

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

Andrew G. Ronan (SBN 312316)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiffs

WILLIE MARQUEZ and ANDY MIKHAEL

[Additional counsel listed on following page]

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

WILLIE MARQUEZ and ANDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CIVSB2125337

*[Assigned for all purposes to the Hon. Jessica
Morgan, Dept. S-26]*

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND AWARD
OF ATTORNEYS' FEES, COSTS,
SERVICE AWARDS AND
ADMINISTRATION COSTS; and
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: November 30, 2023

Time: 9:00 a.m.

[Hearing set by Order dated July 13, 2023]

Dept: S-26

Judge: Hon. Jessica Morgan

Complaint Filed: August 31, 2020

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen(SBN 238571)
enguyen@lidmanlaw.com
Milan Moore, Esq. (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Ste 150
El Segundo, CA 90245
Tel: 424-322-4772
Fax: 424-322-4775

Attorneys for Plaintiff,
JULIO GARCIA

HAINES LAW GROUP, APC

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

Attorneys for Plaintiff,
JULIO GARCIA

TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on November 30, 2023 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department S-26 of the above captioned Court, before the Honorable Jessica Morgan, Plaintiffs Willie Marquez, Andy Mikhael, and Julio Garcia (“Plaintiffs”), by and through Plaintiffs’ counsels of record, will and hereby do move the Court for Final Approval of the Stipulation of Class Action and PAGA Settlement, awarding attorneys’ fees, costs, and Class Representative Service Awards to the Plaintiffs, and entering final approval and judgment.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code section 2699(1). This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of Scott M. Lidman, the Declaration of Paul K. Haines, the Declaration of Kyle Nordrehaug, the Declaration of Kevin Lee of Phoenix Settlement Administrators, the declarations of the Plaintiffs, the Stipulation of Class Action and PAGA Settlement and Release (hereinafter “Settlement Agreement”), argument of counsel, all papers and pleadings filed in the action, and upon any further information or evidence requested by the Court at the time of hearing on this Motion.

Dated: November 1, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By:



Kyle Nordrehaug

Attorney for Plaintiffs and Class Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement by Order dated July 13, 2023. Plaintiffs Willie
4 Marquez, Andy Mikhael, and Julio Garcia (“Plaintiffs”), now respectfully request that this Court
5 grant final approval of the settlement attached to the Declaration of Kyle Nordrehaug (“Decl.
6 Nordrehaug”) as **Exhibit 1**, which seeks to resolve claims against Defendant Accurate Delivery
7 Systems, Inc. (“Defendant”) (collectively with Plaintiffs, the “Parties”) in exchange for a non-
8 reversionary Gross Settlement Amount of Nine Hundred Thousand Dollars and Zero Cents
9 (\$900,000.00). The Class Members overwhelmingly supported the Settlement, as there is a 100%
10 participation rate, with zero objections. The proposed Settlement is projected to pay an estimated
11 average gross payment \$4,848.56 per Class Member, with the highest estimated gross payment at
12 \$9,992.66. (Administrator Decl. of Kevin Lee-hereinafter “Lee Decl.” at ¶ 15).

13 Plaintiffs also move for final approval of attorneys’ fees in the amount of \$300,000 which
14 is one-third of the Gross Settlement Amount. As will be demonstrated herein, Class Counsel’s
15 attorney fee request is supported using the percentage fee method and the lodestar method. Second,
16 Plaintiffs move for final approval of payment of the litigation costs in the amount of \$21,491, all of
17 which was incurred in litigating this matter. Third, Plaintiffs move for final approval of the Class
18 Representatives Service Awards to Plaintiffs in the sum of \$10,000 each, to compensate them for
19 their service as Class Representatives and providing a general release of their claims against
20 Defendant – a release significantly greater than the Class Members provided – and for the risks
21 absorbed and time spent litigating the case. Plaintiffs played a vital role in representing Class
22 Members in this case and spearheading the lawsuit to seek monetary relief on behalf of all Class
23 Members. Fourth, Plaintiffs move for final approval of the payment of \$5,750 for costs of the
24 Settlement Administrator and settlement administration to Phoenix Settlement Administrators.
25 Fifth, Plaintiffs move for final approval of the \$30,000 PAGA Payment and the payment to the
26 Labor and Work Development Agency (“LWDA”) for its share of the PAGA Payment (\$22,500),
27 with the remaining \$7,500 distributed to the PAGA Employees.

28 This case required many hours of attorney time from Class Counsel and sought relief on

1 behalf of 104 potential class members within the State of California: All current and former Delivery
2 Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the Class
3 Period during the Class Period of August 18, 2017 through June 7, 2023. (Preliminary Approval Order
4 dated July 13, 2023, ¶¶ 1-2.)

5 This litigation involved the review and analysis of documents, policies, and practices, as
6 well as a full day of mediation. Most importantly, the Settlement and all its terms received
7 overwhelming support from Class Members, as there were no objections and no requests for
8 exclusion. Therefore, Plaintiffs respectfully request the Court grant final approval of the Settlement,
9 Class Counsel’s attorneys’ fees and costs and expenses, Class Representative Service Awards, costs
10 of Settlement Administrator and settlement administration, and PAGA civil penalties and as fully
11 disclosed to Class Members.

12 **II. BACKGROUND, INVESTIGATION, DISCOVERY**

13 On May 28, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael sent a letter to the California
14 Labor & Workforce Development Agency exhausting their administrative remedies before filing a
15 civil claim under the PAGA against Defendant. The LWDA took no action in response to that letter.
16 (Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”), ¶ 6.)

17 On August 18, 2021, Plaintiff Julio Garcia filed a class action Complaint against Defendant
18 in Los Angeles County Superior Court, in the matter entitled *Julio Garcia v. Accurate Delivery*
19 *Systems, Inc., a California corporation; and Does 1 through 100, inclusive*, Case No.
20 21STCV30557. On January 27, 2022, pursuant to a request by Plaintiff Julio Garcia, the Los
21 Angeles County Superior Court dismissed his action without prejudice. On August 18, 2021,
22 Plaintiffs Julio Garcia sent a letter to the California Labor & Workforce Development Agency
23 exhausting his administrative remedies before filing a civil claim under the PAGA against
24 Defendant. The LWDA took no action in response to that letter. (Nordrehaug Decl., ¶ 7; Declaration
25 of Scott M. Lidman (“Lidman Decl.”), ¶ 10.)

26 On August 31, 2021, Plaintiff Willie Marquez filed a representative PAGA action against
27 Defendant, entitled *Willie Marquez. v. Accurate Delivery Services, Inc.*, in the San Bernardino
28 County Superior Court (Case No. CIVSB 2125174), before Hon. David Cohn of Dept. S-26. In

June 2022, pursuant to a request by Plaintiff Willie Marquez, the San Bernardino County Superior Court dismissed his action without prejudice. (Nordrehaug Decl., ¶ 8.)

On August 31, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael filed a class action against Defendant, entitled *Willie Marquez, et al. v. Accurate Delivery Systems, Inc.*, in the San Bernardino County Superior Court (Case No. CIVSB 2125337), before Hon. David Cohn of Dept. S-26 (hereinafter, the “Action”). (Nordrehaug Decl., ¶ 9.)

On January 11, 2022, a First Amended Complaint was filed in the Action on behalf of Plaintiffs alleging the following claims: (1) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; (2) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (3) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (4) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (5) failure to authorize and permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (6) failure to issue accurate, itemized wage statements (7) failure to timely pay all wages due upon separation of employment; (8) failure to reimburse necessary business expenses; and (9) violations of the California Labor Code Private Attorney General Act of 2004 (“PAGA”) seeking civil penalties premised on the facts, claims, causes of action and legal theories described above. (Nordrehaug Decl., ¶ 10.)

After agreeing to participate in early mediation, Accurate Delivery informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for the putative class. Additionally, Accurate Delivery produced information and data points needed for a fruitful mediation, including without limitation, the number of employees, workweeks at issue, pay periods at issue, meal and rest period policies and procedures, and payroll policies. After a review and analysis of the documents and information produced by Accurate Delivery, Class Counsel drew on their extensive experience in

1 similar cases to assess the strengths and weaknesses of Plaintiffs' case. *Id.* This discovery allowed
2 the parties to assess the merits and value of Plaintiffs' claims and Accurate Delivery's defenses
3 thereto, if a settlement could not be reached. (Nordrehaug Decl., ¶ 11.)

4 On March 7, 2023, a mediation was held with Lynn Frank, a well-respected wage and hour
5 class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their
6 opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for
7 the claims and defenses. *Id.* Ultimately, the parties agreed in principle on a class-wide resolution.
8 *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the
9 Stipulation of Class Action and PAGA Settlement ("Settlement"). (Nordrehaug Decl., ¶ 12.)

10 The Class Representatives have vigorously prosecuted this case, and Defendant has vigorously
11 contested it. (Nordrehaug Decl. ¶ 13). The Parties engaged in sufficient investigation and informal
12 discovery to assess the relative merits of the claims of the Class and of Defendant's defenses to
13 them. *Id.* Defendant has denied all of Plaintiffs' allegations in their entirety and any liability or
14 wrongdoing of any kind. *Id.*

15 **A. The Settlement Provides Reasonable Compensation to Class Members**

16 As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement
17 Amount of \$900,000 (Nordrehaug Decl., Ex. 1- Settlement at ¶ 4).). Based on their own respective
18 independent investigations and evaluations, and after taking into account the sharply disputed
19 factual and legal issues involved in this matter, the risks attending further prosecution of the case,
20 and the monetary benefits received under the Settlement, Class Counsel is of the opinion that
21 Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,
22 reasonable and adequate and is in the best interests of the Class Members. (Nordrehaug Decl. ¶ 14.)

23 Even without the presumption of fairness and reasonableness, the settlement clearly is
24 within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary
25 approval, and as considered by the Court in granting preliminary approval.

26 As explained at preliminary approval, accounting for the risks of continued litigation and
27 impediments to discovery, Plaintiffs determined that a settlement amounting to \$900,000 was fair and
28 reasonable, and accounts for reasonable percentage of the estimated realistic recovery and courts have

1 routinely approved settlements that provided a similar discounted range of the maximum potential
2 recovery. (Nordrehaug Decl. ¶ 15). *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-
3 58 (D. Del. 2002) (recognizing that a reasonable settlement amount Settlement, ¶ 4t can be 1.6% to 14%
4 of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga.
5 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four*
6 *Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v.*
7 *Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that
8 settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial
9 approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re*
10 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8%
11 of estimated damages).¹ (Id.)

12 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’ RESPONSE**

13 **A. Terms of the Settlement**

14 The Gross Settlement Amount is Nine Hundred Thousand Dollars (\$900,000). (Settlement
15 at ¶ 4.) Under the Settlement, the Gross Settlement Amount consists of the following elements:
16 (1) Payments to the Settlement Class members for their share of the Net Settlement Amount
17 (defined below); (2) Payment of Settlement Administrator’s fees and costs; (3) Payment of

19 ¹ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at
20 *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where
21 gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5%
22 or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S.
23 Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class
24 action settlement representing “8.1% of the full verdict value” with net settlement amount
25 representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*,
26 No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final
27 approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum
28 recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal.
Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the
maximum potential recovery from the class claims and estimated amount distributable to class
after accounting for attorneys’ fees and other deductions represented approximately 6.1% of
maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL
3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed
settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—
even before any reduction thereof for attorney’s fees and costs.”).

1 Plaintiffs' Class Representatives Service Awards; (4) Payment of Class Counsel's attorneys' fees
2 and/or costs; and (5) Payment of PAGA civil penalties. (Settlement at ¶ 3(F).)

3 The Gross Settlement Amount excludes Defendant's employer side taxes and shall be
4 paid by Defendant separately from, and in addition to, the Gross Settlement Amount
5 (Settlement at ¶ 3(G).) The Gross Settlement Amount is all-in with no reversion to Defendant.

6 The Gross Settlement Amount is to be deposited with the Settlement Administrator in
7 24 equal monthly installments of \$37,500.00. Settlement at ¶ 4(B). To date, Defendant has
8 deposited 3 installments for a total of \$112,500.00.

9 **B. Released Claims**

10 In exchange for the Gross Settlement Amount, Plaintiffs and Settlement Class members will agree
11 to release the Released Claims during the Settlement Period: "Released Class Claims" shall mean "all
12 claims, demands, rights, liabilities and causes of action that were pled or could have been pled based upon
13 the facts alleged in the operative First Amended Complaint in the Action, that arose during the Class Period
14 defined above with respect to the following claims: (a) failure to pay all overtime wages owed, including
15 without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and
16 failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum
17 wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for
18 non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium
19 wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and
20 permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay
21 premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business
22 expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay
23 wages when due; (g) failure to issue accurate, itemized wage statements; (h) failure to provide paid sick
24 leave or to pay for sick leave; and (i) all claims for unfair business practices that reasonably could have
25 been premised on the facts, claims, causes of action or legal theories described above. The Class Members
26 do not release any claims other than those set forth above, including without limitation claims for vested
27 benefits, wrongful termination, violations of the Fair Employment and Housing Act, unemployment
28 insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the

Class Period.” (Settlement at ¶ 3(A).)

C. The Class Members Support the Settlement – Zero (0) Objections and Zero (0) Opt-Outs

By order dated July 13, 2023, the Court granted Preliminary Approval of the Settlement, conditionally certified the class for settlement purposes, appointed Phoenix Settlement Administrators (“Phoenix”) to act as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via U.S. First Class Mail. On August 17, 2023, Phoenix mailed the Notices to 104 Class Members. (Lee Decl. ¶¶ 5-6). Out of the 104 Notices, only 1 was deemed undeliverable after attempts to ascertain the addresses. (Lee Decl. ¶¶ 7-8). Phoenix received zero (0) requests for exclusion. (Lee Decl. ¶ 9). Phoenix received zero (0) Notices of Objection. (Lee Decl. ¶ 10). As a result, there is a 100% participation rate and all 104 Settlement Class members will be mailed a settlement check. (*Id.* ¶ 13).

Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days after it is mailed. (Settlement at ¶ 5(F).) Any settlement checks not cashed within 180 days will be voided and any funds from such uncashed checks shall escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member. (*Id.*)

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Settlement Satisfies the Standard for Final Approval

California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.

In deciding whether to approve a class settlement, a court evaluates whether the proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. Of S.F.* (9th Cir. 1982) 688

1 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal.
2 App. 4th at 1801. However, “a presumption of fairness exists where: (1) the settlement is reached
3 through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and
4 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
5 of objectors is small.” *Id.* at 1802; *accord Wershba*, 91 Cal. App. 4th at 245. In addition, a court
6 should consider additional relevant factors, including the strength of the plaintiffs’ case compared
7 to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation;
8 and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

9 At the time of preliminary approval, the Court was provided with sufficient information to
10 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
11 until after the Class had an opportunity to respond to the Settlement as explained in the Notice.
12 Subject only to the Class’s reaction to the Settlement, the Court preliminarily presumed the
13 Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and adequate
14 time provided to the Class to object to the Settlement, no class member submitted objections and no
15 class members submitted opt outs of the settlement, ***resulting in a 100% participation rate from***
16 ***the Class.*** (Lee Decl. ¶ 12). Thus, the proposed Settlement is entitled to the presumption that it is
17 fair and in all other respects proper and should be finally approved.

18 **V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS**

19 **A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage** 20 **of a Common Fund**

21 Class Counsel applies for an award of attorneys’ fees in the sum of \$300,000.00 of the Gross
22 Settlement Amount, and litigation costs of \$21,491. When a settlement results in a common fund
23 for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund.
24 *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The
25 California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of
26 fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

27 The recognized advantages of the percentage method—including relative ease of
28 calculation, alignment of incentives between counsel and the class, a better
approximation of market conditions in a contingency case, and the encouragement it

1 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
2 litigation—convince us the percentage method is a valuable tool that should not be
3 denied our trial courts.

4 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
5 (“when a number of persons are entitled in common to a specific fund, and an action brought by a
6 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
7 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d
8 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the
9 trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings*
10 *v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
11 method for calculating attorney’s fees more accurately reflects the results achieved for the putative
12 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
13 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
14 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
15 percentage-of-recovery method is generally favored in common fund cases because it allows courts
16 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
17 failure.’”).²

18 The purpose of the common fund/percentage approach is to “spread litigation costs
19 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
20 burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d
21 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a
22 fund from which others derive benefits may require those passive beneficiaries to bear a fair share
23 of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
24 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied
25 “consistently in California when an action brought by one party creates a fund in which other persons

26 ² *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such
27 as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further
28 that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also
retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
reasonableness of a requested percentage fee”).

are entitled to share.” The reasons for applying the common fund doctrine include: “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.” *Id.* Because there is a defined and clearly traceable benefit to the Class, the Court can base an award of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

1. The Requested Attorneys’ Fee is Within the Range of Fees Approved in Comparable Common Fund Cases

Assessing an appropriate fee based on a percentage of the fund involves considering “all of the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where awards were challenged by Defendant or objectors – the only parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236.

The requested fee falls in the mid-range of percentage class fee awards, which generally range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous courts in California routinely approve fee requests equal to or greater than one-third of the common fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement).

Additionally, Plaintiffs’ counsel have prosecuted pursuant to a joint prosecution agreement and agreed to split the requested fees between Class Counsel as follows: 50% to Blumenthal Nordrehaug Bhowmik De Blouw LLP and 50% to Haines Law Group, APC and Lidman Law, APC,

collectively. (Nordrehaug Decl. ¶ 32). In short, Class Counsels' fee request of \$300,000 (one-third of the common fund) is in line with awards in similar cases in California and demonstrates that Class Counsels' fee request is consistent with market rates and is reasonable.

2. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Class Counsels' fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at 48. The court then may enhance 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; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), ["[t]here is no...rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar"].

As of the date of filing, the Class Counsel Fees Payment is less than the current lodestar of \$305,935.84 (i.e. a "negative" multiplier of 0.98) and is therefore reasonable under *Laffitte*. All of the work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case. (Nordrehaug Decl. ¶ 27 [lodestar totaling \$146,000.84]; Lidman Decl., ¶¶12-18 [lodestar totaling \$159,935]).

3. Class Counsel's Hourly Rates are Reasonable

Class Counsels' hourly rates are between \$175 and \$995 and are in line with rates typically approved in wage and hour class action litigation and which rates have been approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange, San Diego, Riverside, San Luis Obispo, San Bernardino, Kern, Sacramento, and Santa Clara County Superior Courts. (Nordrehaug Decl. ¶ 28; Lidman Decl. ¶ 8; Declaration of Paul K. Haines ("Haines Decl.") at ¶ 6; *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work").

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.

When determining a reasonable hourly rate, courts may consider factors such as skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632. Class Counsels' skill and experience support their hourly rates. Their practices are limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters. (Nordrehaug Decl. ¶¶ 3; Lidman Decl. ¶ 7; Haines Decl. ¶6). As prominent attorneys in the field of wage and hour class action litigation, Class Counsel continually monitors the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates. Therefore, as they are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

4. Class Counsel's Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

The work performed to achieve a settlement that will provide valuable consideration to the Class, is detailed by Class Counsel in the declarations submitted herewith. *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are not required under California law ... , there is no required level of detail that counsel must achieve.") (internal quotations omitted). All tasks and work performed were reasonable and necessary to the prosecution of this case. The work performed was justified in light of the result achieved.

5. Costs of Litigation are Reasonable

Class Counsel seeks reimbursement of the litigation costs and expenses of \$21,491. The requested award is the amount of the actual costs incurred. These costs were reasonable and

necessary to prosecute this case and the results achieved and are fair, and reasonable. (Nordrehaug Decl. ¶ 30, Ex.3 and 4 [expenses of \$11,246.27]); (Lidman Decl. ¶ 15 [expenses of \$10,244.73]).

VI. THE CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE

Class Counsel seeks approval of a \$10,000 Class Representative Service Awards to each of the named Plaintiffs/Class Representatives. The requested enhancement awards are reasonable in light of the general releases of all claims Plaintiffs agreed to, greater than the release given by Class Members, the benefits Plaintiffs conferred upon the entire Class resulting in payments to all Class Members, the time spent assisting counsel with the investigation and prosecution of these claims, commitment to responding to discovery and depositions, and consenting to the proposed Settlement. Furthermore, in pursuing this action on behalf of the Class, Plaintiffs risked a judgment for attorneys' fees and costs in the event this matter had been lost. (Nordrehaug Decl. ¶ 31.)

Courts routinely approve service payments, or incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class litigation. *See In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the total \$30,000.00 Service Award with \$10,000.00 to each Named Plaintiff continues to be fair, appropriate, and justified as part of the overall settlement.

VII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

The Parties agreed to hire Phoenix as the administrator, and the Court approved this choice. The Administrator was responsible for formatting, printing and mailing the Notice. It was also responsible for updating addresses and re-mailing Notices returned as undeliverable, responding to Class Member inquiries, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now request that the Court approve the \$5,750 fee to Phoenix for services rendered and to be rendered. (Lee Decl. ¶¶ 18). Following the grant of final approval, the Administrator's duties will continue in order to calculate and mail Settlement Share checks to Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the

1 Settlement Agreement. The fee of \$5,750 for services rendered and to be rendered is fair and
2 reasonable and should be granted.

3 **VIII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE**

4 The PAGA civil penalties of \$30,000 to resolve the applicable penalties claimed under the
5 California Labor Code's Private Attorney general Act of 2004, as amended ("PAGA"), is reasonable
6 under the circumstances. The Parties negotiated a good faith amount to be allocated to the LWDA
7 and the PAGA Employees. The sum to be paid was not the result of self-interest at the expense of
8 other Class Members. The LWDA was provided notice of the Settlement concurrently with the filing
9 of the preliminary approval motion and the instant motion. Plaintiffs did not receive a response or
10 objection to the Settlement from the LWDA. Thus, Plaintiffs request the Court finally approve the
11 sum of \$30,000 for the PAGA Payment.

12 **IX. CONCLUSION**

13 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
14 of the Class Action Settlement, award (1) Class Counsel's attorneys' fees in the sum of \$300,000
15 and Class Counsel's costs and expenses incurred of \$21,491; (2) award the named Plaintiffs of Class
16 Representative Service Awards in the sum of \$10,000 each; (3) award \$5,750 to Phoenix, for cost
17 of settlement administration of the Settlement Administrator, and (4) approve the PAGA civil
18 penalties of \$30,000 with a payment to the LWDA in the amount of \$22,500 and payment to PAGA
19 Members in the amount of \$7,500.00.

20
21 Dated: November 1, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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23 By:


Kyle Nordrehaug

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25 Attorney for Plaintiffs and Class Counsel
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