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on behalf of all others similarly situated

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

BERNABE PARRILLA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

MONSTER ENERGY COMPANY, a
Delaware corporation; DOES 1 through 25,

Defendants.

Case No.: 21STCV25855

Assigned to Hon. Elihu M. Berle, SSC-6

**NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

**[Filed concurrently with Declarations
of Aaron Gundzik, Daniel Holzman,
Bernabe Parrilla and Jarrod Salinas of
Phoenix Settlement Administrators;
[Proposed] Order and [Proposed]
Judgment]**

Date: April 4, 2024

Time: 9:00 a.m.

Dept.: 6

Complaint Filed: July 14, 2021

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 4, 2024, at 9:00 a.m. in Department 6 of
3 the above-entitled Court, located at 312 N. Spring St, Los Angeles, CA 90012, Plaintiff
4 Bernabe Parrilla will and, by this Notice of Motion and Motion, hereby does, move for an
5 Order as follows:

6 1. Granting final approval of a class action and Private Attorneys' General Act
7 ("PAGA") settlement in the gross amount of two hundred eighty five thousand dollars
8 (\$285,000);

9 2. Approving a service and release payment in the amount of \$10,000 to the
10 named plaintiff, Bernabe Parrilla;

11 3. Approving of the payment of settlement administration costs of \$5,500 to the
12 third-party settlement administrator, Phoenix Class Action Settlement Administrators
13 ("Phoenix" or "Settlement Administrator");

14 4. Approving of a payment to the California Labor Workforce Development
15 Agency ("LWDA") in the amount of \$9,000, which is 75% of the \$12,000 amount allocated
16 to settle the PAGA claims, with the other 25% (\$3,000) being distributed to the PAGA
17 employees;

18 5. Approving the payment of attorneys' fees of \$95,000 which is one-third of
19 the gross settlement amount, and costs and expenses of \$17,255.14 to Class Counsel; and

20 6. Entering final judgment implementing the release of participating Class
21 Members' claims.

22 Plaintiff's motion is made pursuant to California Rule of Court 3.769 and is based on
23 this Notice of Motion and Motion and Memorandum of Points and Authorities submitted
24 herewith, the [Proposed] Final Approval order and [Proposed] Judgment, the Declaration of
25 Class Counsel Aaron C. Gundzik, the Declaration of Class Counsel Daniel Holzman, the
26 Declaration of named Plaintiff Bernabe Parrilla, the Declaration of Jarrod Salinas, on behalf
27 of the Settlement Administrator, Phoenix, the pleadings and other papers filed in this action,
28 and such further argument or evidence as may be considered at the hearing on the motion.

1 As this Motion will be unopposed, Plaintiff respectfully requests relief from the page
2 limit requirement set by California Rules of Court, Rule 3.1113(d).

3 DATED: January 30, 2024

GUNDZIK GUNDZIK HEEGER LLP

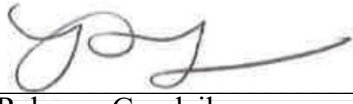
4
5 By: 
6 Rebecca Gundzik
7 Attorneys for Plaintiff Bernabe Parrilla,
8 individually and on behalf of all others
9 similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On December 4, 2023, this Court granted preliminary approval to the wage and hour
4 class and Private Attorneys' General Act ("PAGA") action settlement of two hundred eighty
5 five thousand dollars (\$285,000) that is the subject of this Motion. In doing so, the Court
6 preliminarily concluded that the proposed settlement is fair and reasonable, preliminarily
7 appointed the named Plaintiff as the Class Representative, and preliminarily appointed
8 Aaron C. Gundzik of Gundzik Gundzik Heeger LLP and Daniel Holzman of Caskey &
9 Holzman as Class Counsel. As ordered, notice of the proposed settlement has been
10 distributed to all 75 Class Members. Declaration of Jarrod Salinas ("Salinas Decl."), ¶¶ 3-7.
11 As of the date of this filing, no Class Members have opted out of or objected to the proposed
12 settlement. Salinas Decl., ¶¶ 9-10. The opt out deadline is March 4, 2024.

13 As this Court is aware, this is a class action filed by Plaintiff Bernabe Parrilla against
14 his employer Defendant Monster Energy Company ("Defendant" or "MEC") on behalf of a
15 class consisting of all persons employed by MEC in California and classified as a Field
16 Sales Representative (including Club Field Sales Representative) at any time during the
17 Class Period (July 14, 2017 to April 4, 2023). Generally, the terms of the parties' settlement
18 require Defendant to pay the sum of \$285,000. By this Motion, Plaintiff seeks approval for
19 the distribution of these funds to the Class Members, less a service and release payment to
20 the named Plaintiff, attorneys' fees and costs, a payment to the LWDA, a payment to the
21 aggrieved employees and settlement administration expenses. If this Motion is granted in
22 full, 75 Class Members will receive a settlement payment resulting in individual gross
23 payments to Class Members ranging between \$68.66 and \$6,843.40, and the average
24 settlement payment will be \$1,936.60. Salinas Decl., ¶ 16.

25 Nothing material concerning the proposed settlement has changed since the Court's
26 preliminary approval order. The Court should grant final approval.

27 //

28 //

1 **II. FACTUAL BACKGROUND**

2 **A. Plaintiff's Factual Allegations**

3 As discussed in Plaintiff's Motion for Preliminary Approval, based upon his
4 investigation, Plaintiff made the following contentions: During the Class Period, Defendant
5 has been in the business of manufacturing and selling beverages in California and elsewhere.
6 Plaintiff was employed by Defendant as a Field Sales Representative and Club Field Sales
7 Representative (collectively "FSR") from 2016 until about April 2020. Declaration of Aaron
8 Gundzik ("Gundzik Decl."), ¶ 12. Plaintiff alleged that during the Class Period, which
9 begins on July 14, 2017, Defendant incorrectly classified persons employed as FSR's as
10 exempt employees and did not pay overtime premium wages for overtime hours. In addition,
11 Plaintiff contended that MEC did not provide employees with compliant meal periods or rest
12 breaks or provide required premium wages as compensation. Gundzik Decl., ¶ 13. In
13 addition, Plaintiff contended that Defendant failed to provide accurate wage statements that
14 reflected the unpaid overtime and other premium wages and failed to pay these unpaid
15 wages when employees separated. *Id.*

16 Defendant ardently opposes the merits of this case, denied Plaintiff's factual
17 allegations and maintains that Plaintiff faces substantial risk with respect to certifying his
18 claims (for any purpose other than settlement), proving liability for any of the alleged Labor
19 Code violations or recovering any of the penalties sought in connection with his derivative
20 claims. Defendant contends, among other things, that Plaintiff and the Class Members were
21 properly classified and have been paid proper wages. Moreover, Defendant argues that it
22 met its meal and rest period obligations. Furthermore, to the extent Plaintiff received wage
23 statements that were allegedly inaccurate, Defendant asserted that Plaintiff suffered no
24 actual damage or harm as a result.

25 **B. Procedural History and Investigation and Discovery Prior to Settlement**

26 Plaintiff filed his initial complaint against MEC on July 14, 2021 and filed his
27 First Amended Complaint on September 14, 2021. Gundzik Decl., ¶¶ 5-6. The First Amended
28 Complaint (FAC), which is the operative complaint, alleges causes of action against MEC for

1 (1) failure to pay overtime; (2) failure to provide meal and rest breaks; (3) inaccurate wage
2 statements; (4) failure to pay unpaid wages at separation; (5) violation of the Unfair Practices
3 Act; and (6) recovery of civil penalties under the California Labor Code Private Attorneys'
4 General Act ("PAGA"). Gundzik Decl., ¶ 7.

5 On October 20, 2022, Plaintiff's counsel, co-counsel Daniel Holzman, and their
6 client Bernabe Parrilla, as well as Defendant and Defendant's counsel, attended a mediation
7 session with Gig Kyriacou. Gundzik Decl. ¶ 14. Mr. Kyriacou has substantial experience
8 mediating wage and hour class actions like this one. The case did not settle at the mediation.
9 The mediator continued to work with the parties by telephone and made a settlement
10 proposal on March 31, 2023. The proposal was accepted by the parties on April 6, 2023. *Id.*

11 In connection with Plaintiff's investigation and formal discovery, Plaintiff and
12 Plaintiff's counsel extensively investigated Plaintiff's claims against Defendant. Gundzik
13 Decl. ¶¶ 8-10. They have thoroughly investigated Plaintiff's claims, reviewed and analyzed
14 records and information produced by Defendant, and worked to develop information on
15 potential damages. Gundzik Decl., ¶¶ 8-11. They engaged in formal discovery and informally
16 exchanged additional information and documents for the mediation. Gundzik Decl., ¶ 8.
17 Among other things, Plaintiff's counsel has obtained from Defendant, and then reviewed and
18 analyzed policy documents and pay records and other information concerning class member
19 wages and work activities. Plaintiff's counsel also obtained Class Member contact information
20 and have interviewed a number of Class Members. *Id.* In connection with the mediation,
21 Defendant provided information on the number of Class Members and PAGA Aggrieved
22 Employees, total Class Member workweeks, total PAGA Aggrieved Employee pay periods
23 and other data concerning the class. Gundzik Decl., ¶ 9. Plaintiff's counsel also investigated
24 and compiled publicly available information about Defendant and its business. Gundzik Decl.,
25 ¶ 8. Based on this information, as well as information provided by the Plaintiff, Plaintiff's
26 counsel was able to assess Defendant's potential liability and prepare an estimate the damages
27 incurred by the Class. Gundzik Decl., ¶ 10.

1 **C. Plaintiff's Counsel's Estimate of Potential Recovery**

2 The First Cause of Action is for failure to pay overtime. This claim was based on
3 Plaintiff's contention that he and other FSRs were wrongly treated as non-exempt outside
4 salespersons and as a result were not paid overtime wages when they worked overtime
5 hours. Gundzik Decl., ¶ 20. The Wage Order defines an outside salesperson as an employee
6 "who customarily and regularly works more than half the working time away from the
7 employer's place of business selling tangible or intangible items or obtaining orders or
8 contracts for products, services or use of facilities." Wage Order 04-2001(2)(M). Plaintiff
9 contended that Class Members did spend part of their working days selling beverages, but
10 that these sales activities took up less than half of their working time. *Id.* Defendant
11 contended that all or most of Class Members' working time related to sales and therefore
12 class members were properly classified as outside salespersons. *Id.* Defendant also
13 contended that the class could not be certified on this claim due to a multitude of individual
14 issues concerning how Class Members spent their workdays. *Id.* Defendant did not require
15 FSR employees to record their working hours. *Id.* As a result, there are no records of the
16 actual overtime hours worked by Class Members. Instead, Plaintiff's counsel relied on our
17 employee interviews to estimate that Class Members worked about five overtime hours per
18 week. *Id.* As of the mediation date, class members had worked 5,958 workweeks during the
19 Class Period and their salaries translated into an hourly rate of \$27.90. *Id.* Using these data
20 points, counsel estimated the maximum value of this claim to be \$1,246,488. *Id.* (\$27.90 per
21 hour x 1.5 x 5 overtime hours per week x 5,958 workweeks = \$1,246,488.08.) Based upon
22 MEC's defenses, including the potential inability to certify a class, the minimum value of
23 this claim is nothing. *Id.*

24 The Second Cause of Action is for failure to provide compliant meal and rest
25 periods. Employers are not required to provide meal periods and rest breaks to outside
26 employees engaged in outside sales. Wage Order 04-2001(1)(C). Plaintiff contended that
27 MEC did not provide Class Members with compliant meal and rest breaks because MEC
28 incorrectly believed that such employees were covered by the outside sales exemption.

1 Gundzik Decl., ¶ 21. Defendant contended that it was not required to provide meal or rest
2 breaks because Class Members were exempt outside salespersons and, in any case, Class
3 Members were unsupervised during their workdays and were able to take breaks at any time.
4 *Id.* MEC did not track meal and rest breaks taken by Class Members. So, the incidence of
5 noncompliant breaks could not be measured precisely. *Id.* Plaintiff’s counsel used
6 information from Class Member interviews to estimate that Class Members missed two meal
7 breaks and three rest breaks each week. *Id.* Using these estimated data points, counsel
8 estimated that the maximum value of this claim was \$332,397 for meal periods and
9 \$498,595 for rest breaks. *Id.* ((2 meal breaks + 3 rest breaks) x 5,958 workweeks x \$27.90
10 per hour = \$830,992.05.) Considering the defenses discussed above, the minimum value of
11 this claim is nothing. *Id.*

12 The Third Cause of Action is for failure to provide compliant wage statements. The
13 statute of limitations on such a claim is one year. This claim is based on Plaintiff’s allegation
14 that the wage statements issued to Plaintiff and the class are incorrect in that they do not
15 reflect overtime pay or meal and rest break wage premiums that should have been paid.
16 Gundzik Decl., ¶ 22. The penalties for inaccurate wage statements are \$50 per employee for
17 the first violation and \$100 per employee per violation for all subsequent violations.
18 Penalties per employee are limited to \$4,000. During the relevant limitations period,
19 Defendant issued a total of 1,084 wage statements to about 43 class members. *Id.* Assuming
20 that each wage statement failed to include at least some overtime pay or at least one non-
21 compliant break, counsel estimated the maximum value of this claim to be \$106,250. *Id.*
22 ((1,084 wage statements x \$100 penalty) – (43 employees x \$50) = \$106,250.) At the same
23 time, considering the defenses discussed above, the minimum value of this claim is nothing.
24 *Id.*

25 The Fourth Cause of Action is for failure to pay separated employees all wages due
26 at the time of separation. This claim is based on Defendant’s alleged failure to pay class
27 members amounts due for overtime work and meal or rest period premiums. Gundzik Decl.,
28 ¶ 23. A total of 19 class members were terminated during the three-year limitations period.

1 *Id.* Based on this information, Plaintiff's counsel estimated the maximum value of this claim
2 to be \$151,051. *Id.* (((8 hours x \$27.90 hourly wage) + (1 hour x \$27.90 hourly wage x 1.5))
3 x 30 days x 19 separated class members = \$151,051.43.) In light of the defenses identified
4 above applicable to Plaintiff's wage claims, the minimum value of this claim is nothing. *Id.*

5 The Fifth Cause of Action is for violation of Business & Professions Code section
6 17200, et. seq. The forgoing analysis assumes the longer four-year statute of limitations that
7 is available under the UCL for the overtime and meal and rest period violations. Gundzik
8 Decl., ¶ 24. The value of this claim has been included in the analyses for the First and
9 Second Causes of Action. *Id.*

10 The Sixth Cause of Action is for violations of the Private Attorneys General Act
11 (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA claim
12 would be impacted by the factors discussed above for the non-PAGA claims. Gundzik Decl.,
13 ¶ 25. Based on recent PAGA decisions, Plaintiff's counsel concluded that even if Plaintiff
14 was successful on this claim through trial, the Court may well have exercised its discretion
15 under PAGA and significantly reduced the penalties. Cal. Labor Code §2699(e)(2). *Id.* In
16 addition, the settlement was primarily directed at recovering wages and unpaid premiums
17 owed to Class Members and the bulk of the settlement funds were intended to compensate
18 for these wages. *Id.* Based on these factors, counsel determined that the maximum
19 reasonable value of the PAGA claim is approximately \$300,000, and the minimum value is
20 nothing. *Id.* Counsel therefore concluded that the \$12,000 that the parties allocated to
21 PAGA, \$9,000 of which will be paid to the LWDA, is a reasonable settlement of that claim.
22 *Id.*

23 Based upon the forgoing, the class claims in this case have a minimum value of
24 nothing and the maximum potential recovery is \$2.3 million, not including the PAGA
25 penalties. Gundzik Decl., ¶ 26. Plaintiff asserts that a reasonable estimate of the average
26 amount that Class Members could have obtained if Plaintiff prevailed at trial on behalf of
27 the entire Class, if the Class was certified, would be a minimum of \$0 and a maximum of
28 about \$30,666. *Id.* However, the maximum amount is almost never recovered at trial and

1 never in a settlement. *Id.* Settlements, by their nature, must account for the weaknesses in a
2 plaintiff’s case, which are discussed above. *Id.* Indeed, because Defendant raised a colorable
3 legal or factual defense to each of the claims Plaintiff alleged, it is possible that, after trial,
4 the Class would recover nothing. *Id.*

5 The PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.*, 72 Cal.
6 App. 5th 56, 77 (2021), because “it is fair, reasonable, and adequate in view of PAGA’s
7 purposes to remediate present labor law violations, deter future ones, and to maximize
8 enforcement of state labor laws.” The settlement allocates \$12,000 to Plaintiff’s PAGA
9 claim. Gundzik Decl., ¶ 27. In conjunction with the class settlement, this settlement will
10 serve to remediate Defendant’s alleged Labor Code violations. *Id.* Given that Defendant will
11 be paying \$285,000 as a result of the alleged violations, the class and PAGA settlement is a
12 large disincentive for Defendant to engage in similar Labor Code violations in the future. *Id.*
13 And, because Defendant is aware that Plaintiff’s counsel has been in contact with Class
14 Members and aggrieved employees as a result of the litigation and because all Class
15 Members will receive a Class Notice with counsel’s contact information, those employees
16 will be able to contact Plaintiff’s counsel in the future if Defendant attempts to engage in
17 similar practices. *Id.* These factors—the payment of a large sum and employee notice of
18 violations and potential violations—serve to maximize enforcement of state labor laws. *Id.*
19 Also, unlike in *Moniz*, here there is no unsubstantiated and disproportionate allocation of
20 civil penalties between different groups of employees. *Id.* All aggrieved employees will
21 receive an allocation of PAGA civil penalties based on the number of qualifying weeks that
22 they worked for Defendant. *Id.*

23 **D. Summary of Settlement Negotiations**

24 On October 20, 2022, Plaintiff Bernabe Parrilla, Plaintiff’s counsel, Defendant and
25 Defendant’s counsel attended a mediation session with well-respected mediator, Gig
26 Kyriacou. Mr. Parrilla participated in the mediation. The case did not settle at the mediation.
27 However, during the subsequent months, the mediator continued to work with the parties
28 and in March 2023 issued a settlement proposal, which was accepted by the parties on April

1 6, 2023. Gundzik Decl., ¶ 12. The settlement was negotiated at arms' length and was in no
2 sense collusive. Gundzik Decl., ¶ 16.

3 Plaintiff and Plaintiff's counsel have concluded, after taking into account the sharply
4 disputed factual and legal issues involved in the lawsuit, the risks attending further
5 prosecution, and the substantial benefits to be received pursuant to the compromise and
6 settlement of the action, that the settlement is in the best interests of the Class and is fair and
7 reasonable. Gundzik Decl., ¶ 16. They also considered the possibility that the Class would
8 not be certified and factored in the additional delay in recovery for Class Members if the
9 settlement were rejected and the case went to trial. *Id.*

10 **E. The Representative Plaintiff's Involvement and Release**

11 Both before and after deciding to become class representatives and take on the
12 lawsuit, Plaintiff Bernabe Parrilla met with and engaged in lengthy conversations with Class
13 Counsel about all aspects of the case, his employment, and his job and job duties for MEC.
14 Declaration of Bernabe Parrilla ("Parrilla Decl."), ¶ 17. He was prompt and responsive and
15 spoke with Class Counsel's office many times regarding the case, discovery responses and
16 documents for production, the mediation and the settlement. Parrilla Decl., ¶¶ 17-18. He
17 identified relevant witnesses to Class Counsel and provided Class Counsel with relevant
18 documents. *Id.* He spoke with other employees regarding their treatment while employed by
19 Defendant and provided this information to Class Counsel. *Id.* He was proactive and
20 requested regular updates from Class Counsel and inquired as to how class actions worked
21 so he could understand the process. *Id.*

22 To assist Class Counsel, Plaintiff reviewed and collected all of his documents in
23 connection with his employment for Defendant. Parrilla Decl., ¶ 18. He spent a great deal of
24 time assisting Class Counsel identifying witnesses, discussing discovery responses, and
25 consulting with Class Counsel in advance of the mediation. He missed a full day of work to
26 attend and participate in the mediation. *Id.* And, he had several meetings with Class Counsel
27 to discuss the proposed settlement and the settlement agreement. *Id.* In all, Plaintiff spent in
28 excess of 80 hours on the lawsuit. *Id.*

1 Filing the lawsuit posed risks for Mr. Parrilla. Parrilla Decl., ¶ 15. He understood that
2 if the class action was unsuccessful, he could be responsible for Defendant’s litigation costs,
3 which could have been substantial. *Id.* He was concerned about the attention a publicly-filed
4 lawsuit, and especially a class action, would attract, as his name would be associated with a
5 lawsuit that he had filed against his former employer. *Id.* During the time the lawsuit was
6 pending, he was actually waiting to hear if he could get another employment position with
7 Defendant and was concerned that the lawsuit hurt his chances of getting that position. *Id.*
8 He was aware that it is possible and relatively easy to perform background checks of
9 publicly-filed documents on the internet and was concerned that future prospective
10 employers and others might find out that he had sued Defendant, which could hurt his future
11 job prospects and business relationships. *Id.*

12 In addition, the settlement agreement required Mr. Parrilla to sign a broad general
13 release which is broader than the release that will bind other Class Members and requires
14 him to waive Section 1542 of the California Civil Code. Gundzik Decl., ¶¶ 15, 60, Ex. 1, ¶
15 6.3.

16 **F. The Preliminarily-Approved Settlement**

17 On December 4, 2023, the Court granted preliminary approval to the settlement of this
18 matter. See Gundzik Decl., ¶ 32, Ex. 2. The terms of the settlement are more specifically set
19 forth in the parties’ Settlement Agreement. Gundzik Decl., ¶ 17, Ex. 1.

20 The provisionally-certified settlement class is defined as “All persons employed by
21 MEC in California and classified as Field Sales Representatives (including Club Field Sales
22 Representatives) at any time during the Class Period (July 14, 2017 to April 4, 2023).
23 Gundzik Decl., ¶ 17, and Ex. 1, ¶¶ 1.5; 1.11. There are 75 Class Members. Salinas Decl., ¶¶
24 3, 9.

25 The Settlement Agreement provides that Defendant agreed to pay a gross settlement
26 amount of \$285,000 (“Gross Settlement Amount”). Gundzik Decl., ¶ 17, Ex. 1, ¶ 3.1.
27 Defendant is required to deliver the Gross Settlement Amount to Phoenix within twenty-one
28 (21) calendar days after the Effective Date (which is the date of entry of the order of the

Final Approval Order and the date that the Court’s Order of Final Approval is final).
Gundzik Decl., ¶ 17, Ex. 1, ¶¶ 1.18; 4.9.

G. Notice of Preliminary Settlement Provided to the Settlement Class and the Claims Process

Pursuant to the time-table established in the Settlement Agreement and previously approved by this Court, Phoenix mailed the Notice of Proposed Class Action Settlement (“Notice of Settlement”) to 75 Class Members on January 4, 2024. Salinas Decl., ¶ 7. As a result of this mailing, Phoenix has provided all of the Class Members with a notice of the settlement which calculates the approximate value of their settlement payment and information on how to opt out of and object to the proposed settlement. Salinas Decl., ¶¶ 6-7.

- On December 21, 2023, Phoenix received from Defendant complete information including the names, last known addresses, applicable employment information and Social Security numbers for 75 Class Members.

Salinas Decl., ¶ 3.

- On January 2, 2024, Phoenix completed a National Change of Address (NCOA) search for new addresses.

Salinas Decl., ¶ 6.

- On January 4, 2024, the Notices of Settlement were mailed to the 75 Class Members at the most recent addresses available to Phoenix. The notices provided information about the action, the proposed settlement and instructions on how to opt out, object, or obtain further information. The notices advised Class Members that any objections or opt outs must be postmarked by March 4, 2024.

Salinas Decl., ¶ 7, and Ex. A thereto.

- Subsequent to these mailings, none of the notices were returned after the initial mailing and none were determined to be undeliverable.

Salinas Decl., ¶ 8, and Ex. A thereto.

1 ➤ Phoenix has not yet received any requests to opt out and no objections. Class
2 Counsel has not received any opt-out requests or objections to the proposed
3 settlement. The opt out deadline is March 4, 2024.

4 Salinas Decl., ¶¶ 9-10, and Ex. B thereto; Gundzik Decl., ¶ 35.

5 **H. Proposed Distributions from Gross Settlement Amount**

6 Based upon the Settlement Agreement and this Court’s preliminary approval order,
7 Plaintiff proposes that within ten (10) days of the receipt of the Gross Settlement Amount
8 from Defendant, the Gross Settlement Amount be disbursed as follows:

- 9 • Settlement administration costs, in the amount of \$5,500, to Phoenix;
- 10 • A service and release payment in the amount of \$10,000 to Plaintiff Bernabe
11 Parrilla;
- 12 • An allocation of \$12,000 to Plaintiff’s PAGA claims (the “PAGA Amount”),
13 \$9,000 of which will be paid to the California Labor and Workforce
14 Development Agency, and the remaining \$3,000 of which will be distributed
15 to the Aggrieved Employees.
- 16 • Class Counsel’s attorneys’ fees, in the amount of \$95,000, which is one-third
17 of the gross settlement amount;
- 18 • Class counsel’s costs of \$17,255.14;
- 19 • The remainder of the gross settlement amount (the “Net Settlement
20 Amount”), in the amount of approximately \$145,245, will be distributed to
21 Class Members based on the formula contained in the Settlement Agreement
22 (which is based on the number of Qualifying Workweeks that they were
23 employed by Defendant during the Class Period).

24 Gundzik Decl., ¶ 17, Ex. 1, ¶¶ 1.46; 3.6.

25 //

26 //

27 //

28 //

1 **I. Determination of Settlement Payments to Individual Class Members and**
2 **PAGA Employees**

3 The Settlement Agreement provides that all payments to Class Members shall be
4 made by the Settlement Administrator, based on the number of Qualifying Workweeks that
5 each Class Member worked during the Class Period. Gundzik Decl., ¶ 17, and Ex. 1, ¶ 3.6.

- 6 ➤ Phoenix determined each Settlement Class Member's individual Qualifying
7 Workweeks by adding the total number of Qualifying Workweeks in which he or
8 she was employed in a Class Member position by Defendant during the Class
9 Period.

10 Salinas Decl., ¶ 15.

- 11 ➤ Phoenix then determined the total of all of the Qualifying Workweeks of all the
12 Settlement Class Members. Each Class Member's settlement payment was
13 determined by dividing his or her Qualifying Workweek Number by the total
14 number of Workweeks worked by all Class Members during the Class Period and
15 multiplying the result by each Class Members's Workweeks. The amount of the
16 individual settlement payment was then indicated on each Class Member's Notice.

17 Salinas Decl., ¶ 15.

- 18 ➤ Based on these calculations, Phoenix determined the estimated amount of the
19 class settlement payment due to each Class Member. The approximate range of
20 class settlement pay-outs is expected to be between \$68.66 and \$6,843.40, and
21 the average settlement payment will be in the amount of approximately
22 \$1,936.60.

23 Salinas Decl., ¶ 16.

24 The Settlement Agreement also provides that all payments to Aggrieved Employees
25 shall be made by the Settlement Administrator, based on the number of Qualifying Pay
26 Periods that each Aggrieved Employee worked during the PAGA Period. Those payments
27 were calculated by:
28

1 dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of
2 \$3,000 by the total number of PAGA Pay Periods for all Aggrieved Employees during
3 the PAGA Period and multiplying the result by each Aggrieved Employee's PAGA
4 Pay Periods.

5 Salinas Decl., ¶ 18.

- 6 ➤ Based on these calculations, Phoenix determined the estimated amount of the
7 PAGA settlement payment due to each Aggrieved Employee. The average
8 PAGA settlement payment will be in the amount of approximately \$8.46.

9 Salinas Decl., ¶ 19.

- 10 ➤ The payments to Settlement Class Members will be characterized as one-third
11 wages, to be reports on a W-2 form, and two-thirds as interest and penalties. The
12 amount of unreimbursed expenses, interest and penalties will be reported on IRS
13 1099 Forms.

14 Gundzik Decl., ¶ 17, Ex. 1, ¶ 3.6.1.

15 **J. Proposed Release of Defendant by Class Members**

16 If the Court gives final approval to the proposed settlement, the Settlement
17 Agreement provides that the Court shall enter a final approval Order ("Final Approval
18 Order") and a judgment implementing the release of the released claims as described in the
19 Settlement Agreement. Gundzik Decl., ¶ 17, Ex. 1, ¶ 6. As part of the Final Approval Order
20 and judgment, Class Members who do not opt out will be deemed to have released the
21 specific Released Claims. Gundzik Decl., ¶ 17, Ex. 1, ¶ 6.9. The release applicable to the
22 Class Members provides:

23 All Participating Class Members, on behalf of themselves and their respective former
24 and present representatives, agents, attorneys, heirs, administrators, successors, and
25 assigns, release Released Parties from all claims, causes of action, demands,
26 damages, or liabilities arising at any time during the Class Period that were pled or
27 which could have been pled based on the factual allegations contained in the
28 operative Complaint in the Action, including but not limited to claims for: (i)
violation of Labor Code §§ 226.7 and 512; (ii) violation of Labor Code §§ 510 and
1194; (iii) violation of Labor Code §§ 201, 202, 203, and 204; (iv) violation of
Labor Code § 226; and (v) violation of Business & Professions Code §§ 17200,
which are premised on the violations described above (collectively, the "Released
Claims"). The Released Claims extend to all theories of relief, whether under

California law, federal law, state law or common law (including, without limitation, as alleged violations of the California Labor Code, the IWC Wage Orders, applicable regulations, or California's Business and Professions Code §§ 17200). The Released Claims include all types of relief available for the Released Claims, including without limitation any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. This Settlement shall constitute, and may be pleaded as, a complete and total defense to any Released Claims if raised in the future. Class Members shall not waive section 1542 of the California Civil Code. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. Each Settlement Class Member will be deemed to have made this Release as if by manually signing it. The Notice will advise all Settlement Class Members of the binding nature of this Release and such Notice shall have the same force and effect as if the Agreement were executed by each Settlement Class Member. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released Class Claim.

Gundzik Decl., ¶ 17; Ex. 1, ¶ 6.9. This release does not include any claims that are outside of the scope of the facts alleged in the operative pleadings and does not include the PAGA Released Claims. *Id.*

The release applicable to the Aggrieved Employees provides:

Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each PAGA Employee, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the PAGA Released Claims. Each PAGA Employee and the LWDA will be deemed to have made this Release as if by manually signing it, whether they timely submit a Request for Exclusion from the Settlement Class or not. The Notice will advise all PAGA Employees of the binding nature of this Release and such Notice shall have the same force and effect as if the Agreement were executed by each PAGA Employee. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released PAGA Claim. Aggrieved Employees shall not waive section 1542 of the California Civil Code.

Gundzik Decl., ¶ 17, Ex. 1, ¶ 6.6.

The Settlement Agreement defines "Released Parties" as:

MEC, including each of its past, present and/or future parent companies, subsidiaries,

1 affiliates and related companies, divisions, related companies, successors and
2 predecessors, as well as their respective past, present and future owners, officers,
3 directors, shareholders, employees, agents, members, managers, principals,
4 representatives, accountants, auditors, consultants, fiduciaries, insurers and reinsurers,
5 investors, lenders, administrators, company-sponsored employee benefit plans,
6 assigns, joint venturers and attorneys, both individually and in their official capacities,
7 as well as all persons acting by, through, under, or in concert with any of these persons
8 or entities.

9 l., ¶ 17, Ex. 1, ¶ 1.42.

10 The Settlement Agreement does not constitute an admission of the merits of any
11 claim by Plaintiff or the Class or address any defense of Defendant. Gundzik Decl., ¶ 17,
12 Ex. 1, ¶ 2.2.

13 **III. THE COURT SHOULD GIVE FINAL APPROVAL TO THE SETTLEMENT.**

14 The law favors settlement, particularly in class actions and other complex cases in
15 which substantial resources can be conserved by avoiding the time, cost and rigors of formal
16 litigation. *Potter v Pacific Coast Lumber Company*, 37 Cal.2d. 592, 602-603 (1951); *Class*
17 *Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1991). When faced with a motion for
18 final approval of a class action settlement under Code of Civil Procedure § 382, the
19 appropriate inquiry is whether the settlement is “fair, adequate, and reasonable.” *See*
20 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 244-245 (2001); *Dunk v. Ford Motor*
21 *Co.*, 48 Cal.App.4th 1794, 1801 (1996). If so, the settlement should be approved. *Id.* And, “a
22 presumption of fairness exists where: (1) the settlement is reached through arm's-length
23 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
24 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
25 objectors is small.” *Dunk v Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996).

26 **A. Nothing Has Occurred in the Interim That Should Affect This Court's** 27 **Preliminary Findings.**

28 Before granting preliminary approval of a class and PAGA action settlement, this
Court was required to find—and did find—that there is sufficient evidence that the proposed
settlement would be fair, reasonable, and adequate, and not a product of fraud, overreaching,
or collusion. See Gundzik Decl., ¶ 32, Ex. 2; Cal. Rules of Court, Rule 3.769 (g); Cal. Civ.

1 Proc. § 382; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801. In order to preliminarily
2 determine that the proposed settlement was fair, reasonable, and adequate, and thus
3 appropriate for preliminary approval, the Court was required to find that the following three
4 factors were satisfied: (1) the parties reached settlement after arms-length negotiations;
5 (2) counsel conducted sufficient investigation and discovery to allow themselves and the
6 court to act intelligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802. *See*
7 *also 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146
8 (2000). In applying this determination for the purpose of granting final approval, as
9 discussed below, although not determinative, the Court may also consider the percentage of
10 objectors in determining whether a presumption of fairness exists. *Id.*

11 All of these considerations are satisfied here. The parties conducted significant
12 formal and informal discovery and investigation and participated in a full-day mediation,
13 and thereafter continued to negotiate for several months regarding the Settlement Agreement
14 which is the subject of this motion. Gundzik Decl., ¶¶ 8-30. Moreover, none of the 75 Class
15 Members have opted out of or objected to the proposed settlement as of the date of this
16 filing. Salinas Decl., ¶¶ 9-10. The opt out deadline is March 4, 2024.

17 **B. The Settlement Resulted from Non-Collusive, Arms-Length Negotiations.**

18 There was no collusion between the parties in this case. After extensive formal and
19 informal discovery and the exchange of information and voluminous pages of documents,
20 the parties engaged in mediation with a well-respected and highly knowledgeable wage and
21 hour mediator, Gig Kyriacou. Gundzik Decl., ¶¶ 8-15. The involvement of a neutral third-
22 party mediator is a factor that favors approval and evidences the presumptive fairness of the
23 arms-length negotiations. Indeed, the California Court of Appeal in *Kullar v. Foot Locker*
24 *Retail, Inc.* expressed that courts should give considerable weight to the competency and
25 integrity of counsel and the involvement of a neutral mediator in assuring themselves that a
26 settlement agreement represents an arms-length transaction entered without self-dealing or
27 other potential misconduct. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129
28 (2008).

1 **C. The Settlement is Supported by Substantial Investigative and Discovery**
2 **Efforts.**

3 As set forth in the Declaration of Aaron Gundzik, Class Counsel engaged in
4 substantial investigation and discovery. This investigation included (1) preparing pleadings
5 and other documents filed with the Court, (2) extensively investigating Plaintiff's claims, (3)
6 engaging in informal discovery and reviewing and analyzing numerous handbooks, policies
7 and documents regarding Class Member reimbursements, including records and information
8 produced by Defendant, (4) propounding and responding to formal discovery and document
9 requests and meet and conferring extensively regarding the information and documents
10 being sought, (5) interviewing approximately 15% of the Class Members, (6) reviewing and
11 analyzing policies and pay records for the proposed Class Members, including Plaintiff, as
12 well as records for the PAGA Aggrieved Employees, (7) investigating and compiling
13 publicly-available information about Defendant and its business, (8) negotiating extensively
14 with Defendant regarding the mediation, its scope, and the information to be exchanged in
15 connection with the mediation, and (9) working to develop information on potential
16 damages. Gundzik Decl., ¶¶ 8-13, 20-30, 42-47, and Ex. 3.

17 Class Counsel's analysis enabled them to pinpoint the relevant issues and claims and
18 to assess potential liability and damages. These efforts resulted in the parties having a clear
19 view of the strengths and weaknesses of their respective cases and achieving a resolution on
20 favorable terms. Gundzik Decl., ¶¶ 8-13, 20-30.

21 **D. As Previously Found by this Court, Class Counsel is Experienced in**
22 **Similar Litigation.**

23 The endorsement of qualified and well-informed counsel of the settlement as fair is
24 entitled to significant weight. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1802; *Ellis v.*
25 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). As discussed in the motion
26 for preliminary approval papers and the declarations supporting both that motion and the
27 instant motion, Class Counsel have represented, litigated, mediated and settled many other
28 employee class actions in wage and hour litigation and have knowledge of the strengths and

1 weaknesses of the claims against Defendant and the benefits of the proposed settlement
2 under the circumstances of the case. Gundzik Decl., ¶¶ 20-30, 37-40. Class Counsel believes
3 that the settlement is fair, adequate, reasonable and in the best interests of the Class as a
4 whole. Gundzik Decl., ¶ 35.

5 **E. The Class Members' Positive Reaction to the Settlement Favors Final**
6 **Approval.**

7 The reaction of the Class to proposed settlement to date has been extremely positive.
8 As of the date of this filing, none of the 75 Class Members has opted out of or objected to
9 the proposed settlement.. Salinas Decl., ¶¶ 9-10. The opt out deadline is March 4, 2024.

10 Although a court may appropriately infer that a class action settlement is fair,
11 adequate, and reasonable even when a significant percentage of class members object to it
12 (*See Boyd v Betchel Corp.*, 485 F. Supp. 610, 624 (C. D. Cal 1976); *see also Reed v.*
13 *General Motors*, 703 F.2d 170, 174 (5th Cir. 1983)), the fact that none have opted out yet
14 and none have objected to it yet provides much stronger grounds for granting final approval.
15 In this action, the Court should construe this as a further indication of Class Members'
16 support for the settlement as being fair, adequate, and reasonable.

17 **F. The Proposed Service and Release Payment to the Named Plaintiff is**
18 **Reasonable and Should be Approved.**

19 The Settlement Agreement provides for a service and release payment in the amount
20 of \$10,000 to class representative Bernabe Parrilla. The purpose of this payment is to
21 provide additional compensation to Plaintiff for the time and effort that he put into the
22 litigation and the settlement of this matter, as well as the risks he undertook by agreeing to
23 sue his former employer and an employer from whom he was seeking employment.

24 "In determining whether to make an incentive award, the court may consider (1) the
25 risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the
26 notoriety and personal difficulties encountered by the class representative; (3) the amount of
27 time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
28 personal benefit received by the class representative as a result of the litigation." *Golba v.*

1 *Dick's Sporting Goods, Inc.*, 238 Cal. App. 4th 1251, 1272 (2015). Additional factors to be
2 considered include “the actions the plaintiff has taken to protect the interests of the class, the
3 degree to which the class has benefitted from those actions, and the amount of time and
4 effort the plaintiff expended in pursuing the litigation.” *Clark v. American Residential*
5 *Services LLC*, 175 Cal. App. 4th 785, 804 (2009).

6 The factors enunciated in both *Golba* and *Clark* favor the approval of the requested
7 service and release payment to Plaintiff. He undertook significant risks in getting involved
8 in the lawsuit, knowing that it could impact his future employment. Parrilla Decl., ¶ 15. He
9 understood that if the class action was unsuccessful, he could be responsible for Defendant’s
10 litigation costs, which could have been substantial. *Id.* He was concerned by the attention of
11 a publicly-filed lawsuit, and especially a class action, would attract, as his name would be
12 associated with a lawsuit that he had brought against his employer. He was reasonably
13 concerned about the notoriety that would attend his involvement, as he knew that it is
14 possible and relatively easy to perform background checks of publicly-filed documents on
15 the internet and was concerned that it could hurt his future employment prospects. *Id.*

16 Plaintiff spent a significant amount of time on the lawsuit. He had many telephone
17 and Zoom conferences with Class Counsel regarding the case and the mediation. Parrilla
18 Decl., ¶¶ 17-18. He missed a full day of work in order to attend the mediation. Parrilla Decl.,
19 ¶ 18. He had conferences to discuss the proposed settlement with Class Counsel, and to
20 discuss the Settlement Agreement and related motions. *Id.*

21 To assist Class Counsel, Mr. Parrilla reviewed and collected all of his documents in
22 connection with his employment for Defendant. Parrilla Decl., ¶ 18. And he spent a great
23 deal of time assisting Class Counsel identifying witnesses, and consulting with Class
24 Counsel in advance of the mediation. *Id.* In all, Plaintiff spent in excess of 80 hours on the
25 lawsuit. *Id.*

26 Had he been unwilling to step up, none of the Class Members would have received
27 any amounts whatsoever. By agreeing to serve as the class representative, Mr. Parrilla has
28 taken significant action to protect the interests of the Class, and the Class has significantly

1 benefitted from those actions. *Clark v. American Residential Services LLC*, 175 Cal. App.
2 4th at 804. Although he could have filed a claim with the Department of Labor and possibly
3 received more money, instead of acting in his own self-interest he got involved in this
4 lawsuit to protect the interests of the Class. And as a result of those efforts, 75 Class
5 Members will be receiving settlement payments.

6 The additional payment proposed for the named Plaintiff is also intended to
7 compensate him for the broader release that Defendant has demanded of him. While all
8 other Class Members will only be releasing the Released Claims, Plaintiff will also be
9 releasing any and all known or unknown claims that he might have against Defendant.
10 Gundzik Decl., ¶ 17, Ex. 1, ¶¶ 5.1; 5.1.1.

11 Awarding larger amounts to class representatives is permissible and is often
12 approved by the courts. See, e.g., *Bell v Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726
13 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing class
14 case). As explained by the court in the *Cellphone Termination Fee Cases*, incentive awards
15 are “intended to compensate class representatives for work done on behalf of the class, to
16 make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
17 to recognize their willingness to act as a private attorney general.” *Cellphone Termination*
18 *Fee Cases*, 186 Cal.App.4th 1380, 1393-1394 (2010).

19 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. West*
20 *Publication Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 Newberg on Class Actions
21 (4th ed. 2002) § 11:38, p. 81); Eisenberg & Miller, Incentive Awards to Class Action
22 Plaintiff: An Empirical Study (2006) 53 UCLA L.Rev. 1303. “Since without a named
23 plaintiff there can be no class action, such compensation as may be necessary to induce him
24 to participate in the suit could be thought the equivalent of the lawyers' nonlegal but
25 essential case-specific expenses, such as long-distance phone calls, which are reimbursable.”
26 *Clark v. American Residential Services LLC*, 175 Cal.App.4th at 804 (fn. omitted), citing
27 *Matter of Continental Illinois Securities Litigation*, 962 F.2d 566, 571 (7th Cir. 1992).

28 The additional payment to the named Plaintiff also takes into account the additional

1 risks that he incurred in acting on behalf of the Class. These risks included the potential of a
2 judgment against him if this case had been unsuccessful, as class representatives are deemed
3 the losing party that is liable for the prevailing party's costs. *Earley v. Superior Court*, 79
4 Cal.App.4th 1420, 1433-1434 (2000). Taking that risk here resulted in substantial benefit to
5 the Class. Plaintiff also took the very real risk that this lawsuit would have a negative impact
6 on his future employment. Parrilla Decl., ¶ 15; see, e.g., *Staton v. Boeing*, 327 F.3d 938, 977
7 (9th Cir 2003) (fear of workplace retaliation is one justification behind reasonable class
8 representative incentive payments).

9 If Plaintiff had not come forward, or had not agreed to take on the risks of stepping
10 up and taking on the class action, Plaintiff may have recovered compensation for himself,
11 but no compensation would have been received by 74 current and former employees.
12 Because Plaintiff has advanced California's public policy goal of enforcing wage and hour
13 laws (*See Sav-On Drug Stores, Inc. v. Super.Ct.*, 34 Cal.4th 319, 340 (2004)), the Court
14 should approve of the proposed service and release payments to the Representative Plaintiff.

15 **G. The Court Should Approve the Request for Class Counsel's Fees.**

16 Subject to Court approval, the settlement amount of \$285,000 includes Class
17 Counsel's attorneys' fees of \$95,000. Gundzik Decl., ¶¶ 17, 36, Ex. 1, ¶ 3.4; Declaration of
18 Daniel Holzman ("Holzman Decl."), ¶¶ 6-9. It is well-settled that representative plaintiffs
19 and class members are entitled to recover their attorneys' fees and costs in wage and hour
20 class action disputes. California Labor Code § 218.5; Cal. Code Civ. Proc. § 1021.5(a);
21 *Earley v. Super. Ct.*, 79 Cal. App. 4th at 1420.

22 A fee award is justified when benefits are obtained for the class irrespective of
23 whether there is a final judgment in its favor, such as when those benefits are the result of a
24 settlement. *See Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-353
25 (1983). "Courts recognize two methods for calculating attorney fees in civil class actions:
26 the lodestar/multiplier method and the percentage of recovery method." *Wershba v. Apple*
27 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *See Lealao v. Beneficial California, Inc.*,
28 82 Cal.App.4th 19, 27 (2000). In California, both methods are proper, although courts often

1 use a lodestar-multiplier method as a check against the reasonableness of a percentage fee
2 award. *See, e.g., Serrano v. Priest (Serrano III)*, 20 Cal.3d 25, 48-49, at fn. 23 (1977);
3 *People ex rel. Dept. of Transportation v. Yuki*, 31 Cal.App.4th 1754, 1769-1772 (1995);
4 *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal.App.3d 914, 954 (1985).

5 **1. Class Counsel’s Requested Fee Award is Within California’s**
6 **Benchmark Awards and Thus Reasonable Under the Percentage of**
7 **The Benefit or Common Fund Method.**

8 In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California
9 Supreme Court approved the use of “percentage of the benefit” attorney fee awards in class
10 actions. “[W]hen class action litigation establishes a monetary fund for the benefit of the
11 class members, and the trial court in its equitable powers awards class counsel a fee out of
12 that fund, the court may determine the amount of a reasonable fee by choosing an
13 appropriate percentage of the fund created.” The *Laffitte* court explained that “[t]he
14 percentage method ‘is easy to calculate; it establishes reasonable expectations on the part of
15 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
16 avoids protracted litigation.” 1 Cal. 5th at 490 (quoting *Rawlings v. Prudential-Bache*
17 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). Pursuant to the “percentage of the benefit”
18 doctrine, “a litigant or lawyer who recovers a common fund for the benefit of persons other
19 than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”
20 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “The ultimate goal ... is the award of a
21 reasonable fee to compensate counsel for their efforts, irrespective of the method of
22 calculation. It is not an abuse of discretion to choose one method over another as long as the
23 method chosen is applied consistently using percentage figures that accurately reflect the
24 marketplace.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-558 (2009).

25 Class Counsel’s request for one-third of the monetary fund recovered is California’s
26 standard benchmark and well within the range customarily approved by the California
27 courts in comparable class actions and other class actions, as well as the standard
28 contingency contracts negotiated by plaintiffs and their counsel. “Empirical studies also

1 show that regardless [of] whether the percentage method or the lodestar method is used, fee
2 awards in class actions average around one-third of the recovery.” *See e.g., Chavez v.*
3 *Netflix, Inc.*, 162 Cal.App.4th 43, 66, at fn. 11 (2008); *In re California Indirect Purchases*
4 (October 22, 1998) WL 1031494 at * 9; *Romero v. Producers Dairy Food, Inc.*, WL
5 3492841 at * 4 (E.D. Cal. Nov. 14, 2007), quoting Newberg on Class Actions § 14.6 (4th
6 ed.2007) (“fee awards in class actions average around one-third of the recovery.”); *See also*
7 T. Cohelan, *On California Class Actions* (2016), § 10.5 at 481 (“nearly all common fund
8 awards fall into the neighborhood of 30%.”)

9 Class Counsel seeks \$95,000, which is one third of the \$285,000 Gross Settlement
10 Amount. This request is reasonable and justified considering the settlement secured for the
11 Class Members. It is also consistent with both the Settlement Agreement (See Gundzik
12 Decl., ¶¶ 17, 36, Ex. 1, ¶ 3.4) and the engagement agreement the named Plaintiff entered
13 into with Class Counsel. In that agreement, Plaintiff agreed that Class Counsel would be
14 paid the greater of 1) one-third of all amounts obtained or received in the lawsuit, or 2) the
15 hours worked multiplied by the hourly rates of the attorneys working on the case, plus any
16 additional multiplier awarded by the Court. Gundzik Decl., ¶ 58.

17 Thus, as per the Settlement Agreement, Plaintiff respectfully requests that this Court
18 award Class Counsel’s requested attorneys’ fees.

19 **2. Class Counsel’s Requested Fees Are Reasonable Under the**
20 **Lodestar/Multiplier Method.**

21 Under the lodestar/multiplier method of determining an attorneys’ fee award, “the
22 lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly
23 rate. The court may then enhance the lodestar with a multiplier, if appropriate.” *Wershba v.*
24 *Apple Computer, Inc.*, 91 Cal.App.4th at 254; *Rebney v. Wells Fargo Bank*, 232 Cal.App.3d
25 1344, 1347 (1991). “California case law permits fee awards in the absence of detailed time
26 sheets.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, citing *Sommers v. Erb*, 2
27 Cal.App.4th 1644, 1651 (1992). And, “[m]ultipliers can range from 2 to 4 or even higher.”
28 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, citing *Coalition for L.A. County*

1 *Planning etc. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (1977); *accord, In re*
2 *Lugo*, 164 Cal.App.4th 1522, 1546 (2008); *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d
3 1043, 1050 (9th Cir. 2002) (multiplier of 3.65); *Craft v. Cnty. of San Bernardino*, 624 F.
4 Supp. 2d 1113, 1125 (C.D. Cal. 2008) (multiplier of 5.2); *See also Galeener v. Source*
5 *Refrigeration & HVAC, Inc.*, 2015 U.S. Dist. LEXIS 193096 (N.D. Cal. Aug. 21, 2015)
6 (multiplier of 2.67 approved in granting award of \$3,000,000 in attorneys' fees from a \$10
7 million common fund); *See also Lazarin v. Pro Unlimited, Inc.*, 2013 U.S. Dist. LEXIS
8 97213 (N.D. Cal. July 11, 2013, *28-29) (multiplier of 3.36 approved in granting attorneys'
9 fee award of \$312,500 where lodestar was \$92,824).

10 Here, Class Counsel has expended more time on this matter than the \$95,000 fee
11 award being requested. Gundzik Decl., ¶¶ 47-48, and Ex. 4 thereto. Class Counsel's total
12 lodestar is \$253,975. Gundzik Decl., ¶¶ 47-48, Ex. 4; Holzman Decl., ¶ 9. Class Counsel has
13 attached detailed timesheets and well as a chart specifying the tasks performed on behalf of
14 the Class. *Id.* Because the lodestar exceeds the \$95,000 that Class Counsel is requesting, the
15 Court need not consider any multiplier. Instead, the Court need only determine if the
16 \$95,000 award is reasonable compensation for Class Counsel's efforts. Class Counsel's
17 hourly rates of \$825 (Aaron Gundzik and Rebecca Gundzik) and \$750 (Daniel Holzman) for
18 this matter are reasonable based upon their qualifications and experience. Gundzik Decl., ¶¶
19 37-40; Holzman Decl., ¶¶ 2-5.

20 Both Aaron Gundzik and Rebecca Gundzik have been practicing law in Southern
21 California for over 35 years, and Mr. Holzman has been practicing for 25 years. Gundzik
22 Decl., ¶¶ 37-40; Holzman Decl., ¶ 2. Aaron Gundzik worked for many years at and was an
23 equity partner of the international law firm formerly known as LeBoeuf, Lamb, Greene &
24 MacRae, and has been involved in the litigation of complex cases throughout his career.
25 Gundzik Decl., ¶ 37. Rebecca Gundzik also worked at well-respected law firms and handled
26 complex litigation matters for many years. Gundzik Decl., ¶ 38. Aaron Gundzik has served
27 as Class Counsel on many wage and hour class action matters, and he and Rebecca Gundzik
28 tried and prevailed on appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th

36 (2013), which helped establish the law regarding an employee’s right to be paid for all time under an employer’s control. Gundzik Decl., ¶¶ 37-39. Mr. Holzman also has significant experience with wage and hour class actions. Holzman Decl., ¶¶ 2-3.

Class Counsel’s rates for this case are within the range of prevailing market rates. Gundzik Decl., ¶¶ 54-57, and Ex. 4, National Association of Legal Fee Analysis, 2020 Class Action Hourly Rate Survey (hourly rates for attorneys in 16 largest U.S. legal markets for attorneys with 20 or more years in practice range from \$801-\$900 per hour); Holzman Decl., ¶ 4.

a. Time and Effort

Class Counsel, who are experienced wage and hour class action attorneys, have put a significant number of hours into prosecuting this case. Class Counsel had to conduct substantial investigation, engage in formal written discovery, meet and confer extensively regarding discovery, interview Class Members, review and analyze nearly thousands of pages of time records and other documents, research numerous issues and review and analyze policies, independently analyze time records, as well as dedicate substantial time to analyze data and other documents related to Defendant’s compensation policies. Gundzik Decl., ¶¶ 8-11, 42-47, and Ex. 3 thereto. Those efforts, along with negotiating the settlement and obtaining preliminary and final approval, required a significant amount of time and labor. The total amount of attorney time expended through January 25, 2024, is 316.1 hours. Class Counsel’s base lodestar for these hours equates to attorneys’ fees of \$253,975. Gundzik Decl., ¶¶ 46-60, and Ex. 4 thereto; Holzman Decl., ¶ 9.

b. Extent Litigation Precluded Other Employment

Inherent to class action litigation is the large amount of time and labor required to properly adjudicate the case. From start to settlement, judgment or verdict, class action litigation commands commitment, an extensive amount of time, labor and resources. Although this litigation did not conclusively preclude other employment, it did impact Plaintiff’s counsel’s ability to take on other class action cases. Plaintiff’s counsel are small law firms with few attorneys and staff. Gundzik Decl., ¶ 50.

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c. Continent Nature of the Agreement

Class counsel agreed to work on this case on a contingency basis. If they had not successfully resolved the case, they would not have earned any fees. Moreover, they would not have recouped the substantial litigation expenses that they incurred. Gundzik Decl., ¶¶ 49-50. The courts have recognized that higher attorneys’ fees are justified in contingency matters because of the contingent nature of their recovery. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001). Class action contingency cases are inherently risky. Upon retention, class counsel makes a commitment to litigate the case through trial. These types of cases can take years, hundreds of hours of work and cost an enormous amount of money—risks which are known upon retention. Class Counsel has had to front significant litigation expenses, as well as office overhead expenses. Gundzik Decl., ¶¶ 49-51, and Ex. 4 thereto; Holzman Decl., ¶ 10, Ex. A. The risks involved coupled with the contingency basis of this case further support Class Counsel’s request for attorneys’ fees and costs.

In *Ketchum v. Moses*, *supra*, 24 Cal.4th at 1132, the court explained the economic rationale for awarding higher fees in contingency cases as follows:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but also for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans. (Citation omitted.) A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Class Counsel represented the Class Members in this matter and have borne the entire risk and costs of litigation on a pure contingency basis. To date, Class Counsel have not received any compensation and have expended significant litigation costs on behalf of the Class.

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1 **d. Experience, Reputation, and Ability of Plaintiff's Counsel**

2 As set forth in the Declarations of Aaron Gundzik and Dan Holzman, Class
3 Counsel's skill and experience in litigating wage and hour class actions, in state and federal
4 forums, contributed to the results obtained on behalf of the Class Members. All three
5 attorneys who were primarily responsible for the case have significant experience litigating
6 wage and hour class actions, and each have been practicing law for over 25 years. Gundzik
7 Decl., ¶¶ 37-40; Holzman Decl., ¶¶ 2-3.

8 **e. Results Obtained On Behalf of the Class by Plaintiff's**
9 **Counsel**

10 An award of attorneys' fees should reflect the successful outcome of the case.
11 *Hensley v Eckerhart*, 461 U.S. 424, 440 (1983), abrogated in part as stated in *McKee v.*
12 *Comm'r of Soc. Sec.*, 2008 U.S. Dist. LEXIS 86793 (M.D. Fla. 2008), superseded by statute
13 as stated in *Laube v. Allen*, 506 F. Supp. 2d 969, 2007 U.S. Dist. LEXIS 64916 (M.D. Ala.
14 2007). As already discussed herein and in the Motion for Preliminary Approval, this case
15 involves numerous and difficult issues requiring a highly technical analysis and largely
16 precluding a clear-cut outcome as to liability. There also were significant issues regarding
17 Defendant's ultimate liability, as Defendant consistently denied that it had violated
18 California's wage and hour laws. In fact, Defendant raised a colorable legal or factual
19 defense to each claim Plaintiff alleged. Gundzik Decl., ¶ 30.

20 Nevertheless, despite these obstacles, Class Counsel obtained significant financial
21 compensation for the Class Members. Defendant agreed to pay a gross settlement amount of
22 \$285,000 to the 75 Settlement Class Members, as well as the employer's portion of all
23 payroll taxes. After payment of attorneys' fees and costs, service and release payments and
24 class administration costs, the remainder of the Net Settlement Amount will be
25 approximately \$145,245. Despite the complexity of the case, Class Counsel have, through
26 the investment of substantial effort, and the resources of their law firm, been able to secure
27 an outstanding settlement on behalf of the Class Members.

28 //

1 **f. Reaction of Putative Class Members**

2 As already discussed herein, the reaction of the Class Members has been very
3 positive. Not one of the Class Members objected to Class Counsel's request for attorneys'
4 fees, which also provide compelling evidence that the request is fair, adequate and
5 reasonable. Salinas Decl., ¶ 10.

6 In sum, based on the six factors discussed above, Class Counsel's requested fees
7 should be awarded.

8 **H. Class Counsel's Requested Costs are Reasonable.**

9 The settlement provides for repayment of Class Counsel's actual and reasonable
10 costs of litigation in an amount not to exceed \$25,000. Gundzik Decl., ¶ 17, Ex. 1, ¶ 34.
11 Class Counsel incurred reasonable litigation costs in bringing this matter to a resolution
12 before trial. The total of out-of-pocket costs incurred and to be incurred by Class Counsel in
13 this litigation are \$17,255.14, which is the amount of reimbursement Class counsel is
14 requesting. Gundzik Decl., ¶49, Ex. 3; Holzman Decl., ¶ 10, Ex. A.

15 **I. The Settlement Administrator's Requested Expenses are Reasonable.**

16 Plaintiff retained a neutral third-party administrator, Phoenix, to administer the notice and
17 claims process. Phoenix's duties included and include, among other things: (a) translating,
18 printing and mailing the Notice of Settlement to all Class Members; (b) locating updated
19 addresses for class members; (c) receiving other communications about the settlement; (d)
20 preparing weekly reports notifying the parties of the number of class members who filed
21 objections or requests for exclusion; and (e) notifying the parties of the number of class
22 members who filed untimely or deficient requests for exclusion, and taking steps to cure the
23 deficiencies. Salinas Decl., ¶ 2. If final approval is granted, Phoenix will receive and assume
24 stewardship of the settlement funds, make final calculations of individual settlement
25 payments, mail checks to class members and aggrieved employees, prepare and distribute
26 tax documents and arrange for transfer of funds from any un-negotiated settlement checks to
27 the state as unclaimed property. Phoenix will be charging \$5,500 to perform this work,
28 which is the amount it estimated in connection with the Motion for Preliminary Approval.

1 Salinas Decl., ¶ 21, and Ex. C. Because this amount is reasonable in light of the
2 administrator's significant duties, it should be approved.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
5 requests that the Court grant final approval of the settlement, award a service and release
6 payment to the named Plaintiff in the amount of \$10,000, approve of the payment to the
7 LWDA in the amount of \$9,000 and \$3,000 to the Aggrieved Employees, award attorneys'
8 fees in the amount of \$95,000 and Class Counsel's costs in the amount of \$17,255.14, and
9 award the Settlement Administrator its fees in the amount of \$5,500, all of which will be
10 paid from the Gross Settlement Amount.

11 DATED: January 30, 2024

GUNDZIK GUNDZIK HEEGER LLP

12
13 By: 

Rebecca Gundzik

14 Attorneys for Plaintiff Bernabe Parrilla,
15 individually and on behalf of all others
16 similarly situated
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On February 2, 2024, I served the following document described as

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

() BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.	(XX) BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served through Case Anywhere pursuant to the Court’s Order Authorizing Electronic Service dated _____, to the names and email addresses listed on the Service List attached hereto.

(X) STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on February 2, 2024, at Sherman Oaks, California.



Nicole Salazar

Case Anywhere Electronic Service List

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Case Info: **21STCV25855, Los Angeles Superior Court**

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