel's previous experience in litigating wage and hour class actions also supports the
12 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
13 hour class action litigation, with substantial experience litigating claims for meal and rest period
14 violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration Elizabeth Nguyen ("Nguyen
15 Decl."), ¶¶ 3-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. They have been certified as class
16 counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the
17 strengths and weaknesses of the case against Ready Roast and the reasonableness of the Settlement. *See*
18 Lidman Decl., ¶ 33. Practice in the narrow field of wage and hour litigation requires skill and knowledge
19 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class
20 action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their
21 skill, reputation, and experience, a fee award of one-third of the Class Settlement Amount is reasonable.

22 Other factors also show that the fee amount requested in this case is reasonable under the
23 circumstances. This case involved nuanced legal issues including questions surrounding Ready Roast's
24 obligation to "provide" meal periods and "authorize and permit" rest periods, and the propriety of
25 statutory penalties, to name just a few. Lidman Decl., ¶ 35. Thus, Class Counsel's requested fee award
26 is fair, reasonable, and adequate and should be approved.

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

3 Class Counsel seek reimbursement of \$8,773.55 (including anticipatory fees and expenses related
4 to the instant motion and other future activity in this case) in litigation costs. Class Counsel's request is
5 fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Lidman
6 Decl., ¶ 34; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by
7 courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-
8 of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-
9 03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)("costs of reproducing pleadings, motions and
10 exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of*
11 *Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th
12 Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F.
13 Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research,
14 copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the
15 expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class
16 member has objected to them, Plaintiffs respectfully request the Court should grant the request for actual
17 costs incurred.

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

19 Plaintiffs also request that the Court approve \$10,000.00 in administration costs to the Settlement
20 Administrator, PSA. As detailed in the declaration of Kevin Lee on Behalf of PSA submitted herewith,
21 PSA performed duties in connection with this Settlement that were integral in effectuating the Settlement
22 and the Notice process. Among other things, PSA calculated each Settlement Class member's individual
23 settlement payment, updated addresses contained in the class data supplied by Ready Roast, formatted
24 and the Class Notices for mailing, mailed Class Notices to all 446 Settlement Class members in English
25 and Spanish, kept the parties informed of any objections or requests for exclusion, and have otherwise
26 administered the Settlement. *See* Lee Decl., ¶¶ 2-16.

27 For these reasons, PSA's requested costs are fair, reasonable, and adequate, and should be finally
28 approved.

