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

GILBERTO RODRIGUEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

CARDINAL PAINT AND POWDER, INC., a
Nevada corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 20STCV14711

*[Assigned for all purposes to the Hon. Yvette M.
Palazuelos, Dept. SSC-9]*

**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: December 6, 2021
Time: 10:00 a.m.
Dept.: SSC-9

Complaint Filed: April 15, 2020
Trial Date: None Set

1
2 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
4 December 6, 2021 at 10:00 a.m. in Department SSC-9 of the above-entitled Court, located at 312 N.
5 Spring Street, Los Angeles, California 90012, Plaintiff Gilberto Rodriguez (“Plaintiff”), individually and
6 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

- 7 1. Confirming the certification of the Settlement Class for settlement purposes under Section 382
8 of the California Code of Civil Procedure;
- 9 2. Confirming the appointment of Plaintiff Gilberto Rodriguez as Class Representative for
10 settlement purposes;
- 11 3. Confirming the appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
12 Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for
13 settlement purposes;
- 14 4. Granting final approval of the Stipulation of Settlement (“Settlement”);
- 15 5. Approving an award of \$255,000.00 in attorneys’ fees to Class Counsel;
- 16 6. Approving an award of \$13,832.96 in costs to Class Counsel;
- 17 7. Approving an award of \$9,750.00 in costs to Phoenix Settlement Administrators (“Phoenix”)
18 for its settlement administration services;
- 19 8. Approving a service award of \$5,000.00 to Plaintiff Gilberto Rodriguez for his services as
20 Class Representative;
- 21 9. Approving an award of \$22,500.00 to the Labor & Workforce Development Agency
22 (“LWDA”); and
- 23 10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action
24 Settlement and Final Judgment filed concurrently herewith.

25 This Motion is based on this notice of motion, the attached memorandum of points and authorities
26 attached hereto, the declarations of Scott M. Lidman, Elizabeth Nguyen, Paul K. Haines, Milan Moore,
27
28

1 Plaintiff Gilberto Rodriguez,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: November 9, 2021

Respectfully submitted,
LIDMAN LAW, APC

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7 By:



Elizabeth Nguyen
Attorney for Plaintiff
GILBERTO RODRIGUEZ

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28 ¹ The declaration of Plaintiff Gilberto Rodriguez was originally filed with this Court on June 23, 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.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	1
	A. Plaintiff's Claims.....	2
	B. Mediation and Settlement.....	3
	C. Preliminary Approval of Settlement.....	4
III.	SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS.....	5
	A. Settlement Class Definition.....	5
	B. Monetary Terms of the Settlement	5
	C. Summary of Notice Process	6
	1. Mailing of Notice Packets	6
	D. Timing of Payments	7
	E. Notice of Judgment.....	7
IV.	ARGUMENT	8
	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.....	8
	B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims.....	8
	1. The Settlement was Reached at Arm's Length, Through Experienced Counsel and An Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation.....	9
	2. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Participating Class Member Will Be Paid Based on the Extent of His or Her Injury	12
	3. The 100% Participation Rate and Absence of Any Objections Further Confirms That the Settlement is Fair, Adequate, and Reasonable	12
	C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check	12
	D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable.....	18
	E. The Court Should Finally Approve the Requested Administration Costs.....	18
	F. Plaintiff's Requested Enhancement Payment Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that He Assumed on Behalf of the Class	19
V.	CONCLUSION.....	20

TABLE OF AUTHORITIES

Federal Cases

<i>Air Line Stewards, etc., Local 550 v. American Airlines, Inc.</i> 455 F.2d 101 (7th Cir. 1972)	9
<i>Ashker v. Sayre</i> 2011 WL 825713 (N.D. Cal. 2011)	18
<i>Cicero v. DirectTV, Inc.</i> No. EDCV 07-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010).....	14
<i>Harris v. Marhoefer</i> 24 F.3d 16 (9th Cir. 1994)	18
<i>In re Immune Response Securities Litigation</i> 497 F. Supp. 2d 1166 (S.D. Cal. 2007).....	18
<i>In re Rite Aid Corp. Securities Litigation</i> 396 F.3d 294 (3d Cir. 2005).....	13
<i>Rawlings v. Prudential-Bache Properties, Inc.</i> 9 F.3d 513 (6th Cir. 1993)	13
<i>Schiller v. David's Bridal, Inc.</i> 2012 WL 2117001 (E.D. Cal. 2012).....	16
<i>Sorenson v. PetSmart, Inc.</i> Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)	16
<i>Trustees of Const. Indust. & Laborers Health & Welfare Trust v. Redland Ins. Co.</i> 460 F.3d 1253 (9th Cir. 2006)	18
<i>Van Vranken v. Atlantic Richfield Co.</i> 901 F. Supp. 294 (N.D. Cal. 1995)	19
<i>Vizcaino v. Microsoft Corp.</i> 290 F.3d 1043 (9th Cir. 2002)	16
<i>Williams v. Centerplate, Inc.</i> 2013 WL 4525428 (S.D. Cal. 2013).....	16
<i>Williams v. Costco Wholesale Corp.</i> No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 (S.D. Cal. July 7, 2010).....	14
State Cases	
<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> 85 Cal.App.4th 1135 (2000)	12

1	<i>Bell v. Farmers Ins. Exchange</i>	
2	115 Cal.App.4th 715 (2004)	19
3	<i>Brinker Restaurant Corp. v. Superior Court</i>	
4	53 Cal. 4th 1004 (2012)	10
5	<i>Chavez v. Netflix, Inc.</i>	
6	162 Cal.App.4th 43 (2008)	14
7	<i>City of Oakland v. Oakland Raiders</i>	
8	203 Cal.App.3d 78 (1988)	15
9	<i>Clark v. Am. Residential Servs. LLC</i>	
10	175 Cal.App.4th 785 (2009)	19
11	<i>Coalition for L. County Planning etc. Interest v. Bd. of Supervisors</i>	
12	76 Cal.App.3d 241 (1977)	15
13	<i>Consumer Privacy Cases</i>	
14	175 Cal.App.4th 545 (2009)	15
15	<i>Dunk v. Ford Motor Co.</i>	
16	48 Cal.App.4th 1794 (1996)	9, 12
17	<i>Kao v. Joy Holiday</i>	
18	12 Cal.App.5th 947 (2017)	11
19	<i>Ketchum v. Moses</i>	
20	24 Cal.4th 1122 (2001)	14
21	<i>Laffitte v. Robert Half Int’l, Inc.</i>	
22	1 Cal.5th 480 (2016)	13, 14, 15
23	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i>	
24	103 Cal.App.3d 573 (1980)	8
25	<i>Mallick v. Superior Court</i>	
26	89 Cal.App.3d 434 (1979)	9
27	<i>Maria P. v. Riles</i>	
28	43 Cal.3d 1281 (1987)	13
	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
	40 Cal. App. 5th 444 (2019)	11
	<i>Richmond v. Dart Industries, Inc.</i>	
	29 Cal.3d 462 (1981)	8

1	<i>Serrano v. Priest</i>	
2	20 Cal.3d 25 (1977)	13, 14
3	<i>Serrano v. Unruh</i>	
4	32 Cal.3d 621 (1982)	13
5	<i>Stambaugh v. Superior Court</i>	
6	62 Cal.App.3d 231 (1976)	8
7	<i>Thayer v. Wells Fargo Bank</i>	
8	92 Cal.App.4th 819 (2001)	14
9	<i>Wershba v. Apple Computer, Inc.</i>	
10	91 Cal.App.4th 224 (2001)	9, 13
11	<i>Westside Community for Independent Living, Inc. v. Obledo</i>	
12	33 Cal.3d 348 (1983)	13
13	Statutes	
14	Civ. Proc. § 382	8
15	Lab. Code § 218.5	12
16	Lab. Code § 226(e)	11, 12
17	Lab. Code §2699(g)	12
18	Regulations	
19	8 Cal. Code Regs. § 13520.....	11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Gilberto Rodriguez (“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 Defendants
5 Cardinal Paint and Powder, Inc., and Cardinal Industrial Finishes (hereinafter collectively referred to as
6 “Cardinal” or “Defendants”). The Settlement Class is defined as: “all current and former hourly-paid or
7 non-exempt employees who worked for Cardinal Paint and Powder, Inc. and/or Cardinal Industrial
8 Finishes in the state of California at any time during the time period of April 15, 2016 through August
9 12, 2021.”

10 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
11 Member is approximately **\$1,178.63**. 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 12, 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, no one has opted-out or submitted a written objection to the Settlement.

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

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 On April 15, 2020, Plaintiff filed a putative class action complaint against Defendant Cardinal
26 Paint and Powder, Inc. in Los Angeles County Superior Court. *See* Declaration of Elizabeth Nguyen
27 (“Nguyen Decl.”), ¶ 10. On July 26, 2021, pursuant to the Parties’ stipulation and in connection with
28 effectuating the terms of the settlement, Plaintiff filed a First Amended Class and Representative Action

Complaint (“FAC”) adding affiliate company Cardinal Industrial Finishes, one of the legal entities that employed the Class Members in California,² as a named Defendant. In the FAC, Plaintiff alleges that Defendants: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to timely pay all wages upon separation of employment; (6) failed to provide accurate, itemized wage statements; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). *Id.*

A. Plaintiff’s Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of liability are related to Defendant’s alleged failure to pay for all time worked and failure to provide Class Members all legally compliant duty-free meal and rest periods. Nguyen Decl., ¶¶ 11-24. Specifically, Plaintiff alleges that Defendants failed to compensate its non-exempt employees for all time worked. *Id.* at ¶ 11. Plaintiff alleges that Defendants would keep track of Plaintiff’s time worked and would unlawfully round/shave Plaintiff’s work time such that Plaintiff would not be fully paid for all time worked. *Id.* This time-shaving and/or rounding practice utilized by Defendants was not even-handed over time and would almost exclusively round and shave in Defendants’ favor such that Plaintiff was routinely underpaid for all his time worked. *Id.* Also, Defendants’ timekeeping policies and/or practices required Class Members to stand in a line in order to clock in. This timekeeping policy and/or practice resulted in Plaintiff and Class Members routinely having to wait approximately five to six minutes before being able to clock in for which they did not receive pay. *Id.*

Plaintiff alleges that throughout times during his employment, he and Class Members would receive non-discretionary bonuses from Defendants based on the earnings of the company, as well as other forms of non-discretionary pay (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”). Nguyen Decl., ¶ 13. Specifically, Plaintiff alleges Defendants failed to include the Incentive Pay when calculating the regular rate of pay for purposes of paying Plaintiff and the other non-exempt employees’ overtime wages, thereby causing them to be underpaid all of their

² Cardinal Paint and Powder, Inc. manufactures the powder coating, while Cardinal Industrial Finishes is the liquid paint portion of the business operations.

1 required overtime wages. *Id.*

2 Plaintiff alleges that he and Class Members were not provided with all legally-required off-duty
3 meal periods beginning before the end of the fifth hour of work. Nguyen Decl., ¶ 15. Specifically,
4 Plaintiff contends that Defendants' meal period policies/practices fail to require employees to record the
5 start and stop time for meal periods. Additionally, on the occasions when Plaintiff worked in excess of
6 10.0 hours, he was not provided with a second 30-minute meal period due to Defendants' meal period
7 policies/practices that fail to provide for a second meal period for shifts over 10.0 hours. These practices
8 resulted in systematically unlawful meal periods. Despite Defendants' failure to keep any records of
9 Plaintiff's meal periods, Plaintiff is informed and believes that Defendants unlawfully automatically
10 deducted thirty minutes from Plaintiff's work time each shift for his meal break regardless of if a meal
11 period was taken or not. *Id.*

12 Plaintiff alleges that he and other Class Members were not authorized and permitted to take all
13 required rest periods due to Defendants' rest period policies/practices which fail to authorize and permit
14 all rest periods for every four hours worked, or *major fraction thereof*. Nguyen Decl., ¶ 17. Specifically,
15 Plaintiff regularly worked shifts of over 10.0 hours, but Defendants did not authorize and permit Plaintiff
16 to take a third 10-minute rest period. *Id.*

17 As a result of the alleged unpaid wages and unpaid meal period and rest period premium wages
18 described above, Plaintiff alleges that Defendants issued inaccurate wage statements in violation of Labor
19 Code § 226, failed to pay all wages to Settlement Class Members upon their separation of employment,
20 and are thus liable for civil penalties under the Labor Code Private Attorney General Act ("PAGA").
21 Nguyen Decl., ¶¶ 19-24.

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

25 **B. Mediation and Settlement**

26 After agreeing to participate in early mediation, Defendants informally produced time records
27 and payroll data for the putative class for both Cardinal Paint and Powder, Inc. and Cardinal Industrial
28 Finishes, as well as its wage and hour policies and other relevant documents and information relevant to

1 the claims alleged in advance of mediation. Nguyen Decl., ¶ 26. Plaintiff conducted an analysis of the
2 payroll data and time records produced by Defendants. After the detailed review of the payroll and time
3 records and other documents and policies produced by Defendants, Class Counsel drew on their extensive
4 experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery
5 also allowed the Parties to discuss the strengths and weaknesses of Plaintiff's contemplated claims for
6 waiting time penalties, inaccurate wage statements, and civil penalties under the PAGA as well as
7 Plaintiff's various theories of liability on his claims. This discovery further allowed the parties to assess
8 the merits and value of Plaintiff's claims and Defendants' defenses thereto, if a settlement could not be
9 reached. *Id.*

10 On March 25, 2021, after extensive research and analysis, including a detailed analysis of
11 Defendants' potential exposure by Plaintiff, a full-day mediation was held with Jeffrey Krivis, Esq., a
12 well-respected wage and hour class action mediator, at First Mediation. Nguyen Decl., ¶ 27. During
13 mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of
14 Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* As part of the negotiations and
15 settlement discussions, the Parties agreed that Plaintiff would file a FAC adding causes of action against
16 Defendants for: (1) waiting time penalties; (2) inaccurate wage statements; and (3) civil penalties under
17 the PAGA. After a full day mediation, the Parties reached agreement and executed a Memorandum of
18 Understanding ("MOU"). Thereafter, the Parties cooperated and signed the Stipulation of Settlement
19 ("Settlement"). *Id.*

20 **C. Preliminary Approval of Settlement**

21 Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary
22 Approval on June 23, 2021. Nguyen Decl., ¶ 28. On August 12, 2021, the Court issued an Order
23 Granting Preliminary Approval of the Settlement. *Id.*; Exh. A.

24 Plaintiff submitted the Settlement, and Court's Order Granting Preliminary Approval of the
25 Settlement to the LWDA via the LWDA's website on June 23, 2021 and October 29, 2021, respectively.
26 *See* Nguyen Decl., ¶ 42; Exhs. D & E. Plaintiff will also provide the LWDA with a copy of the instant
27 motion for final approval and supporting documents after the instant motion is filed and will file a
28 supplemental proof of service prior to the hearing. Nguyen Decl., ¶ 44.

On September 13, 2021, the Settlement Administrator mailed the Court-approved Notice of Class Action Settlement in English and Spanish to the Settlement Class Members, who had until October 28, 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 **no opt-outs** 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 hourly-paid or non-exempt employees who worked for Cardinal Paint and Powder, Inc. and/or Cardinal Industrial Finishes in the state of California at any time during the time period of April 15, 2016 through August 12, 2021.” Nguyen Decl., ¶ 29.

B. Monetary Terms of the Settlement

The Settlement provides for Defendants to pay a Total Settlement Amount of Seven Hundred Sixty-Five Thousand Dollars and Zero Cents (\$765,000.00). Kruckenberg Decl., ¶ 16. The Net Distribution Fund is the amount remaining from the Total Settlement Amount after deducting requested attorneys’ fees (\$255,000.00) and verified costs (\$13,832.96), proposed Class Representative Service Award to Plaintiff (\$5,000.00), Settlement Administration costs (\$9,750.00), and PAGA payment (\$30,000.00). *Id.* Based on these requested amounts, the Net Distribution Fund is calculated to be approximately **\$451,417.04**. *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:

The Net Distribution Fund shall be divided by the total of all Workweeks of Settlement Class Members during the Class Period in order to establish the value of each Workweek. The Individual Settlement Share to each Settlement Class Member shall be calculated by multiplying the value of a Workweek by the number of Workweeks worked by the Settlement Class Member during the Class Period. *See* Settlement, ¶ 4.8.

1 In addition, PAGA Employees will receive a *pro-rata* share of \$7,500.00 (or 25% of the
2 \$30,000.00 PAGA Payment) (“Individual PAGA Payment”) based on workweeks during the PAGA
3 Period. Specifically, 25% of the PAGA Payment (or 7,500.00) shall be divided by the total of all
4 workweeks worked by PAGA Employees during the PAGA Period in order to establish the value of each
5 workweek. The Individual PAGA Payment to be made to each PAGA Employee shall be calculated by
6 multiplying the value of a workweek by the number of workweeks worked by the PAGA Employee during
7 the PAGA Period. *See* Settlement, ¶ 4.9. The “PAGA Period” is defined in the Settlement as the time
8 period of April 15, 2019 through August 12, 2021. *See* Settlement, ¶ 2.21.

9 Payments to Class Members will be classified as 67% as penalties and interest to be reported on
10 a 1099 form, and 33% as wages. *See* Settlement, ¶ 4.11.

11 Defendants will pay the employer’s share of payroll taxes separately from, and in addition to, the
12 Total Settlement Amount. *See* Settlement ¶ 2.33; Kruckenberg Decl., ¶ 18.

13 **C. Summary of Notice Process**

14 ***1. Mailing of Notice Packets***

15 On August 30, 2021, Defendants provided Phoenix with data files with the following
16 information: each Class Member’s full name, last known address, Social Security number, number of
17 workweeks during the Class Period and PAGA Period, and employment dates as a non-exempt employee
18 during the Class Period. Kruckenberg Decl., ¶ 6. After performing address updates and verifications,
19 Phoenix mailed the Notice of Class Action Settlement (“Class Notice”) to the 383 Settlement Class
20 Members on September 13, 2021 in English and Spanish. *Id.* at ¶¶ 7-8. Following the initial mailing,
21 twelve (12) Class Notices were returned to Phoenix by the Post Office. *Id.* at ¶ 9. After Phoenix
22 performed a Skip Trace, eleven (11) Class Notices were re-mailed. *Id.* at ¶ 11. As of the date of filing
23 this final approval motion, one (1) Class Notice remains undeliverable because no forwarding address
24 was provided and/or no new address could be located through Skip Trace. *Id.* at ¶ 12.

25 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
26 disputes was October 28, 2021. Kruckenberg Decl., ¶ 8. As of the date of this filing, there were no
27 objections, no disputes, and no opt-outs. *Id.* at ¶¶ 13-15. Accordingly, as of the date of this Motion, the
28 participation rate amongst the Settlement Class Members is 100% and the average estimated payment is

1 \$1,178.63, with the highest estimated payment to a Settlement Class Member being \$2,475.40, the lowest
2 estimated payment to a Settlement Class Member being \$1.27 (worked one (1) workday), and the median
3 amount being \$971.07. *Id.* at ¶¶ 13-19.

4 **D. Timing of Payments**

5 Defendants shall pay the Total Settlement Amount within ten (10) calendar days of the Effective
6 Date.³ Settlement ¶ 4.1. Within fifteen (15) calendar days of receipt of the Total Settlement Amount, the
7 Settlement Administrator shall distribute the following payments: (a) full payment to Plaintiff for
8 Plaintiff's Court-approved Service Award; (b) full payment to the LWDA for its 75% portion of the PAGA
9 Payment; (c) full payment of the Court-approved Settlement Administrator Expenses; (d) full payment of
10 the Court-approved litigation costs and expenses; (e) full payment of the Individual Settlement Payments
11 to Settlement Class Members; (f) full payment to the PAGA Employees of their 25% portion of the PAGA
12 Payment; and (g) the Court-approved Class Counsel Award to Class Counsel. Settlement ¶ 10.2. After
13 disbursement, Settlement Class Members will have 180 days to cash their checks. *See* Settlement ¶¶ 2.34,
14 10.4. Funds remaining unclaimed will be distributed to the California State Controller's Office –
15 Unclaimed Property Fund in the name of the Settlement Class Member. *Id.*; Nguyen Decl., ¶ 30.

16 **E. Notice of Judgment**

17 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class
18 members, the final judgment entered by the Court and any changes to the Final Approval hearing date or
19 location will be posted on the Settlement Administrator's website at
20 <http://www.phoenixclassaction.com/rodriguez-v-cardinal-paint/>. *See* Kruckenberg Decl., Exh A.;
21 Nguyen Decl., ¶ 43.

22 //

23
24 ³ "Effective Date" means the date by which the Settlement is finally approved as provided herein and the Court's
25 Final Approval Order becomes binding. For purposes of the Settlement Agreement, the Final Approval Order
26 becomes binding upon the later of: (1) the day after the last day by which a notice of appeal of the Final Approval
27 Order and/or of an order rejecting any motion to intervene may be timely filed, and none is filed; (2) if such an
28 appeal is filed, and the Final Approval Order is affirmed, the day after the last date for filing a request for further
review of the decision passes and no further review is requested; (3) if an appeal is filed and further review of the
decision affirming the Final Approval Order is requested, the day after the request for review is denied with
prejudice and/or no further review of the decision can be requested, or (4) if review is accepted, the day after the
United States or California Supreme Court affirms the Settlement. *See* Settlement ¶ 2.11.

1 **IV. ARGUMENT**

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

5 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and
6 its members are too numerous for joinder to be practical; (2) the representative and absent class members
7 share a community of interest, and questions of law and fact common to the class predominate over
8 questions unique to individual class members; (3) the representative's claims are typical of the class'
9 claims; and (4) the representative will fairly and adequately represent the class' interests. *See Richmond*
10 *v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

11 Here, this Court found that the Class meets all the requirements for class certification for
12 settlement purposes when it granted preliminary approval of the Settlement on August 12, 2021. *See*
13 *Nguyen Decl.*, ¶ 28; Exh. A. After the Court entered an order granting preliminary approval, no events
14 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
15 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement
16 Class Members have objected to any portion of the Settlement and no Settlement Class Member have
17 elected to opt-out of the Settlement. *See Kruckenberg Decl.*, ¶¶ 13-15. This Court should therefore
18 confirm its conditional certification of the Settlement Class.

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

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

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

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

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

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

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

1 As detailed in Plaintiff's Preliminary Approval Motion, there is significant risk of non-certification
2 and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example, with respect
3 to Plaintiff's unlawful rounding claims, Defendants contend that they compensated non-exempt
4 employees for all of their time worked and that the time punch data would necessarily include minutes
5 that were not compensable work time because the employee would not start performing any work prior to
6 the start of the shift and/or would not perform any work after the scheduled stop time. Nguyen Decl., ¶
7 12. Defendants also contend that their rounding practices were lawful and any unpaid time was *de minimis*
8 and therefore non-compensable. *Id.* Defendants further assert that Plaintiff would be unable to certify a
9 rounding or off-the-clock claim given the individualized inquiries that would be required, given that
10 Defendants rounding mechanism was, according to Defendants, allegedly favored the employees. *Id.*

11 As for Plaintiff's miscalculation of regular rate claims, Defendants contend that Class Members
12 received all overtime wages to which they were entitled. Nguyen Decl., ¶ 14. Defendants further counter
13 that any bonuses paid to Class Members during the relevant time period were discretionary and did not to
14 be included in the regular rate of pay for overtime purposes. *See* 29 C.F.R. §§778.208, 778.211 (excluding
15 "discretionary" bonuses from the regular rate); *see also* DLSE Manual § 49.1.2.4(3) (bonuses are
16 discretionary, and therefore excludable, if "both the fact that payment is to be made and the amount of the
17 payment" are discretionary). *Id.*

18 As for Plaintiff's meal period claims, Defendants counter that they have always provided non-
19 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
20 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
21 than any policy or practice of Defendants. Nguyen Decl., ¶ 16. Furthermore, Defendants counter that the
22 time records reflect compliant meal periods. Defendants point out that under *Brinker Restaurant Corp. v.*
23 *Superior Court* (2012) 53 Cal. 4th 1004, they are only required to "provide" the opportunity to take meal
24 periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53
25 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendants contend Plaintiff's meal period claim
26 is not suited for class certification, since individual inquiries would be required to assess which employees
27 took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons
28

1 why a particular employee took a non-compliant meal period or missed a meal period during a particular
2 shift. *Id.*

3 As for Plaintiff's rest period claims, Defendants contend they have always maintained and
4 enforced lawful rest period policies and practices, and that Class Members were authorized and permitted
5 to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 18. Defendants argue
6 this claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether
7 each Class Member was in fact authorized and permitted to take a compliant rest period, which would
8 devolve into an unmanageable series of mini-trials. *Id.*

9 As for Plaintiff's claim for wage statement penalties, Defendants argue that meal and rest period
10 claims cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services,*
11 *Inc.* (2019), review granted, 40 Cal. App. 5th 444 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53
12 Cal.4th 1244 (*see, e.g., Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012)
13 2012 WL 3264081 at **8-9). Defendants further argue that their alleged wage statement violations could
14 not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee
15 "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e)
16 for imposition of penalties. Nguyen Decl., ¶ 20.

17 As for Plaintiff's claim for waiting time penalties, Defendants assert they have strong defenses to
18 the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims,
19 precluding imposition of penalties. Nguyen Decl., ¶ 22. *See also* 8 Cal. Code Regs. § 13520 (a "good
20 faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy*
21 *Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was
22 exempt precluded imposition of waiting time penalties over contested wages owed). *Id.*

23 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims,
24 Defendants argue that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims
25 will fail. Nguyen Decl., ¶ 24. Defendants also maintain that, given their good faith defenses, this Court
26 would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants
27 liable for any of Plaintiff's claims. *Id.*

28 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also

1 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
2 litigation. Nguyen Decl., ¶ 25. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted
3 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages
4 figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
5 adequate, and reasonable in view of them.

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

9 Individual settlement payments will be calculated based on the number of workweeks worked by
10 each Settlement Class Member during the Class Period. See Settlement, ¶ 4.8. This method of
11 distribution compensates Settlement Class Members based on the estimated extent of their injuries, as
12 Settlement Class Members who worked more workweeks, would have been subject to more of the alleged
13 wage and hour violations than those who worked fewer weeks. Thus, the formula for compensating
14 Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties
15 that could be recovered by them.

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

18 Class members' response to a settlement is relevant in evaluating whether it merits final approval.
19 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
20 fairness presumption. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
21 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
22 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion,
23 not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member
24 have elected to opt-out of the Settlement. In addition, only 1 of the 383 Class Notices was returned
25 undeliverable. Kruckenberg Decl., ¶¶ 8-15. The extremely favorable response of the Settlement Class
26 further confirms that the Settlement is fair, adequate, and reasonable.

27 **C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common**
28 **Fund Confirmed by a Lodestar Cross-Check**

 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
their attorneys' fees and costs for their wage claims. See Lab. Code §§ 218.5, 226(e) and 2699(g). A fee

award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

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

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

The recognized advantages of the percentage method—including relative ease of calculation, 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.

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

Laffitte also held that trial courts have discretion to assess reasonableness of fee awards with tools

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

8 Here, Class Counsel’s fee request of \$255,000.00 (one-third of the Total Settlement Amount) is
9 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
10 “regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
11 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
12 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
13 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
14 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
15 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
16 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
17 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
18 in similar wage and hour class action matters. *See* Nguyen Decl., ¶ 31. Thus, the percentage sought by
19 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

28 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 **\$208,288** which results in a multiplier of approximately 1.22 compared to the \$255,000.00 fee request. *See* Nguyen Decl., ¶ 36. 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., ¶ 37, 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	68.8	\$51,600.00
Elizabeth Nguyen (16th Year Attorney)	\$650	125.9	\$81,835.00
Paul K. Haines (15th Year Attorney)	\$650	26.7	\$17,355.00
Milan Moore (6th Year Attorney)	\$400	15.5	\$6,200.00
Romina Tamiry (2nd Year Attorney)	\$295	122.4	36,108
Paralegals	\$175	86.8	15,190
Total Lodestar			208,288

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

1 representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v.*
2 *Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency
3 case, significant risk and the absence of supporting precedents, are proper considerations in awarding
4 attorneys' fees).

5 First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a
6 current participation rate of 100%, and not a single Settlement Class Member has objected to the
7 Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Kruckenberg Decl., ¶¶
8 13-15. Additionally, the *average* settlement payment in this case of approximately **\$1,178.63** is in line
9 with, and above, settlement payments in similar wage and hour class action settlements. *See, e.g.,*
10 *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class
11 action settlement approved where average class member recovery was approximately \$60); *Schiller v.*
12 *David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding
13 that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate,*
14 *Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013)
15 (granting final approval of class action settlement where average recovery for each class member was
16 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted
17 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the
18 strength of the results achieved.

19 As discussed above, this case presented significant risk as to both class certification and merits
20 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
21 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
22 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
23 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
24 compensation for over one year of work. *Nguyen Decl.*, ¶ 33. During this time, Class Counsel have
25 expended a total of \$12,332.96 in actual costs and have devoted substantial time to this litigation and
26 expect to incur approximately \$1,500.00 in future costs for filing the instant motion, filing the final
27 declaration regarding distribution of settlement, Case Anywhere fees for approximately four quarters
28 following final approval until case closure, service and messenger fees, postage fees, and/or court costs

1 for future court appearances.⁴ Nguyen Decl., ¶ 33; Exh. B. Class Counsel’s efforts have included
2 conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, reviewing
3 Defendants’ documents and policies, analyzing Settlement Class Members’ timekeeping data and payroll
4 records, preparing for and attending mediation, negotiating and revising the long-form Settlement
5 Agreement, preparing the Motions for Preliminary and Final Approval, overseeing the settlement
6 administration process, communicating with Settlement Class Members, and otherwise litigating this
7 case. *See* Nguyen Decl., ¶ 32. Moreover, Class Counsel have expended time, effort, and money that they
8 could have expended on less risky cases instead. Given the considerable potential for adverse outcomes
9 in this case, including, but not limited to losing on class certification and/or merits issues, the contingent
10 risk borne by Class Counsel was great. Nguyen Decl., ¶¶ 32-35.

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

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

27
28

⁴ This includes total costs incurred by both law firms.

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

3 Class Counsel seek to be reimbursed a total of \$13,832.96⁵ in litigation costs. Class Counsel's
4 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
5 See Nguyen Decl., ¶ 33; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
6 approved by courts. See, e.g., *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
7 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*,
8 No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions
9 and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees*
10 *of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59
11 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497
12 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
13 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because
14 the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement
15 Class Member has objected to them, Plaintiff respectfully requests the Court should grant the request for
16 actual costs incurred.

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

18 Plaintiff also requests that the Court approve \$9,750.00 in administration costs to the Settlement
19 Administrator, Phoenix. As detailed in the declaration of Elizabeth Kruckenberg on Behalf of Phoenix
20 submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in
21 effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each
22 Settlement Class Member's individual settlement payment, updated addresses contained in the class data
23 supplied by Defendant, formatted Class Notices for mailing, mailed Class Notices to all 383 Class
24 Members in English and Spanish, kept the parties informed of any objections or requests for exclusion,
25 and have otherwise administered the Settlement. See Kruckenberg Decl., ¶¶ 2-20. For these reasons,
26 Phoenix's requested costs are fair, reasonable, and adequate, and should be finally approved.

27 _____
28 ⁵ Class Counsel have expended a total of \$12,332.96 in actual costs and anticipates incurring costs in the
amount of \$1,500 for filing fees, Case Anywhere fees for four quarters, service and messenger fees, postage fees,
and/or court costs for future court appearances.

1 **F. Plaintiff's Requested Enhancement Payment Is Fair, Adequate, and Reasonable in View**
2 **of Plaintiff's Efforts and the Risks that He Assumed on Behalf of the Class**

3 Courts routinely approve service payments to compensate named plaintiffs for the services they
4 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
5 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in
6 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
7 \$50,000 service payment). In analyzing the requested service payment, courts consider the following
8 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the
9 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has
10 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,
11 and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's*
12 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
13 Cal.App.4th 785, 804.

14 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
15 \$5,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook
16 on behalf of Class Members. Nguyen Decl., ¶ 41; Declaration of Gilberto Rodriguez (“Rodriguez Decl.”),
17 ¶¶ 6-11. Plaintiff gathered documents for use in the lawsuit, and worked with Class Counsel on the case,
18 including preparing for mediation and discussing the case, the merits, the defenses, and settlement. *See*
19 *Nguyen Decl.*, ¶ 41; *Rodriguez Decl.*, ¶¶ 6-10. The class has benefited from Plaintiff's actions as the
20 average settlement amount is **\$1,178.63**.

21 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
22 lawsuit could stigmatize him and/or affect future employment. *Rodriguez Decl.*, ¶ 8. Plaintiff also
23 understood the risk that he could be liable for Defendants' costs if he lost the case. *Id.* at ¶ 7. Plaintiff
24 accepted these risks and burdens because he wanted Defendants to compensate their current and former
25 employees for unpaid wages. *Id.* at ¶¶ 7-8. Plaintiff estimates he spent over 15 hours on activities related
26 to this case. *Id.* at ¶ 9.

27 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
28 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendants
and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving

1 all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Settlement, ¶ 2.9.

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

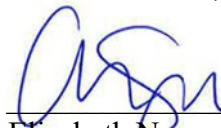
6 **V. CONCLUSION**

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

10
11 Dated: November 9, 2021

Respectfully submitted,
LIDMAN LAW, APC

12
13 By:



Elizabeth Nguyen
Attorney for Plaintiff
GILBERTO RODRIGUEZ