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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

BERNARDO SANTOS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TORRES FARM LABOR CONTRACTOR,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. BCV-19-102470

*[Assigned for All Purposes to the Hon. Bernard
C. Barmann, Jr., Dept. 10]*

**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: January 14, 2022
Time: 8:30 a.m.
Dept.: 10

Complaint Filed: August 30, 2019
Trial Date: None Set

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 January 14, 2022 at 8:30 a.m. in Department 10 of the above-entitled Court, located at 1415 Truxtun Ave., Bakersfield, California 93301, Plaintiff Bernardo Santos (“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 Bernardo Santos 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 Settlement (“Settlement”);
5. Approving an award of \$450,000.00 in attorneys’ fees to Class Counsel;
6. Approving an award of \$19,961.00 in costs to Class Counsel;
7. Approving an award of \$35,500.00 in costs to Phoenix Settlement Administrators (“Phoenix”) for its settlement administration services;
8. Approving a service award of \$5,000.00 to Plaintiff Bernardo Santos for his services as Class Representative;
9. Approving an award of \$30,000.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. 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, Elizabeth Nguyen, Paul K. Haines, Milan Moore,

1 Plaintiff Bernardo Santos,¹ and Elizabeth Kruckenberg of Phoenix Settlement Administrators, and the
2 exhibits 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: December 21, 2021

Respectfully submitted,
LIDMAN LAW, APC

6
7 By:



Elizabeth Nguyen
Attorney for Plaintiff
BERNARDO SANTOS

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¹ The declaration of Plaintiff Bernardo Santos was originally filed with this Court on April 26, 2021 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 Bernardo Santos (“Plaintiff”) submits this memorandum of points and authorities in
4 support of his motion for final approval of the class action settlement (the “Settlement”) with Defendant
5 Torres Farm Labor Contractor, Inc. (hereinafter referred to as “Torres Farm” or “Defendant”). The
6 Settlement Class is defined as: “all current and former non-exempt, hourly, employees of Defendant
7 Torres Farm Labor Contractor, Inc. who worked at Grimmway Enterprises, Inc. and related entities’
8 facilities (including, but not limited to, Grimmway Enterprises, Inc. aka Grimmway Farms and Cal-
9 Organic Farms) in California at any time between August 29, 2015 and May 1, 2021.”

10 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
11 Member is approximately \$113.22. This is a favorable resolution of the highly disputed wage and hour
12 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
13 preliminary approval on August 13, 2021, nothing has changed to impact the propriety, fairness, adequacy
14 and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their
15 projected Settlement payments, only one (1) Settlement Class Member has opted-out and no one
16 submitted a written objection to the Settlement.

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

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 On August 30, 2019, Plaintiff filed a putative class action complaint against Defendant in Kern
27 County Superior Court. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. On April 30,
28 2021, pursuant to the Parties’ stipulation and in connection with effectuating the terms of the settlement,

1 Plaintiff filed a First Amended Class and Representative Action Complaint (“FAC”). In the FAC,
2 Plaintiff alleges that Defendant: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime
3 wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all
4 legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely
5 pay all wages upon separation of employment; (7) engaged in unlawful business practices; and (8) is
6 liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). *Id.*

7 **A. Plaintiff’s Claims**

8 As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of
9 liability are related to Defendant’s alleged failure to pay for all time worked and failure to provide Class
10 Members all legally compliant duty-free meal and rest periods. Nguyen Decl., ¶¶ 11-22. Specifically,
11 Plaintiff alleges that Defendant would keep track of Plaintiff’s time worked and would unlawfully
12 round/shave Plaintiff’s work time such that Plaintiff would not be fully paid for all time worked. *Id.* at ¶
13 11. Further, Plaintiff was required to work and clock in 5 minutes before the start of his scheduled shift
14 but was not compensated until his scheduled start time. In addition, upon information and belief,
15 Defendant had a policy and practice of automatically-deducting 15 minutes from an employee’s work
16 time if he or she clocked in after the scheduled start time regardless of the actual number of minutes the
17 employee clocked in late. This time-shaving and/or rounding practice utilized by Defendant was not
18 even-handed over time and would almost exclusively round and shave in Defendant’s favor such that
19 Plaintiff was routinely underpaid for all his time worked. *Id.* Plaintiff also alleges that he and other
20 Settlement Class Members often worked in excess of ten hours per workday, but Defendant failed to
21 provide overtime compensation equal to one and one-half times their regular rate of pay for all such
22 overtime hours. In the complaint, Plaintiff alleged, upon information and belief during at least a portion
23 of the class period, Defendant paid Plaintiff and other Settlement Class Members weekly “Units” pay
24 and/or bonuses. These “Units” pay, bonuses, and/or other forms of pay were not excludable as a matter
25 of law when calculating an employee’s regular rate (hereinafter the aforementioned forms of pay are
26 collectively referred to as “Incentive Pay”). *Id.* Plaintiff alleged, upon information and belief, that
27 despite Defendant’s payment of Incentive Pay to Plaintiff and other Settlement Class Members,
28 Defendant failed to include all forms of Incentive Pay when calculating employee’s regular rate of pay,

1 thereby causing Plaintiff and other Settlement Class Members to be underpaid all of their overtime wages
2 owed. *Id.*

3 Plaintiff alleges that he and Settlement Class Members were not provided with all legally-required
4 off-duty meal periods in compliance with California law due to Defendant's unlawful meal period
5 policies and practices. Nguyen Decl., ¶ 13. Specifically, Plaintiff alleges that Defendant had a policy
6 and practice of staggering the meal periods for non-exempt employees, resulting Defendant providing
7 non-exempt employees with a meal period after the start of their fifth hour of work. As a result, Plaintiff's
8 and other non-exempt employees' meal periods were often late or otherwise unlawful. Additionally, for
9 at least a portion of the class period, Defendant would automatically-deduct 30 minutes from Plaintiff's
10 and other non-exempt employee's work time and regardless of whether they actually took a meal period,
11 and regardless of how long a meal period was if in fact taken. Further, when Plaintiff worked shifts of
12 over 10.0 hours, he was not always provided a second 30-minute meal period due to Defendant's meal
13 period policies/practices that failed to provide for a second meal period for shifts of over 10.0 hours. *Id.*

14 Plaintiff alleges that he and other Settlement Class Members were not authorized and permitted
15 to take all required rest periods due to Defendant's rest period policies/practices which fail to authorize
16 and permit a third 10-minute rest period on all shifts worked in excess of 10.0 hours. Nguyen Decl., ¶
17 15.

18 As a result of the alleged unpaid wages and unpaid meal period and rest period premium wages
19 described above, Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor
20 Code § 226, failed to pay all wages to Settlement Class Members upon their separation of employment,
21 and are thus liable for civil penalties under the Labor Code Private Attorney General Act ("PAGA").
22 Nguyen Decl., ¶¶ 17-22.

23 As explained *infra* and in Plaintiff's Motion for Preliminary Approval, Defendants deny
24 Plaintiff's claims and asserts several affirmative defenses, both on the merits and with respect to class
25 certification.

26 **B. Mediation and Settlement**

27 After agreeing to participate in early mediation, Defendant informally produced time records and
28 payroll data for the 20% of the putative class randomly selected by Plaintiff, as well as its wage and hour

1 policies and other relevant documents and information relevant to the claims alleged in advance of
2 mediation. Nguyen Decl., ¶ 24. Plaintiff retained an expert to conduct an analysis of the payroll data
3 and time records produced by Defendant. After the detailed review of the payroll and time records and
4 other documents and policies produced by Defendant, Class Counsel drew on their extensive experience
5 in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* The discovery allowed the
6 Parties to discuss the strengths and weaknesses of Plaintiff’s contemplated claim for civil penalties under
7 the PAGA and various theories of liability on his claim. This discovery allowed the parties to assess the
8 merits and value of Plaintiff’s claims and Defendant’s defenses thereto for mediation. *Id.*

9 On October 30, 2020 after extensive research and analysis, including a detailed analysis of
10 Defendant’s potential exposure by Plaintiff’s retained expert who holds a Ph.D. in economics, a full-day
11 mediation was held with Steven G. Mehta, Esq., a well-respected wage and hour class action mediator.
12 Nguyen Decl., ¶ 25. During mediation, the parties vigorously debated their opposing legal positions, the
13 likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* As
14 part of the negotiations and settlement discussions, the Parties agreed that Plaintiff would file a FAC
15 which adds a claim for civil penalties under the PAGA. *Id.* After a full day mediation, the Parties reached
16 agreement on a class-wide resolution. In the months that followed, the Parties finalized the terms of the
17 settlement and executed the Stipulation of Settlement (“Settlement”). *Id.*

18 **C. Preliminary Approval of Settlement**

19 Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary
20 Approval on April 26, 2021. Nguyen Decl., ¶ 26. On August 13, 2021, the Court issued an Order
21 Granting Preliminary Approval of the Settlement. *Id.*; Exh. A.

22 Plaintiff submitted the Settlement, and Court’s Order Granting Preliminary Approval of the
23 Settlement to the LWDA via the LWDA’s website on April 27, 2021 and August 19, 2021, respectively.
24 *See* Nguyen Decl., ¶ 40; Exhs. D & E. Plaintiff will also provide the LWDA with a copy of the instant
25 motion for final approval and supporting documents after the instant motion is filed and will file a
26 supplemental proof of service prior to the hearing. Nguyen Decl., ¶ 42.

27 On October 7, 2021, the Settlement Administrator mailed the Court-approved Notice Packet
28 (which consisted of the Notice of Pendency of Class Action and Proposed Settlement and Notice of

Individual Award) in English and Spanish to the Settlement Class Members, who had until December 6, 2021 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Elizabeth Kruckenberg of Phoenix Settlement Administrators (“Kruckenberg Decl.”), ¶ 8. As of the date of this filing, there have been **no objections**, **no disputes**, and **only one (1) opt-out** received. *Id.* at ¶¶ 13-15. 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 current and former non-exempt, hourly, employees of Defendant Torres Farm Labor Contractor, Inc. who worked at Grimmway Enterprises, Inc. and related entities’ facilities (including, but not limited to, Grimmway Enterprises, Inc. aka Grimmway Farms and Cal-Organic Farms) in California at any time between August 29, 2015 and May 1, 2021.” Nguyen Decl., ¶ 27.

B. Monetary Terms of the Settlement

The Settlement provides for Defendants to pay a Defendant will pay a Gross Settlement Amount (“GSA”) of \$1,350,000.00. Kruckenberg Decl., ¶ 16. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys’ fees (\$450,000.00) and verified costs (\$19,961.00), proposed Class Representative Service Award to Plaintiff (\$5,000.00), Settlement Administration costs (\$35,500.00), and PAGA payment (\$40,000.00). *Id.* Based on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$799,539.00**. *Id.*

Payment to Settlement Class Members will be distributed as follows:

From the Net Distribution Fund, the Settlement Administrator will calculate each Settlement Class Member’s Settlement Award based on the following formula:

- i. The Net Settlement Amount, not including the PAGA Amount, shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and

the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period. Settlement, ¶ 6.B.i.

- ii. PAGA Amount: In addition, Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount has been designated as the “PAGA Amount”. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period, which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of workweeks worked during this time period, and the denominator of which is the total number of workweeks worked by all PAGA Employees. (Settlement, ¶ 6.B.iii.) The “PAGA Period” is defined in the Settlement as the time period of August 29, 2018 through May 1, 2021. Settlement, ¶ 2.

Payments to Class Members will be classified as 80% as penalties and interest to be reported on a 1099 form, and 20% as wages. *See* Settlement, ¶ 6.D.

Defendant will pay the employer’s share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. *See* Settlement ¶ 5.E.; Kruckenberg Decl., ¶ 18.

C. Summary of Notice Process

1. Mailing of Notice Packets

On September 1, 2021, Defendant provided Phoenix with data files with the following information: the names, last known addresses, phone numbers, social security numbers, the dates of employment and the number of workweeks worked by each Settlement Class Member while employed during the Class Period. Kruckenberg Decl., ¶ 6. After performing address updates and verifications, Phoenix mailed the Notice Packet (which consisted of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Award) to the 7,064 Settlement Class Members on October 7, 2021 in English and Spanish. *Id.* at ¶¶ 7-8. Following the initial mailing, 544 Notice Packets were returned to Phoenix by the Post Office. *Id.* at ¶ 9. After Phoenix performed a Skip Trace, 496 Notice Packets were re-mailed. *Id.* at ¶ 11. As of the date of filing this final approval motion, 181 Notice Packets remain undeliverable because no forwarding address was provided and/or no new address could be located through Skip Trace. *Id.* at ¶ 12.

1 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
2 disputes was December 6, 2021. Kruckenberg Decl., ¶ 8. As of the date of this filing, there were no
3 objections, no disputes, and one (1) opt-out. *Id.* at ¶¶ 13-15. Accordingly, as of the date of this Motion,
4 the participation rate amongst the Settlement Class Members is 99.99% and the average estimated
5 payment is \$113.22, with the highest estimated payment to a Settlement Class Member being \$1,334.84,
6 the lowest estimated payment to a Settlement Class Member being \$4.49, and the median amount being
7 \$35.96. *Id.* at ¶¶ 13-19.

8 **D. Timing of Payments**

9 Defendant will have the option to pay the Gross Settlement Amount in two (2) payments up to 90
10 days apart to the Administrator with the first payment commencing 30 days of the Effective Date of the
11 Settlement and the second payment due no later than 120 days of the Effective Date. Defendant agrees to
12 deposit the full amount of the Gross Settlement Amount with the Settlement Administrator by no later
13 than 120 days of the Effective Date. Settlement ¶ 5.B and ¶ 13. The Effective Date occurs after certain
14 conditions have been satisfied, including the expiration of the period for filing any appeal. Settlement ¶
15 5.B and ¶ 13.

16 After disbursement, Settlement Class Members will have 120 days to cash their checks. *See*
17 Settlement ¶ 6.E. Funds remaining unclaimed will be distributed to Juvenile Diabetes Research
18 Foundation (JDRF). *Id.*; Nguyen Decl., ¶ 28. Plaintiff's counsel does not have any connection with the
19 identified organization that could create the appearance of impropriety as between identified organization
20 and the interests of the class. *Id.* Defendant and counsel for Defendant have also confirmed that they do
21 not have a connection to or a relationship with the identified organization that could create the appearance
22 of impropriety as between the identified organization and the interests of the class. *Id.*

23 Moreover, JRDF falls within the scheme of section 384 as it is an organization, according to its
24 website, that provides research and advocacy to help secure access to the most effective treatments and
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therapies and affordable healthcare for all communities, including the indigent.² Indeed, part of JDRF's mission is help with costs associated with diabetes prescriptions and insulin.

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 <http://www.phoenixclassaction.com/santos-v-torres-farm/>. See Kruckenberg Decl., Exh A.; Nguyen Decl., ¶ 41.

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

Here, this Court found that the Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on August 13, 2021. See Nguyen Decl., ¶ 26; Exh. A. After the Court entered an order granting preliminary approval, no events have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement Class Members have objected to any portion of the Settlement and only one (1) Settlement Class Member has elected to opt-out of the Settlement. See Kruckenberg Decl., ¶¶ 13-15. This Court should therefore confirm its conditional certification of the Settlement Class.

² In the alternative if Defendant cannot get court approval on any organization acceptable to the Defendant, any check that is not negotiated within the 120 days of mailing to a Class Member will transferred to the California's Secretary of State Controller's Office – Unclaimed Property Fund under the unclaimed property laws in the name of the Class Member. Settlement, ¶ 6.E.

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

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

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

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

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

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
to each case. *Id.* "In the context of a settlement agreement, the test is not the maximum amount plaintiffs
might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of
the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because

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

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

11 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
12 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect
13 to Plaintiff’s unpaid wages claim, Defendant contends that it compensated non-exempt employees for all
14 of their time worked and that the time punch data would necessarily include minutes that were not
15 compensable work time because the employee would not start performing any work prior to the start of
16 the shift and/or would not perform any work after the scheduled stop time. Nguyen Decl., ¶ 12. Defendant
17 also contends that its rounding practices were lawful and any unpaid time was *de minimis* and therefore
18 non-compensable. *Id.* Defendant further asserts that Plaintiff would be unable to certify a rounding or
19 off-the-clock claim given the individualized inquiries that would be required, given that Defendant’s
20 rounding mechanism was, according to Defendant, allegedly favored the employees. Defendant further
21 contends that Settlement Class Members received all overtime wages to which they were entitled.
22 Defendant contends that Settlement Class Members received all overtime wages to which they were
23 entitled and that it maintained pay codes for shift differentials, shift differential based on regular hours,
24 shift differential based on overtime hours, shift differential based on double overtime hours and properly
25 paid overtime wages and the correct regular rate of pay. Defendant contends that the use of “Units” on the
26 wage statements were not for payment of any bonuses and were labels for the different shift differentials
27 paid. *Id.*

1 As for Plaintiff's meal period claims, Defendant counters that it has always provided non-exempt
2 employees with an opportunity to take legally compliant meal periods, the supervisors stagger breaks, and
3 that it maintains and track compliance meal breaks utilizing detailed handwritten records. Nguyen Decl.,
4 ¶ 14. In addition, Defendant contends that it maintains forms that non-exempt employees can complete if
5 they were not provided with a meal period in order to be paid a meal period premium. Further, any
6 purported non-compliant meal periods reflected in employee timekeeping records were solely the result
7 of employee choice, rather than any policy or practice of Defendant. *Id.* Defendant points out that under
8 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the
9 opportunity to take meal periods, not "ensure" meal periods are taken, and that it has always done so.
10 *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendant contends Plaintiff's
11 meal period claim is not suited for class certification, since individual inquiries would be required to assess
12 which employees took non-compliant meal periods, how many meal periods were non-compliant or
13 missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
14 period during a particular shift. *Id.*

15 As for Plaintiff's rest period claims, Defendant contends it has always maintained and enforced
16 lawful rest period policies and practices, and that Settlement Class Members were authorized and
17 permitted to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 16.
18 Defendant argues that Plaintiff's rest period claims are inherently unsuited for class treatment as it requires
19 an individualized inquiry into whether each Settlement Class member was in fact authorized and permitted
20 to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.*

21 As for Plaintiff's claim for wage statement penalties, Defendant argues that meal and rest period
22 claims cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services,*
23 *Inc.* (2019) 40 Cal. App. 5th 444 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see,*
24 *e.g., Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at
25 **8-9). Defendant further argues that its alleged wage statement violations could not be shown to be
26 "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed]
27 injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
28 imposition of penalties. Nguyen Decl., ¶ 18.

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

7 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims,
8 Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims
9 will fail. Nguyen Decl., ¶ 22. Defendant also maintains that, given its good faith defenses, this Court
10 would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant
11 liable for any of Plaintiff's claims. *Id.*

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

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

21 Individual settlement payments will be calculated based on the number of workweeks worked by
22 each Settlement Class Member during the Class Period. *See* Settlement, ¶ 6.B. This method of
23 distribution compensates Settlement Class Members based on the estimated extent of their injuries, as
24 Settlement Class Members who worked more workweeks, would have been subject to more of the alleged
25 wage and hour violations than those who worked fewer weeks. Thus, the formula for compensating
26 Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties
27 that could be recovered by them.

28 **3. The 99.99% 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.

1 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
2 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
3 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
4 “particularly impressive” favorable response from class members). Here, as of the filing of this Motion,
5 not a single Settlement Class Member has objected to the Settlement and only one Settlement Class
6 Member has elected to opt-out of the Settlement. In addition, only 181 of the 7,064 Notice Packets was
7 returned undeliverable. Kruckenberg Decl., ¶¶ 8-15. The extremely favorable response of the Settlement
8 Class further confirms that the Settlement is fair, adequate, and reasonable.

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

11 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
12 their attorneys’ fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
13 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
14 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
15 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
16 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,
17 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

18 Plaintiff has provided written approval of the split of attorneys’ fees in this action. Nguyen Decl.,
19 ¶ 40.

20 The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506
21 (2016), that “[t]he percentage of fund method survives in California class action cases.” Specifically, the
22 *Laffitte* Court held:

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

Id. at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or

1 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
2 may be awarded attorney's fees out of the fund."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
3 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
4 equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache*
5 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
6 attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method
7 and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery;
8 and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities*
9 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored
10 in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
11 counsel for success and penalizes it for failure.") (citation omitted).

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

20 Here, Class Counsel's fee request of \$450,000.00 (one-third of the Gross Settlement Amount) is
21 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
22 "regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
23 average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
24 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
25 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively
26 small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour
27 class actions..."); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
28 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in

attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience in similar wage and hour class action matters. *See* Nguyen Decl., ¶ 29. Thus, the percentage sought by Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

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

In this case, Class Counsel have a lodestar of **\$195,896.50** which results in a multiplier of approximately 2.29 compared to the \$450,000.00 fee request. *See* Nguyen Decl., ¶ 34. A general 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. Nguyen Decl., ¶ 35, Exh. C. Based on the *Laffey Matrix*, the hourly rate for a 23rd year attorney is \$914, the hourly rate for a 16th year

attorney is \$759, the hourly rate for a 6th year attorney is \$465, and the hourly rate for a 2nd year attorney is \$378. *Id.*

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (23rd Year Attorney)	\$750	77.8	\$58,350
Elizabeth Nguyen (16th Year Attorney)	\$650	125.9	\$81,835
Paul K. Haines (15th Year Attorney)	\$650	21.6	\$14,040
Milan Moore (6th Year Attorney)	\$400	24.3	\$9,720
Romina Tamiry (2nd Year Attorney)	\$295	95.2	\$28,084
Paralegals	\$175	22.1	\$3,867.50
Total Lodestar			\$195,896.50

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 99.99%, 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* Kruckenberg Decl., ¶¶ 13-15. Additionally, the *average* settlement payment in this case of approximately **\$113.22** 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 *18 (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

1 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the
2 strength of the results achieved.

3 As discussed above, this case presented significant risk as to both class certification and merits
4 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
5 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
6 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
7 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
8 compensation for over two years of work. Nguyen Decl., ¶ 31. During this time, Class Counsel have
9 expended a total of \$19,511.00 in actual costs and have devoted substantial time to this litigation and
10 expect to incur approximately \$450.00 in future costs for filing the instant motion, filing the final
11 declaration regarding distribution of settlement, service and messenger fees, postage fees, and/or court
12 costs for future court appearances.³ Nguyen Decl., ¶ 31; Exh. B. Class Counsel's efforts have included
13 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
14 Defendant's documents and policies, analyzing Settlement Class Members' timekeeping data and payroll
15 records, preparing for and attending mediation, negotiating and revising the long-form Settlement,
16 preparing this Motion, and otherwise litigating the case. See Nguyen Decl., ¶ 30. Moreover, Class
17 Counsel have expended time, effort, and money that they could have expended on less risky cases instead.
18 Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on
19 class certification and/or merits issues, the contingent risk borne by Class Counsel was great. Nguyen
20 Decl., ¶¶ 30-33.

21 Class Counsel's previous experience in litigating wage and hour class actions also supports the
22 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
23 hour class action litigation, with substantial experience litigating claims for meal and rest period
24 violations, and related penalties. See Nguyen Decl., ¶¶ 3-8; Declaration of Scott M. Lidman ("Lidman
25 Decl."), ¶¶ 3-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. They have been certified as class
26 counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the
27

28 ³ This includes total costs incurred by both law firms.

1 strengths and weaknesses of the case against Defendants and the reasonableness of the Settlement. *See*
2 Nguyen Decl., ¶ 32. Practice in the narrow field of wage and hour litigation requires skill and knowledge
3 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class
4 action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their
5 skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

6 Other factors also show that the fee amount requested in this case is reasonable under the
7 circumstances. This case involved nuanced legal issues including questions surrounding Defendant's
8 requirement to "provide" meal periods and "authorize and permit" rest periods, and the propriety of
9 statutory penalties, to name just a few. Nguyen Decl., ¶¶ 11-22, 32. Thus, Class Counsel's requested fee
10 award is fair, reasonable, and adequate and should be approved.

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

13 Class Counsel seek to be reimbursed a total of \$19,961.00⁴ in litigation costs. Class Counsel's
14 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
15 *See* Nguyen Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
16 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
17 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*,
18 No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions
19 and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees*
20 *of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59
21 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497
22 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
23 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because
24 the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement
25 Class Member has objected to them, Plaintiff respectfully requests the Court should grant the request for

26
27
28 ⁴ Class Counsel have expended a total of \$19,511 in actual costs and anticipates incurring costs in the
amount of \$450.00 for filing fees, service and messenger fees, postage fees, and/or court costs for future court
appearances.

1 actual costs incurred.

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

3 Plaintiff also requests that the Court approve \$35,500.00 in administration costs to the Settlement
4 Administrator, Phoenix. As detailed in the declaration of Elizabeth Kruckenberg on Behalf of Phoenix
5 submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in
6 effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each
7 Settlement Class Member's individual settlement payment, updated addresses contained in the class data
8 supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 7,064 Class
9 Members in English and Spanish, kept the parties informed of any objections or requests for exclusion,
10 and have otherwise administered the Settlement. *See* Kruckenberg Decl., ¶¶ 2-20. For these reasons,
11 Phoenix's requested costs are fair, reasonable, and adequate, and should be finally approved.

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

14 Courts routinely approve service payments to compensate named plaintiffs for the services they
15 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
16 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in
17 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
18 \$50,000 service payment). In analyzing the requested service payment, courts consider the following
19 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the
20 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has
21 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,
22 and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's
23 Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
24 Cal.App.4th 785, 804.

25 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
26 \$5,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook
27 on behalf of Class Members. *Nguyen Decl.*, ¶ 39; Declaration of Bernardo Santos ("Santos Decl."), ¶¶
28 6-11. Plaintiff gathered documents for use in the lawsuit, and worked with Class Counsel on the case,
including preparing for mediation and discussing the case, the merits, the defenses, and settlement. *See*

1 Nguyen Decl., ¶ 39; Santos Decl., ¶¶ 6-11. The class has benefited from Plaintiff's actions as the average
2 settlement amount is **\$113.22**.

3 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
4 lawsuit could stigmatize him and/or affect future employment. Santos Decl., ¶ 8. Plaintiff also
5 understood the risk that he could be liable for Defendant's costs if he lost the case. *Id.* at ¶ 7. Plaintiff
6 accepted these risks and burdens because he wanted Defendant to compensate its current and former
7 employees for unpaid wages. *Id.* at ¶¶ 7-8. Plaintiff estimates he spent over 15 hours on activities related
8 to this case. *Id.* at ¶ 9.

9 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
10 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendant
11 and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving
12 all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Settlement, ¶ 4.D.

13 Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff,
14 no Class Member has objected to the proposed award, as of the date of this filing. *See* Kruckenberg Decl.,
15 ¶ 15. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should
16 be finally approved.

17 **V. CONCLUSION**

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

21
22 Dated: December 21, 2021

Respectfully submitted,
LIDMAN LAW, APC

23
24 By: 

Elizabeth Nguyen
Attorney for Plaintiff
Bernardo Santos