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

JULIO MACHADO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PACIFIC DRAYAGE SERVICES, LLC., a
Delaware limited liability company; and DOES 1
through 100, inclusive,

Defendants.

Case No. CIVSB2124879

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

**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: July 18, 2023
Time: 10:00 a.m.
Dept.: S-26

Action Filed: August 27, 2021
Trial: None set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 18, 2023 at 10:00 a.m. in Department S-26 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Julio Machado (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Angel Medina as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Class Action and PAGA Settlement (herein “Settlement”);
5. Approving an award of \$116,666.67 in attorneys’ fees to Class Counsel;
6. Approving an award of \$12,077.36 in costs to Class Counsel;
7. Approving an award of \$8,250.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving an incentive payment of \$5,000.00 to Plaintiff Julio Machado for his services as Class Representative;
9. Approving an award of \$15,000.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

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

1 Plaintiff Julio Machado,¹ and Kevin Lee of Phoenix Settlement Administrators, and the exhibits attached
2 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
3 evidence or argument presented at the time of hearing.

4
5 Dated: June 23, 2023

Respectfully submitted,
LIDMAN LAW, APC

6
7 By: 

8 Scott M. Lidman
9 Attorney for Plaintiff
10 JULIO MACHADO
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28 ¹ The declaration of Plaintiff Angel Medina was originally filed with this Court on August 17, 2022 in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Julio Machado (“Plaintiff”) submits this memorandum of points and authorities in
4 support of his motion for final approval of the class action settlement (the “Settlement”) with Defendant
5 Pacific Drayage Services, LLC (hereinafter “Pacific Drayage” or “Defendant”). The Settlement Class is
6 defined as: all current and former Drivers of Defendant Pacific Drayage Services, LLC who worked at
7 any time in California from August 27, 2020 and January 28, 2022.

8 In this non-reversionary Settlement, the total settlement class is 313 that worked a total of 12,214
9 workweeks and the average settlement payment to each of the Settlement Class Member is approximately
10 \$600.66. Further, there are 314 PAGA Employees with 12,288 total pay periods and the average
11 individual PAGA Amount is \$15.92. 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.

13 Since this Court granted preliminary approval on February 27, 2022, nothing has changed to
14 impact the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving
15 notice of the Settlement and of their projected Settlement payments, only one (1) individual has opted-
16 out and no one has raised or submitted an objection to the Settlement.

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

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 On August 27, 2021, Plaintiff filed a class action Complaint against Pacific Drayage in San
27 Bernardino County Superior Court. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. After
28 having exhausted his administrative remedies with the California Labor & Workforce Development

Agency (“LWDA”) by way of a letter submitted to the LWDA on August 27, 2021 (a true and correct copy of which is attached to the Settlement as **Exhibit A**), on December 17, 2021, Plaintiff filed a First Amended Complaint (“FAC”) against Pacific Drayage, which added a PAGA claim. Plaintiff’s primary claims/allegations which are being settled subject to Court approval are that Pacific Drayage: (1) failed to provide accurate, itemized wage statements, and (2) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) resulting from the wage statement violations. *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 issue accurate, itemized wage statements. Lidman Decl., ¶¶ 11-24. Plaintiff alleges that Pacific Drayage issued inaccurate wage statements in violation of Labor Code § 226 because the wage statements failed to include all applicable hourly rates of pay and also failed to include total hours worked during the pay period, in violation of California law. *Id.* at ¶ 11. Plaintiff’s data analysis reflected that there were approximately 11,894 wage statements issued up until January 28, 2022 when Pacific Drayage changed its wage statements to include this information. *Id.*

Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 13.

As explained *infra* and in Plaintiff’s Motion for Preliminary Approval, Defendant denies Plaintiff’s claims and asserts several affirmative defenses, both on the merits and with respect to class certification.

B. Mediation and Settlement

After agreeing to participate in early mediation, Pacific Drayage informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation data to calculate the number of pay periods at issue and information about when Pacific Drayage changed its wage statements on or about January 28, 2022. Lidman Decl., ¶ 16. After a review and analysis of the documents and information produced by Pacific Drayage, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff’s claims and Pacific Drayage’s defenses thereto, if a settlement could not be reached. *Id.*

1 As discussed in the preliminary approval papers, on August 9, 2022, a mediation was held with
2 Steven G. Mehta, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 17. During
3 mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of
4 Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in
5 principle on a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of
6 settlement and executed the Stipulation of Class Action and PAGA Settlement ("Settlement"). *Id.*

7 **C. Preliminary Approval of Settlement**

8 Plaintiff submitted the Stipulation of Class Action and PAGA Settlement to the Court with his
9 Motion for Preliminary Approval on September 28, 2022. Lidman Decl., ¶ 18. On February 27, 2023,
10 the Court signed an Order Granting Preliminary Approval of the Settlement. *Id.*; Exh. A.

11 Plaintiff submitted the Settlement and the Court's Order Granting Preliminary Approval of the
12 Settlement to the LWDA via the LWDA's website on September 28, 2022 and May 9, 2023, respectively.
13 *See* Lidman Decl., ¶ 32; Exhs. D and E.

14 Plaintiff will also provide the LWDA with a copy of the instant motion for final approval and
15 supporting documents after the instant motion is filed and will file a supplemental proof of service prior
16 to the hearing. Lidman Decl., ¶ 32.

17 On March 28, 2023, the Settlement Administrator mailed the Court-approved Notice Packet
18 (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of
19 Individual Settlement Award) in English and Spanish to the 314 Settlement Class Members, who had
20 until May 27, 2023 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of
21 Kevin Lee of Phoenix Settlement Administrators ("Lee Decl."), ¶ 8. As of the date of this filing, there
22 have been **no objections**, **no disputes**, and **only 1 opt-out** received. *Id.* at ¶¶ 13-15.

23 Plaintiff now respectfully submits the Settlement for this Court's final approval.

24 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

25 **A. Workweek Count and Settlement Class Definition**

26 After the preliminary approval was granted, the Settlement Administrator advised the total number
27 of pay periods worked is 12,214, confirming the escalator clause was not triggered. Lee Decl., ¶ 19.
28 Further, the Settlement Class is defined as: current and former Drivers of Defendant Pacific Drayage

Services, LLC who worked at any time in California from August 27, 2020 and January 28, 2022. Lidman Decl., ¶ 19.

B. Monetary Terms of the Settlement

The Settlement provides for Defendant to pay a Gross Settlement Amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00). Lee Decl., ¶ 16. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees (\$116,666.67) and verified costs (\$12,077.36), proposed Class Representative Service Award to Plaintiff (\$5,000.00), Settlement Administration costs (\$8,250.00), and PAGA payment (\$20,000.00). *Id.* Based on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$188,005.97**. *Id.*

The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of pay periods worked as a Driver during the Class Period, the numerator of which is the Settlement Class member's total pay periods worked as a Driver during the Class Period, and the denominator of which is the total pay periods worked as Drivers by all Settlement Class members (who do not opt out) who worked during the Class Period. *See* Settlement, ¶ 5.B.i.

Additionally, Five Thousand Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. *See* Settlement, ¶ 5.C.

Pursuant to the terms of the Settlement Agreement, each Settlement Award made under this Settlement will be attributed 100% as penalties and interest (because no "wages" are at issue) and paid via IRS Form 1099 issued to each Class Member and PAGA Employee. *See* Lee Decl., ¶ 16.

1 **C. Summary of Notice Process**

2 **1. *Mailing of Notice Packets***

3 On March 14, 2023, Defendant provided Phoenix with data files containing the names, last known
4 addresses, phone numbers, social security numbers, positions held, the number of pay periods worked
5 (or information allowing the Settlement Administrator to calculate same) as a non-exempt employee by
6 each Settlement Class member while employed during the Class Period and PAGA Period. Lee Decl., ¶
7 6. After performing address updates and verifications, Phoenix mailed the Notice Packet to the 314
8 Settlement Class Members on March 28, 2023 in English and Spanish. *Id.* at ¶ 8. Following the initial
9 mailing, 0 Notice Packets was returned to Phoenix by the Post Office. *Id.* at ¶ 9. After Phoenix performed
10 a Skip Trace, 0 Notice Packets were re-mailed. *Id.* As of the date of filing this final approval motion, 0
11 Notice Packets remain undeliverable because no forwarding address was provided and/or no new address
12 could be located through Skip Trace. *Id.*

13 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
14 disputes was May 27, 2023. Lee Decl., ¶ 8. As of the date of this filing, there were no objections, no
15 disputes, and only 1 opt-out. *Id.* at ¶¶ 13-15. Accordingly, as of the date of this Motion, the participation
16 rate amongst the Settlement Class Members is 99.68% and the average estimated payment is \$600.66,
17 with the highest estimated payment to a Settlement Class Member being \$1,139.06, the lowest estimated
18 payment to a Settlement Class Member being \$15.39, and the median amount being is \$569.53. *Id.* at
19 ¶¶ 13-19.

20 **D. Timing of Payments**

21 The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set
22 up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA
23 Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator
24 within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court’s
25 final approval of the settlement if no objections by or on behalf of Settlement Class members have been
26 filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or
27 withdrawn; or (c) the final resolution of any appeal that has been filed. Settlement ¶ 4.B.
28

1 After disbursement, Settlement Class Members will have 180 days to cash their checks. *See*
2 Settlement ¶ 5.E. Funds remaining unclaimed will be distributed to the California State Controller's Office
3 – Unclaimed Property Fund in the name of the Settlement Class Member. *Id.*; Lidman Decl., ¶ 20.

4 **E. Notice of Judgment**

5 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class
6 members, the final judgment entered by the Court and any changes to the Final Approval hearing date or
7 location will be posted on the Settlement Administrator's website at
8 www.phoenixclassaction.com/pacific-drayage. *See* Lee Decl., ¶6, Exh A.

9 **IV. ARGUMENT**

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

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

19 Here, this Court found that the Class meets all the requirements for class certification for
20 settlement purposes when it granted preliminary approval of the Settlement on February 27, 2023. *See*
21 Lidman Decl., ¶ 18; Exh. A. After the Court entered an order granting preliminary approval, no events
22 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
23 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement
24 Class Members have objected to any portion of the Settlement and only one (1) Settlement Class Member
25 has elected to opt-out of the Settlement. *See* Lee Decl., ¶¶ 13-15. This Court should therefore confirm
26 its conditional certification of the Settlement Class.

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

California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
Court, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a

1 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*
2 *Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval
3 process consists of preliminary settlement approval, notice being given to class members, and a final
4 fairness and approval hearing being held, at which class members have the opportunity to be heard with
5 respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff
6 respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

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

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

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

25 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
26 to each case. *Id.* “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
27 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of
28 the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because
settlements inherently involve compromise, even settlements providing for substantially narrower relief
than likely would be obtained if the suit were successfully litigated can be reasonable because, “the public
interest may indeed be served by a voluntary settlement in which each side gives ground in the interest

1 of avoiding litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455
2 F.2d 101, 109 (7th Cir. 1972)).

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

8 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
9 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect
10 to Plaintiff’s wage statement claim, Pacific Drayage contends that its alleged wage statement violations
11 could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other
12 employee “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code
13 § 226(e) for imposition of penalties. Lidman Decl., ¶ 12. Pacific Drayage also contends that as of January
14 28, 2022 it changes it wage statement policies and procedures. *Id.*

15 As for Plaintiff’s claim for PAGA civil penalties, Pacific Drayage argues that Plaintiff’s PAGA
16 claim will fail for the same reasons that his underlying claim will fail. Lidman Decl., ¶ 14; *see Price v.*
17 *Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the
18 derivative UCL and PAGA claims also fail.”). Pacific Drayage also maintains that, given its good faith
19 defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to
20 find Pacific Drayage liable for Plaintiff’s claim, especially given the fact that Pacific Drayage changed its
21 wage statements and also in consideration that there was no injury since only simple math was required
22 to remedy the missing information. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
23 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien*
24 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA
25 penalties from \$2.8 million to \$500,000).

26 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also
27 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
28 litigation. Lidman Decl., ¶ 15. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted

1 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages
2 figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
3 adequate, and reasonable in view of them.

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

7 Individual settlement payments will be calculated based on the number of workweeks worked by
8 each Settlement Class Member during the Class Period. See Settlement, ¶ 5.B. This method of
9 distribution compensates Settlement Class Members based on the estimated extent of their injuries, as
10 Settlement Class Members who worked more workweeks, would have been subject to more of the alleged
11 wage and hour violations than those who worked fewer weeks. Thus, the formula for compensating
12 Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties
13 that could be recovered by them.

14 **3. *The 99.68% Participation Rate and Absence of Any Objections Further***
15 ***Confirms That the Settlement is Fair, Adequate, and Reasonable***

16 Class members' response to a settlement is relevant in evaluating whether it merits final approval.
17 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
18 fairness presumption. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
19 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
20 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion,
21 not a single Settlement Class Member has objected to the Settlement and only 1 Settlement Class Member
22 has elected to opt-out of the Settlement. In addition, none of the 314 Notice Packets mailed were returned
23 undeliverable. Lee Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further
24 confirms that the Settlement is fair, adequate, and reasonable.

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

27 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
28 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*,

1 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
2 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,
3 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

4 Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman Decl.,
5 ¶ 30.

6 The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506
7 (2016), that “[t]he percentage of fund method survives in California class action cases.” Specifically, the
8 *Laffitte* Court held:

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

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

28 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools
such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar (hours
worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed to bring the

1 lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may
2 utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold further that trial courts have
3 discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the
4 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
5 requested percentage fee.”)

6 Here, Class Counsel’s fee request of \$116,666.67 (one-third of the Gross Settlement Amount) is
7 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
8 “regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
9 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
10 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
11 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
12 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
13 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
14 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
15 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
16 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 19. Thus, the percentage sought by
17 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

26 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
27 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
28 *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 **\$100,970** which results in a 1.16 multiplier compared to the \$116,666.67 fee request. *See* Lidman Decl., ¶ 26. 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. Lidman Decl., ¶ 27, Exh. C. Based on the *Laffey* Matrix, the hourly rate for a 25th year attorney is \$997, the hourly rate for a 16th and 17th year attorney is \$829, and the hourly rate for a 7th year attorney is \$508. *Id.*

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (25th Year Attorney)	\$750	56.1	\$42,075
Elizabeth Nguyen (17th Year Attorney)	\$650	31.7	\$20,605
Paul K. Haines (16th Year Attorney)	\$675	14.5	\$9,787.50
Milan Moore (7th Year Attorney)	\$450	55.6	\$25,020
Paralegals	\$175	19.9	\$3,482.50
Total Lodestar			\$100,970

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees).

1 First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a
2 current participation rate of 99.68%, and not a single Settlement Class Member has objected to the
3 Settlement or to Class Counsel's requested fees as of the date of this filing. See Lee Decl., ¶¶ 13-15.
4 Additionally, the average settlement payment in this case of approximately \$600.66 is in line with, and
5 above, settlement payments in similar wage and hour class action settlements. See, e.g., *Sorenson v.*
6 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action
7 settlement approved where average class member recovery was approximately \$60); *Schiller v. David's*
8 *Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that
9 average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*,
10 Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting
11 final approval of class action settlement where average recovery for each class member was
12 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted
13 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the
14 strength of the results achieved.

15 As discussed above, this case presented significant risk as to both class certification and merits
16 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
17 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
18 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
19 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
20 compensation for over one year. Lidman Decl., ¶ 23. During this time, Class Counsel have expended a
21 total of \$11,627.36 in actual costs and have devoted substantial time to this litigation and expect to incur
22 approximately \$450.00 in future costs for filing the instant motion, filing the final declaration regarding
23 distribution of settlement, service and messenger fees, postage fees, copying at \$0.06/page, and/or court
24 costs for future court appearances.² Lidman Decl., ¶ 23; Exh. B. Class Counsel's efforts have included
25 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
26 Pacific Drayage's documents and policies, preparing for and attending mediation, negotiating and
27

28 ² This includes total costs incurred by both law firms.

1 revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. *See* Lidman
2 Decl., ¶ 22. Moreover, Class Counsel have expended time, effort, and money that they could have
3 expended on less risky cases instead. Given the considerable potential for adverse outcomes in this case,
4 including, but not limited to losing on class certification and/or merits issues, the contingent risk borne
5 by Class Counsel was great. Lidman Decl., ¶¶ 20-23.

6 Class Counsel’s previous experience in litigating wage and hour class actions also supports the
7 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
8 hour class action litigation, with substantial experience litigating claims for meal and rest period
9 violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration of Elizabeth Nguyen (“Nguyen
10 Decl.”), ¶¶ 3-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 3-8. They have been certified as class
11 counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the
12 strengths and weaknesses of the case against Defendants and the reasonableness of the Settlement. *See*
13 Lidman Decl., ¶ 22. Practice in the narrow field of wage and hour litigation requires skill and knowledge
14 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class
15 action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their
16 skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

17 Other factors also show that the fee amount requested in this case is reasonable under the
18 circumstances. This case involved nuanced legal issues including questions surrounding the propriety of
19 statutory penalties. Lidman Decl., ¶¶ 11-15.

20 Thus, Class Counsel’s requested fee award is fair, reasonable, and adequate and should be
21 approved.

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

23 Class Counsel seek to be reimbursed a total of \$12,077.36³ in litigation costs. Class Counsel’s
24 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
25 *See* Lidman Decl., ¶ 23; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
26 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
27

28 ³ Class Counsel have expended a total of \$11,627.36 in actual costs and anticipates incurring costs in the amount
of \$450.00 for filing fees, service and messenger fees, and/or postage fees.

“those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)(“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class Member has objected to them, Plaintiff respectfully requests the Court should grant the request for actual costs incurred.

E. The Court Should Finally Approve the Requested Administration Costs

Plaintiff also requests that the Court approve \$8,250.00 in administration costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Kevin Lee on Behalf of Phoenix submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class Member’s individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 314 Settlement Class Members in English and Spanish, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Lee Decl., ¶¶ 2-20.

For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be finally approved.

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

Courts routinely approve service payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 service payment). In analyzing the requested service payment, courts consider the following factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the

1 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has
2 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,
3 and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's*
4 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
5 Cal.App.4th 785, 804.

6 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
7 \$5,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook
8 on behalf of Settlement Class Members. Lidman Decl., ¶ 31; Declaration of Julio Machado ("Machado
9 Decl."), ¶¶ 6-11. Plaintiff gathered documents for use in the lawsuit, and worked with Class Counsel on
10 the case, including preparing for mediation and discussing the case, the merits, the defenses, and
11 settlement. *See* Lidman Decl., ¶ 31; Machado Decl., ¶¶ 6-10. The class has benefited from Plaintiff's
12 actions as the average settlement amount is \$600.66.

13 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
14 lawsuit could stigmatize him and/or affect future employment. Machado Decl., ¶ 8. Plaintiff also
15 understood the risk that he could be liable for Defendant's costs if he lost the case. *Id.* at ¶ 7. Plaintiff
16 accepted these risks and burdens because he wanted Defendants to compensate their current and former
17 employees for unpaid penalties. *Id.* at ¶¶ 4-5. Plaintiff estimates he spent between 10-12 hours on
18 activities related to this case. *Id.* at ¶ 6.

19 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
20 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendants
21 and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving
22 all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Settlement ¶ 3.E.

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

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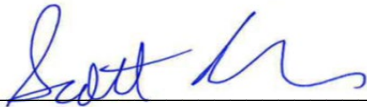
1 **V. CONCLUSION**

2 Lastly, Class Counsel is not aware of any other pending class, representative or other collective
3 action that would be affected by the approval of this settlement. Lidman Decl., ¶ 34.

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

7
8 Dated: June 23, 2023

Respectfully submitted,
LIDMAN LAW, APC

9
10 By: 

11 Scott M. Lidman
12 Attorney for Plaintiff
13 JULIO MACHADO
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