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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – LONG BEACH COURTHOUSE**
12

13 KEVIN PUGH, on behalf of himself and all
14 “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

15 Plaintiff,

16 v.

17 THE AIRPORT COLLECTIVE, INC., a
18 California corporation, and DOES 1 through
19 10, inclusive,

20 Defendants.
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CASE NO: 21LBCV00333

Assigned to the Honorable Mark C. Kim, Dept. S27

CLASS ACTION

**PLAINTIFF’S UNOPPOSED APPLICATION
FOR APPROVAL OF ATTORNEYS’ FEES
AND COSTS, CLAIMS ADMINISTRATION
FEES, AND CLASS REPRESENTATIVE’S
SERVICE PAYMENT**

DATE: January 12, 2023

TIME: 8:30 a.m.

DEPT.: S27

Action Filed: June 18, 2021

1 **PLEASE TAKE NOTICE THAT** on January 12, 2023 at 8:30 a.m., or as soon thereafter as
2 the matter may be heard, in Department S27 of the above-entitled Court, located at 275 Magnolia,
3 Long Beach, California 90802, Plaintiff Kevin Pugh will and hereby does move unopposed for an
4 Order (1) awarding Class Counsel attorneys' fees in the total amount of \$52,500, (2) awarding Class
5 Counsel litigation costs in the total amount of \$6,803.16, (3) approving a service payment in the
6 amount of \$2,500 to Plaintiff and Class Representative Kevin Pugh and (4) approving claims
7 administration fees of \$4,950. This application is made pursuant to California Rules of Court, Rule
8 3.769, which requires court approval of the settlement of class actions. This application is unopposed
9 by Defendant The Airport Collective, Inc. and will be based on the Memorandum of Points and
10 Authorities, the Settlement Agreement and Release of Claims, the Declarations of Daniel F. Gaines
11 and Alex P. Katofsky, the Declaration of Jarrod Salinas of Phoenix Class Action Administration
12 Solutions, the Declaration of Plaintiff Kevin Pugh, such evidence or oral argument as may be
13 presented at the hearing, and on the complete records and file herein.¹

14 Dated: December 22, 2022

GAINES & GAINES, APLC

15
16 By: 

DANIEL F. GAINES
ALEX P. KATOFSKY
Attorneys for Plaintiff Kevin Pugh
and Proposed Class Counsel

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28 ¹ This application should not be construed as a waiver of any attorney-client or attorney work-product
privileges.

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5 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105 9

6 *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 13

7 *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1 7, 8

8 *Estate of Stauffer* (1959) 53 Cal.2d 124 8

9 *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328 8

10 *Knoff v. City and County of San Francisco* (1969) 1 Cal.App.3d 184 9

11 *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503 10

12 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19 2, 9

13 *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556 9

14 *Quinn v. State of California* (1995) 15 Cal.3d 162 8, 9

15 *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410 9

16 *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25 7, 8

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19 **Federal Cases**

20 *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472 8

21 *In re Activision Sec. Litig.* (9th Cir. 1989) 723 F. Supp. 1373 9

22 *In re GNC Shareholder Litigation* (W.D. Pa. 1987) 668 F.Supp. 450 12

23 *In re Sumitomo Copper Litigation* (S.D.N.Y. 1999) 74 F.Supp.2d 393 9

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27 *In re United Energy Corp. Securities Litigation* (C.D. Cal. 1989) 1989 WL 7321 1 12

28 *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375 8, 9

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Kevin Pugh (“Pugh” or “Plaintiff”) moves for an award of attorneys’ fees and costs,
4 approval of the claims administrator’s fees, as well as approval of service payments to the Class
5 Representative in connection with the final approval of the class and PAGA action settlement of this
6 action. As discussed in the Motion for Final Approval submitted concurrently herewith, Plaintiff
7 and Defendant The Airport Collective, Inc. (“Defendant”) (collectively, the “Parties”) have settled
8 the Released Class and PAGA Claims on behalf of the Class Members as defined in the parties’
9 Settlement Agreement and Release of Claims (the “Settlement” or “Stipulation”) for a settlement
10 package worth \$150,000. This class and PAGA action settlement resolves the named Plaintiff’s and
11 Settlement Class Members’¹ pending Released Claims against Defendant and other released parties.

12 The Parties have agreed upon a settlement class defined as: all non-exempt California
13 employees of Defendant from January 1, 2020 through January 27, 2022.

14 The Settlement is “direct distribution” – there is no claims process, and 77 participating Class
15 Members will automatically be mailed a settlement check when the Settlement is granted final
16 approval.

17 The Settlement Administrator has calculated pro rata settlement payments to Class Members
18 from the Net Settlement Proceeds based on the total number of weeks worked by each such employee
19 as a non-exempt employee in California during the applicable Class Period. The average settlement
20 share to be paid to the 77 participating Class Members is approximately \$1,055.15; the highest
21 settlement share to be paid is approximately \$4,103.83. Declaration of Jarrod Salinas of Phoenix
22 Class Action Administration Solutions (“Phoenix”) (“Salinas Decl.”) ¶ 13.

23 No Class Members have requested exclusion from the Settlement, no Class Members have
24 submitted a dispute, and no Class Members have submitted an objection to the Settlement. *See id.*
25 ¶¶ 8, 9, 10.

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28 ¹ All capitalized terms are defined in the Stipulation and are incorporated by reference herein.

1 The Labor & Workforce Development Agency (“LWDA”) shall be paid \$1,500 (75%) of the
2 \$2,000 total allocated to settle the Class’s claims brought pursuant to Labor Code § 2698 *et seq.*, the
3 Private Attorneys General Act of 2004 (“PAGA”), and the remaining 25%, or \$500, shall be included
4 in the Net Settlement Proceeds for payment to Class Members. Stip. at ¶ C(1)(d).

5 Because the Settlement achieves outstanding results for the Settlement Class, Plaintiff
6 respectfully requests that the Court approve his request for attorneys’ fees and costs, a service
7 payment for serving as the class representative, and the Settlement Administrator’s fees.

8 Plaintiff seeks the Court’s approval of an attorneys’ fee award of \$52,500, plus the
9 reimbursement of \$6,803.16 in litigation costs. The attorney fee request equals 35% of the
10 Maximum Settlement Amount of \$150,000. Class Counsel’s request for an award of attorneys’ fees
11 and costs is reasonable and appropriate in light of the outstanding work performed by Class Counsel
12 in the case, the contingent nature of this action, and the results achieved under the Settlement. *Lealao*
13 *v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19.

14 Plaintiff also requests the Court confirm the amount of the service payment award agreed to
15 be paid to the named Plaintiff in the amount of \$2,500. The amount proposed to be awarded to the
16 representative Plaintiff is fair and reasonable. Courts approve incentive awards to plaintiffs when
17 justified and appropriate to compensate plaintiffs for their time, effort, and inconvenience. *See e.g.*,
18 *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299.

19 Finally, Plaintiff requests that the Court approve the payment of \$4,950 to Phoenix as
20 compensation for the claims administration services it has and will provide in connection with this
21 settlement. Salinas Decl. at ¶ 15.

22 II. STATEMENT OF FACTS

23 A. Background and Procedural History

24 On April 13, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code Private
25 Attorneys General Act of 2004 (“PAGA”). Declaration of Daniel F. Gaines (“Gaines Decl.”) at ¶ 8.

26 On or about June 18, 2021, Plaintiff initiated the Action by filing a Representative Action
27 Complaint for Penalties, pursuant to PAGA, on behalf of himself and all other aggrieved employees
28 (the “Complaint”). The First Amended Complaint asserts class and PAGA representative action

1 claims against Defendant for (1) failure to provide compliant rest periods or compensation in lieu
2 thereof (Labor Code §§ 226.7 and 558; IWC Wage Order 4-2001); (2) failure to provide compliant
3 meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, 558, 1194 and 1194.2;
4 IWC Wage Order 4-2001); (3) failure to reimburse employee business expenses (Labor Code § 2802);
5 (4) failure to comply with itemized employee wage statement provisions (Labor Code §§ 226 and
6 226.3); (5) failure to timely pay wages due at separation of employment (Labor Code §§ 201-203);
7 (6) violation of Business and Professions Code §§ 17200, *et seq.*; and (7) civil penalties pursuant to
8 Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201, 202, 226, 226.3, 226.7, 510, 512,
9 558, 1194, and 2802 (the "First Amended Complaint"). Gaines Decl. at ¶ 9.

10 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
11 in the Action, and further denies that the Action is appropriate for class treatment for any purpose
12 other than this settlement. Defendant contends that it has complied at all times with the California
13 Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable federal, state,
14 and local laws and regulations. It is Defendant's position that, if this case were to be litigated, class
15 certification would be inappropriate because Plaintiff is not an adequate class representative,
16 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
17 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
18 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i) shall
19 not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not be an
20 admission or evidence of fault on behalf of Defendant in any action before a civil, criminal, or
21 administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission or
22 evidence of the appropriateness of these or similar claims for class certification in the Action or with
23 respect to any other proceeding. Gaines Decl. at ¶ 10.

24 The Class Representative contends that Defendant violated the California Labor Code and
25 Industrial Welfare Commission Wage Orders, and that this case is appropriate for class certification.
26 Gaines Decl. at ¶ 11.

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1 **B. Investigation And Settlement Discussions**

2 Class Counsel represent that they have conducted a thorough investigation into the facts and
3 law during the prosecution of this class action case, including the exchange of extensive formal and
4 informal discovery and the review and verification of statistical data and other facts and information
5 provided by Defendant. Counsel for the Parties also represent that they have investigated the
6 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
7 potential defenses thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at ¶
8 12.

9 On January 27, 2022, following their exchange of information and documents regarding the
10 Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-
11 length negotiations with the assistance of mediator Judge David I. Brown (Sacramento County Super.
12 Ct., Ret.), through which they were able to reach the resolution of the Action set forth herein. Gaines
13 Decl. at ¶ 13.

14 Based on their own independent investigation and evaluation, Class Counsel are of the
15 opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement
16 is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all
17 known facts and circumstances, including the risk of significant delay, the risk the Settlement Class
18 will not be certified by the Court, and the defenses asserted by Defendant. Gaines Decl. at ¶ 14.

19 The Parties agree that the Settlement Class described herein may be certified for settlement
20 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
21 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
22 certification will have no force or effect and will immediately be revoked. The Parties further agree
23 that certification for purposes of the settlement is in no way an admission that class certification is
24 proper under the more stringent standard applied for litigation and that evidence of this limited
25 stipulation for settlement purposes only will not be admissible for any purpose in this or any other
26 proceeding. Gaines Decl. at ¶ 15.

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1 **C. Summary of Settlement Terms**

2 **1. Benefits to the Class and the Public**

3 The Settlement provides that (a) the Court may certify the Settlement Class as described in
4 the Stipulation on a provisional, non-mandatory basis for the purposes of this settlement only,
5 conditioned upon the Court granting final approval of the Settlement; and (b) Defendant shall pay
6 the total, non-reversionary sum of \$150,000 (the “Maximum Settlement Amount”). The Maximum
7 Settlement Amount includes the attorneys’ fees of Class Counsel; litigation costs and expenses
8 (which includes, without limitation, all such fees and costs incurred to date, as well as such fees and
9 costs to be incurred in documenting the settlement, providing any notices required as part of the
10 settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the
11 Enhancement Payment to the Class Representative, as approved by the Court; the payment to the
12 California Labor and Workforce Development Agency (“LWDA”); and all costs of administration,
13 including, without limitation, settlement administration fees and expenses. Defendant shall pay all
14 employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds in
15 addition to, and separate and apart from, the Maximum Settlement Amount. Defendant shall
16 separately pay Plaintiff a general release payment of \$15,000 in exchange for his broad release of all
17 claims - documented through a separate agreement. Stip. at ¶ C(1)(a).

18 The Parties have agreed to a settlement class composed of all non-exempt California
19 employees of Defendant from January 1, 2020 through January 27, 2022 (the “Class Period”).
20 Defendant represents that this Class contains approximately 77 Class Members, and the Maximum
21 Settlement Amount will increase proportionately if the final class includes more than 77 members.
22 Stip. at ¶¶ A(4); E(16).

23 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
24 application to the Court for up to 35% of the Maximum Settlement Amount for attorneys’ fees (or
25 \$52,500). Stip. at ¶ C(1)(f).

26 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
27 application to the Court for up to \$10,000 in reimbursement of litigation costs and expenses. Stip.
28 at ¶ C(1)(g).

1 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
2 application to the Court for an Enhancement Payment to the Class Representative in the gross amount
3 of \$2,500, in consideration for his efforts in instituting and participating in the Action. Stip. at ¶
4 C(1)(e).

5 From the Maximum Settlement Amount, settlement administration fees paid to Phoenix
6 Class Action Administration Solutions will be no more than \$5,000. Stip. at ¶ C(1)(h).

7 From the Maximum Settlement Amount, the portion to be allocated for settlement of any and
8 all claims for penalties under the PAGA is \$2,000 ("PAGA Payment"), 75% of which shall be paid
9 to the LWDA and 25% shall be included in the Net Settlement Proceeds for payment to Class
10 Members. Stip. at ¶ C(1)(d).

11 The Net Settlement Proceeds is the Maximum Settlement Amount less the amounts approved
12 and awarded by the Court for: attorneys' fees and documented litigation costs and expenses incurred
13 or advanced by Class Counsel; the Enhancement Payment to the Class Representative; the payment
14 to the LWDA pursuant to PAGA; and the costs of administering the settlement. Stip. at ¶ C(1)(b).

15 The Individual Payment Amount means the portion of the Net Settlement Proceeds
16 distributable to each Class Member who participates in the Settlement (i.e., who does not submit a
17 valid request for exclusion form). The Individual Payment Amounts will be calculated by dividing
18 the Net Settlement Proceeds by the total weeks worked by all participating Class Members in
19 California in a non-exempt position during the Class Period, which will yield the applicable weekly
20 rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class
21 Member worked for Defendant in California in a non-exempt position during the Class Period to
22 yield their Individual Payment Amount. Each Participating Settlement Class Member who does not
23 opt out will receive an Individual Payment Amount equal to their individual weeks worked in
24 California in a non-exempt position during the Class Period multiplied by the weekly rate. Stip. at
25 ¶ C(1)(c).

26 **2. Preliminary Approval, Notice, and the Claims Process**

27 By Order dated September 6, 2022, this Court granted Plaintiff's unopposed motion for
28 preliminary approval of the Settlement and provisionally certified the Settlement Class, finding that

1 the Settlement appeared to be within the range of reasonableness of settlements that could ultimately
2 be given final approval. See **Exhibit C**. The Court approved the distribution of the Notice of
3 Proposed Class Action Settlement and set the Final Fairness and Approval Hearing. *Id.*

4 Pursuant to the Court's Order, on October 3, 2022, Phoenix mailed Notice packets containing
5 the notice of the terms of the Settlement — including the terms relating to attorneys' fees and costs
6 — to 77 Class Members. Salinas Decl. at ¶ 5, Salinas Decl., Ex. A. Class Members were given 45
7 days after the Notice was mailed to opt out or object to the Settlement. As of the date of this motion,
8 77 Class Members will be issued their share of the Settlement and they will be paid, on average,
9 approximately \$1,055.15 each; the highest-paid Class Members will be paid approximately
10 \$4,103.83. Salinas Decl. at ¶ 13. No Class Members have objected to the Settlement; and no Class
11 Members have opted out. *Id.* at ¶¶ 8, 9.

12 **D. Compliance with Procedural Requirements of PAGA**

13 On April 19, 2022, in compliance with Labor Code § 2699(1)(2), Plaintiff's counsel submitted
14 copies of the Settlement Agreement and preliminary approval papers to the LWDA through its online
15 submission interface. These final approval papers are also being submitted to the LWDA
16 concurrently with their submission to the Court. The LWDA has not objected or otherwise
17 responded to any of the submissions thus far. Gaines Decl. at ¶ 55; Ex. D.

18 **III. ARGUMENT**

19 **A. Class Counsel Request an Award Under the Common Benefit Doctrine**

20 ***1. A 35% Fee Award Is Reasonable Here***

21 Class Counsel respectfully requests that this Court approve the fees and costs to be paid in
22 this action. This Application is made pursuant to California Rules of Court, Rule 3.769 which
23 requires court approval of the fees paid through settlement in a class action.

24 Class Counsel seeks attorneys' fees of \$52,500, representing 35% of the settlement
25 consideration under the "common fund" doctrine. Courts have long recognized the "common fund"
26 or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a
27 group of persons may be awarded their fees and costs to be paid out of the fund. *Serrano v. Priest*
28 (*"Serrano III"*) (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical Examiners* (1974)

1 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
2 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert*
3 (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

4 The California Supreme Court has held that, "when a number of persons are entitled in
5 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all
6 results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded
7 attorneys' fees out of the fund." *Serrano III, supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1;
8 *see also Boeing, supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit
9 of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as
10 a whole."); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
11 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
12 Group) at § 17:172.3 explains the common fund doctrine as follows:

13 Where the lawsuit results in the recovery of a fund or property benefiting
14 others as well as plaintiff (e.g., a class action), the court has inherent
15 equitable power to order plaintiff's attorney fees paid out of the common
fund or property [citations]. Such fee spreading assures that all of those
benefited by the litigation pay their fair share of obtaining the recovery.

16 The percentage-of-the-fund approach appears to be the preferred method of awarding fees in
17 traditional common fund cases, such as this case. Where the settlement amount is a "certain or easily
18 calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano III*, 20
19 Cal. 3d at 35.

20 In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19,
21 the California Supreme Court upheld an attorneys' fee award based on a percentage of the common
22 benefit obtained in a lawsuit by a city employees' association for retroactive wages:

23 It is not necessary to find this suit a proper class action in order to uphold
24 the portion of the judgment awarding counsel for plaintiffs 25 percent of
25 all retroactive salaries and wages received. That award may be sustained
26 under the rule that a litigant who creates a fund in which others enjoy
beneficial rights may require those beneficiaries to pay their fair share
of the expense of litigation. (*See Sprague v. Ticonic National Bank* (1939)
307 U.S. 161, 159; *Estate of Stauffer* (1959) 53 Cal.2d 124, 132).

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1 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
2 stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others
3 derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”
4 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the
5 California Supreme Court recognized that the common benefit doctrine has been applied
6 “consistently in California when an action brought by one party creates a fund in which other persons
7 are entitled to share.”

8 Numerous appellate courts have similarly found. See e.g., *Knoff v. City and County of San*
9 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
10 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable powers);
11 *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and expenses
12 properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of*
13 *America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by
14 action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44
15 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of
16 residential property in an inverse condemnation action).

17 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth, Tenth,
18 Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
19 reasonable attorneys’ fees in common benefit cases. See e.g., *In re Sumitomo Copper Litig.* (S.D.N.Y.
20 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal authority in favor
21 of the percentage fee method); see also, *Lealao, supra*, 82 Cal.App.4th at 30-31 (describing same).

22 Attorneys’ fees awards in line with the amount sought here are frequently upheld. See e.g.,
23 *In re Activision Sec. Litig.* (9th Cir. 1989) 723 F. Supp. 1373, 1375. The California Supreme Court
24 recently confirmed the validity of this position in the context of a similar wage and hour class action
25 settlement:

26 [U]se of the percentage method to calculate a fee in a common fund case,
27 where the award serves to spread the attorney fee among all the
28 beneficiaries of the fund, does not in itself constitute an abuse of
discretion. We join the overwhelming majority of federal and state

1 courts in holding that when class action litigation establishes a monetary
2 fund for the benefit of the class members, and the trial court in its
3 equitable powers awards class counsel a fee out of that fund, the court
4 may determine the amount of a reasonable fee by choosing an
5 appropriate percentage of the fund created. The recognized advantages
6 of the percentage method—including relative ease of calculation,
7 alignment of incentives between counsel and the class, a better
approximation of market conditions in a contingency case, and the
encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation – convince us the percentage
method is a valuable tool that should not be denied our trial courts.

8 *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503 (internal citations omitted).

9 The requested fee falls well within – even below – the percentages awarded in other class
10 action litigation by this Court and numerous California trial courts. As the cases cited above
11 demonstrate, attorneys’ fee awards in the amount sought here are well-established by California law
12 and practice. Accordingly, Class Counsel’s fee request is fair and reasonable and is consistent with
13 the awards in California and the Ninth Circuit. It is also reasonable given the history of this action
14 and the results obtained by Class Counsel.

15 **2. The Circumstances of this Case Support a 35% Fee Award**

16 Given the significant results achieved under the circumstances of this litigation, the requested
17 fee award is reasonable. As discussed in *Sumitomo Copper Litigation, supra*, 74 F. Supp. 2d at 396:

18 No one expects a lawyer whose compensation is contingent on the
19 success of his services to charge, when successful, as little as he would
20 charge a client who in advance of the litigation has agreed to pay for his
21 services, regardless of success. Nor, particularly in complicated cases
22 producing large recoveries, is it just to make a fee depend solely on the
23 reasonable amount of time expended.

24 In that vein, this Court should consider the contingent nature of this case, the uncertainty of
25 the outcome, the quality of the counsel, and the preclusion from other employment.

26 **a. The Contingent Nature of This Case**

27 From the outset of the case to the present, prosecution of this action has involved significant
28 financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis,
with no guarantee of recovery. Class Counsel have placed their own resources at risk to prosecute
this action with no guarantee of success. Gaines Decl. at ¶ 68. The risks of this case are apparent in

1 that class certification would likely have been a hard-fought issue, especially given the uncertainty
2 regarding certification of cases such as this. Moreover, even if class certification were granted over
3 Defendant's opposition, there was no assurance that Plaintiff would succeed at trial. Despite such
4 challenges, Class Counsel were able to persuade Defendant that it faced significant liability exposure
5 such that it was willing to pay \$150,000 to settle the Class Members' claims.

6 **b. The Experience, Reputation, and Ability of Counsel, and**
7 **the Skill They Displayed in Litigation**

8 Class Counsel has substantial experience in wage-and-hour and other class action litigation,
9 including litigation involving the novel legal issues in this action. *See e.g.*, Gaines Decl. at ¶¶ 2-5;
10 Declaration of Alex P. Katofsky at ¶¶ 2-5. Class Counsel's skill in developing a factual record and
11 convincing Defendant of its litigation exposure under California law were essential to achieving the
12 Settlement. Through their skill and reputation, Class Counsel was able to obtain a settlement that
13 provides an outstanding result for Class Members. Gaines Decl. at ¶¶ 6-7, 12-15.

14 **c. The Results Achieved**

15 The excellent results achieved by the Settlement support Class Counsel's request for
16 attorneys' fees. Class Members' support for the results achieved by Class Counsel is demonstrated
17 by the absence of any objections to either the Settlement or to Class Counsel's request for fees, both
18 of which were described clearly in the Notice. As of the date of this application, Class Members
19 will be paid, on average, approximately \$1,055.15 each, which is intended to compensate them for
20 a narrow set of wage and hour issues. This is a significant benefit for the Class Members here – it
21 represents a recovery for highly disputed claims. Gaines Decl. at ¶ 31. Equally important is the fact
22 that the State of California will receive \$1,500 for enforcement of labor laws and education of
23 employers. Gaines Decl. at ¶ 32.

24 Furthermore, the efficiency with which this litigation was conducted and resolved should be
25 rewarded. After preparing and investigating the case prior to filing the complaint, Class Counsel
26 litigated and resolved the case in an efficient manner. The Class Members directly benefited from
27 the prompt and fair resolution of their claims. They will be receiving a significant award in a short
28

1 period of time as opposed to waiting years to recover some undetermined amount if they succeeded
2 at trial, which is an uncertainty in itself.

3 **d. Preclusion of Other Employment**

4 As California law recognizes, Class Counsel's commitment to this litigation should not be
5 assessed in a vacuum. *See Serrano, supra*, 20 Cal.3d at 49. A relevant factor in determining attorneys'
6 fees is whether the litigation required Class Counsel to forego other employment. *See id.* Additional
7 work was available that Class Counsel had to forego to devote the time necessary to pursue this
8 litigation. *See* Gaines Decl. at ¶ 65.

9 **B. No Class Member Objected to the Attorney Fee Award**

10 Counsel's intention to request payment of attorneys' fees was clearly disclosed to each Class
11 Member in the Court-approved Notice of Class Action Settlement. *See* Exhibit C; *see also*, Salinas
12 Decl., Ex. A. As of the filing of this brief, there has been not one single objection to the request for
13 attorneys' fees. Salinas Decl. at ¶ 9. Clearly, the Class approves of the award of attorneys' fees.
14 Class Counsel request \$52,500 in attorneys' fees – representing 35% of the \$150,000 Maximum
15 Settlement Amount.

16 **C. Class Counsel's Request for Costs is Reasonable**

17 In the course of this litigation, Class Counsel had to (and will) incur substantial out-of-pocket
18 in the amount of \$6,803.16. *See* Gaines Decl. at ¶ 67, **Exhibit E**. Pursuant to the terms of the
19 Stipulation and the class notice, the cost award sought falls well below the \$10,000 maximum
20 permissible request.

21 As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included
22 among other things filing fees, photocopy charges, expert analysis charges, mediation expenses,
23 service of process fees, and mailing charges. *See* Gaines Decl. at ¶ 67, **Exhibit E**. Such costs are
24 appropriate for cost reimbursement in these types of cases. *See e.g., In re United Energy Corp. Sec.*
25 *Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987));
26 *see also, In re GNC Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

27 \\\

28 \\\

1 The costs incurred by Class Counsel in this litigation benefited Class Members. In light of
2 the litigation costs that Class Counsel needed to incur to prosecute this action and the positive
3 reaction of Class Members, Plaintiff's cost request is reasonable and should be granted.

4 **D. The Class Representative's Service Payment is also Reasonable**

5 Plaintiff seeks a service payment in the amount of \$2,500. Gaines Decl. ¶ 56.

6 The service payments are intended to recognize the time and efforts that the named Plaintiff
7 spent on behalf of the Class. Gaines Decl. at ¶¶ 56-58; *see also*, Declaration of Pugh submitted
8 herewith.

9 When determining whether incentive awards are appropriate, courts consider a variety of
10 non-exclusive factors such as:

11 [T]he actions the plaintiff has taken to protect the interests of the class,
12 the degree to which the class has benefitted from those actions, and the
13 amount of time and effort the plaintiff expended in pursuing the
14 litigation . . . the risk to the class representative in commencing suit, both
15 financial and otherwise, the notoriety and personal difficulties
encountered by the class representative, the duration of the litigation,
and the personal benefit (or lack thereof) enjoyed by the class
representative as a result of the litigation.

16 *Clark v. American Residential Services LLC* (2009)175 Cal.App.4th 785, 804 (internal quotations
17 omitted), *citing* *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 and *Van Vranken, supra*, 901
18 F.Supp. at 299.

19 As a result of the named Plaintiff's efforts, Class Members will receive significant monetary
20 settlement payments – approximately \$1,055.15, on average, per Class Member who participates in
21 the Settlement. The State of California will receive \$1,500, to be put toward education about and
22 enforcement of California's labor laws.

23 In this case, the named Plaintiff performed the following tasks, among others: (1) assisted
24 Counsel in investigating and substantiating the claims alleged in this action, including multiple
25 interviews with counsel to review facts, documents, and Defendant's policies; (2) assisted in the
26 preparation of the complaint; (3) produced evidentiary documents to Counsel; and (4) assisted in the
27 settlement of this litigation. Gaines Decl. at ¶¶ 56-58; *see generally*, Declaration of Pugh. Moreover,
28 as with any plaintiff who files a civil action, the named plaintiff undertook the financial risk that, in

1 the event of a judgment in favor of Defendant in this action, he could have been personally
2 responsible for any attorneys' fees and costs awarded in its favor.²

3 The award of service payment to the named plaintiff is especially warranted in a case like
4 this one. Service payments are necessary to ensure that employees, like Plaintiff, continue to bring
5 claims like those brought here to enforce the rights of employees. Individuals like the named plaintiff
6 (and most Class Members) would have little, if any, recourse without the class action device. Most
7 Class Members – like the named plaintiff – would be fearful of retaliation in response to filing any
8 lawsuit, much less a class action one. Plaintiff must be commended for pursuing his claims; modest
9 service payments like that sought here are an appropriate means of doing so.

10 Not a single Class member objected to the service payments requested on behalf of the named
11 plaintiff, who brought this litigation on their behalf and who secured a benefit for them worth
12 \$150,000. In light of the work that the named plaintiff performed on behalf of Class Members, and
13 the Class Members' response to the Settlement, the requested service payment is reasonable and
14 appropriate.

15 **E. Approval of the Fees Incurred by the Claims Administrator**

16 As part of the preliminary approval process, the Court approved the hiring of Phoenix as the
17 Claims Administrator. See **Exhibit C**. In preliminarily approving the Stipulation, the Court also
18 tentatively approved a payment of up to \$5,000 to Phoenix to perform all of the duties required to
19 administer the Settlement. *Id.* Phoenix has performed all of its required duties to date and is
20 committed to completing the claims administration process. *See generally* Declaration of Jarrod
21 Salinas. Phoenix's fees are \$4,950. Salinas Decl. at ¶ 15. Plaintiff requests that the Court approve
22 the payment of \$4,950 to Phoenix to account for the costs of administration as part of its final order
23 approving the Settlement.

24 **IV. CONCLUSION**

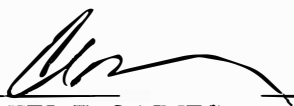
25 For all the foregoing reasons, Plaintiff request that the Court (1) approve Class Counsel's
26 request of \$52,500 as an award of attorneys' fees, (2) approve the requested award of \$6,803.16 in

27
28 ² Defendant shall separately pay Plaintiff a general release payment of \$15,000 in exchange for his
broad release of all claims - documented through a separate agreement. Stip. at ¶ C(1)(a).

1 litigation costs to Class Counsel, (3) approve the request of \$2,500 as a service payment to the named
2 Plaintiff, and (4) approve payment of \$4,950 in administration costs to Phoenix.

3
4 Dated: December 22, 2022

GAINES & GAINES, APLC

5
6 By: 

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and Proposed Class Counsel