

SOLOUKI | SAVOY, LLP
SHOHAM J. SOLOUKI (SBN 278538)
shoham@soloukisavoy.com
GRANT JOSEPH SAVOY (SBN 284077)
grant@soloukisavoy.com
316 W. 2nd Street, Suite 1200
Los Angeles, California 90012
Telephone: (213) 814-4940
Facsimile: (213) 814-2550

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — SPRING STREET COURTHOUSE**

MICHAEL GARCIA JUAREZ, an individual
on behalf of himself and all similarly situated
employees,

Plaintiff,

v.

MARAN, INC., a Delaware Corporation;
DAVID GREENBERG, an individual; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV29894

[Assigned for all purposes to the Honorable Elihu
M. Berle, Dept. 6]

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEYS' FEES
AND COSTS, AND ENHANCEMENT
AWARDS; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: April 26, 2023
Time: 9:00AM
Dept.: 6
Hon. Elihu M. Berle

Action Filed: February 9, 2017
Trial Date: None Set

///

///

///

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

2 PLEASE TAKE NOTICE that, on April 26, 2023, at 9:00AM, or as soon thereafter as this matter
3 may be heard, in Department 6 of the above-captioned courthouse, located at Spring Street Courthouse,
4 312 N. Spring Street, Los Angeles, CA 90012, Plaintiff Michael Garcia Juarez (“Plaintiff”), will, and
5 hereby does, move this Court for final approval of the Joint Stipulation and Settlement of Class Action
6 and PAGA Settlement (“Settlement” and/or “Agreement”) reached by the parties in the above-captioned
7 litigation. Plaintiff moves the Court for entry of an order and judgment providing for the following:

- 8 1. Granting final approval of the terms of the Settlement as fair, adequate, and reasonable to all parties
9 and to all Participating Class Members;
- 10 2. Certifying the Class for settlement purposes only;
- 11 3. Finding that the notice distributed to Class Members, pursuant to the Court’s Order Granting Plaintiff’s
12 Motion for Preliminary Approval of Class Action Settlement, dated January 5, 2023, constituted the best
13 notice practicable under the circumstances;
- 14 4. Approving payment of Individual Settlement Payments to Participating Class Members pursuant to the
15 terms of the Settlement;
- 16 6. Approving payment of a Class Representative Service Award to the three named Plaintiffs in the
17 amount of \$7,500.00;
- 18 7. Awarding Class Counsel attorney’s fees in the amount up to one-third of the Maximum Settlement
19 Amount for a maximum fee award of \$ 73,33.33, plus an award of actual costs and reimbursement of
20 reasonable litigation costs not to exceed \$25,000;
- 21 8. Approving payment of Settlement Administration Costs to Phoenix Settlement Administrators, Class
22 Action Settlement Administrators in the amount of \$3,750.00.

23 The motion will be based upon this Notice, the attached Memorandum of Points and Authorities,
24 the accompanying Declaration of Grant Joseph Savoy, Declaration of Plaintiff Michael Garcia Juarez,
25 Declaration of Kevin Lee Regarding Notice and Settlement Administration (Phoenix Settlement
26 Administrators), the Class Action Settlement Agreement, the complete files and records of this case, and
27 any other evidence or oral argument which may be considered by the Court at the time of the hearing.
28

1 Dated: February 24, 2023

SOLOUKI | SAVOY, LLP

3 SHOHAM J. SOLOUKI, ESQ.
4 GRANT JOSEPH SAVOY, ESQ.
5 *Attorneys for Plaintiff Michael Garcia Juarez*
6 *and Those Similarly Situated*

26 ///

27 ///

28 ///

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND	2
A. The Parties	2
B. The Complaints	2
C. Discovery and Investigation	2
D. Settlement Negotiations	4
E. The Settlement Class	4
F. Preliminary Approval	4
III. SETTLEMENT TERMS	4
A. Class Representative Service Awards	4
B. Class Counsel Award	4
C. Payment to the LWDA	4
D. Settlement Class	4
E. Preliminary Approval	4
IV. CLASS NOTICE HAS BEEN EFECTUATED AND COMPORTS WITH CALIFORNIA LAW AND DUE PROCESS	8
V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE	9
A. The Proposed Settlement Was Reached Through Arm's Length Bargaining	9
B. Settlement Negotiations Were Conducted Based on Sufficient Investigation and Discovery	10
D. None of the Class Members Have Objected to the Settlement	11
E. Assessment of Amount in Controversy and Risks Associated with Proceeding	11
VI. THE CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE	15
VII. CLASS COUNSEL IS ENTITLED TO AN AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS	16
A. The Requested Attorney's Fees Are Reasonable Under the Common Fund Theory	16
B. The Requested Attorney's Fees Are Reasonable Under the Lodestar Method	18

1	1. Class Counsel’s Hours Are Reasonable	19
2	2. Class Counsel’s Hourly Rates Are Reasonable	20
3	C. Class Counsel’s Costs Are Reasonable	21
4	D. Neither Defendants Nor the Class Members Oppose the Request for Fees and Costs	21
5	VIII. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE	
6		21
7	IX. NOTICE TO LABOR AND WORKFORCE DEVELOPMENT AGENCY	21
8	X. CONCLUSION	21

26 ///

27 ///

28 ///

TABLE OF AUTHORITIES

Cases

Page(s)

<i>Boeing v. Van Gemert</i> , (1980) 444 U.S. 472	18
<i>Chavez v. Netflix. Inc.</i> , (2008) 162 Cal.App.4th 43	17
<i>City and County of San Francisco v. Sweet</i> , (1995) 12 Cal.4th 105	17
<i>Clark v. Am. Residential Services, LLC</i> , (2009) 175 Cal.App.4th 785	15
<i>Computer Inc. v. Superior Court</i> , (2005) 126 Cal.App.4th 1253	17
<i>Dunk v. Ford Motor Co.</i> , (1996) 48 Cal.App.4th 1794	9
<i>Eisen v. Carlisle & Jacquelin</i> , (1974) 417 U.S. 156	8
<i>In re Activision Securities Litigation</i> , (N.D. Cal. 1989) 723 F. Supp. 1373	17
<i>In re Consumer Privacy Cases</i> , (2009) 175 Cal.App.4th 545	17,18
<i>Jordan v. Multnomah County</i> , (9th Cir. 1987) 815 F.2d 1258	19
<i>Kullar v. Foot Locker Retail, Inc.</i> , (2008) 168 Cal.App.4th 116	9
<i>Laffitte v. Robert Half Int’l Inc.</i> , (2016) 1 Cal. 5th 480 (2016)	17,18,19
<i>Lealao v. Beneficial California, Inc.</i> , (2000) 82 Cal.App.4th 19	17
<i>Martino v. Denevi</i> , (1986) 182 Cal.App.3d 553	19
<i>MBNA American Bank, N.A. v. Gorman</i> , (2006) 147 Cal.App.4th 1	20
<i>Moreno v. City of Sacramento</i> , (9th Cir. 2008) 534 F.3d 1106	19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , (2010) 186 Cal.App.4th 399	9, 15
<i>Parkinson v. Hyundai Motor America</i> , (C.D. Cal. 2010) 796 F.Supp.2d 1160	20
<i>Phillips Petroleum Co. v. Shutts</i> , (1985) 472 U.S. 797	8
<i>PLCM Group, Inc. v. Drexler</i> , (2000) 22 Cal.4th 1084	20
<i>Rebney v. Wells Fargo Bank</i> , (1990) 220 Cal.App.3d 1117	9
<i>Serrano v. Priest</i> , (1977) 20 Cal.3d 25	16,17
<i>Vincent v. Hughes Air West, Inc.</i> , (9th Cir. 1977) 557 F.2d 759	17

1	<i>Vizcaino v. Microsoft Corp.</i> , (9th Cir. 2002) 290 F.3d 1043	
2		18
3	<i>Wershba v. Apple Computer, Inc.</i> , (2001) 91 Cal.App.4th	
4		19
5	<i>Williams v. MGM-Pathe Communications Co.</i> , (9th Cir. 1997) 129 F.3d 1026	
6		17

///

///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion is brought by Plaintiff Michael Garcia Juarez (“Plaintiff” and/or “Garcia Juarez”), in
4 the matter of *Garcia Juarez, et al. v. Maran, Inc., et al.* (Los Angeles Superior Court (“LASC”) Case No.
5 21STCV29894 (the “Action” or “Matter”)) in this wage and hour class action brought on behalf of all
6 current and former non-exempt California employees who worked for Defendant Maran, Inc.
7 (“Defendant” and/or “Maran”) at any time from August 12, 2017 until January 5, 2023. The Action
8 primarily alleges that Defendant failed to provide Plaintiff and the class he seeks to represent with legally
9 required meal and rest periods, failed to pay their overtime and off-the-clock wages, failed to maintain
10 required employment records, provided inaccurate wage statements, and failed to timely compensate
11 former employees for all wages owed upon section of employment. Plaintiff and Defendant (collectively,
12 the “Parties”) entered into a JOINT STIPULATION AND SETTLEMENT OF CLASS ACTION AND
13 PAGA SETTLEMENT (“Settlement” and/or “Agreement”), which provides for a non-reversionary,
14 Maximum Settlement Amount (“MSA”) of Two Hundred and Twenty Thousand Dollars (\$220,000.00).
15 On January 5, 2023, the Court granted preliminary approval of the Settlement. Plaintiff now seeks an order
16 granting final approval of the Settlement, including an award of attorney’s fees and costs.

17 The Settlement Class is composed of approximately Fifteen (15) current and former employees of
18 Defendant working as hourly non-exempt employees, in the State of California at any time from August
19 12, 2017 through January 5, 2023, inclusive (the “Class Period”). A presumption of fairness exists because
20 the Settlement was reached through extensive, arm’s-length negotiations. Sufficient investigation and
21 discovery allowed Class Counsel to act intelligently. Class Counsel is experienced in similar wage and
22 hour class litigation, and there are no objections to the Settlement at the time of filing these papers.

23 The Settlement provides substantial benefits to Class Members. The estimated average Individual
24 Settlement Payment will be approximately \$5,262, with the highest estimated Individual Settlement
25 Payment amounting to approximately \$8,381.96. The lowest Individual Settlement Payment is
26 approximately \$114.96. Furthermore, the Settlement has been favorably received by Class Members. Of
27 the 15 Class Members, not a single individual objected to the terms of the Settlement and no Class
28 Members opted out of the settlement, at the time of filing these papers.

1 Plaintiff's request in an amount not to exceed \$73,333.33 in attorney's fees and reimbursement of
2 litigation costs in the amount of \$15,486.00, is reasonable. The amount of attorney's fees, which amounts
3 to one third of the common fund, is well within the range generally sought and approved in class actions.
4 The amount of fees requested is also reasonable given Class Counsel's lodestar of \$246,860.00, based
5 upon 484.0 billable hours at hourly rates recently approved by the California federal District Court, with
6 no multiplier.

7 Because the Settlement is fair, adequate, and reasonable, and it is in the best interests of Class
8 Members, Plaintiff respectfully requests that the Court grant final approval and enter judgment.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 **A. The Parties**

11 Defendant Maran engages in the business of manufacturing and shipping clothing goods for
12 women and children. There are approximately Fifteen (15) current and former employees of Defendant
13 who are eligible to participate in the Settlement. (*Grant Savoy Declaration* ("Savoy Decl."), at ¶ 6.)

14 **B. The Complaints**

15 The Action was filed on August 12, 2021, and originally alleged the following causes of action: (1)
16 failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay
17 overtime wages; (4) failure to pay minimum wage; (5) failure to timely pay wages; (6) failure to pay all
18 wages due to discharged and quitting employees; (7) failure to maintain required records; (8) failure to
19 furnish accurate itemized statements; (9) failure to indemnify employees for necessary expenditures
20 incurred in discharge of duties; (10) all claims for unfair business practices. On or about May 23, 2022,
21 via joint stipulation, Plaintiff filed a First Amended Complaint adding an additional 11th cause of action
22 under the California Private Attorneys General Act of 2004 ("FAC," "Complaint," or "Operative
23 Complaint"). (*Savoy Decl.*, at ¶ 4, 5.)

24 **C. Discovery and Investigation**

25 Prior to the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by
26 Plaintiff, conducted legal research, and engaged in extensive formal and informal discovery. Prior to
27 mediation, the Parties met and conferred regarding the scope of discovery necessary for the Parties to
28 engage in a productive mediation. It was agreed that the Parties would exchange agreed upon documents

1 and class records/data prior to mediation. (*Savoy Decl.*, at ¶ 8.)

2 Defendant Maran produced numerous documents relating to its policies, practices, and procedures
3 regarding its wage and hour practices, paying non-exempt employees for all hours worked, meal and rest
4 period policies, meal premiums paid, and payroll and operational policies. As part of Defendant's
5 production, Class Counsel represents it also reviewed time records, pay records, and information relating
6 to the size and scope of the Class, as well as data permitting Class Counsel to understand the number of
7 workweeks and pay periods in the Class Period. The Parties agree that the above-described investigation
8 and evaluation, as well as the information exchanged during the settlement negotiations, are more than
9 sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair
10 and equitable basis. (*Savoy Decl.*, at ¶ 9.)

11 Through discovery and investigation, my office was able to identify multiple current and former
12 employees of Defendant that provided valuable information that allowed my office and our expert to
13 clarify any apparent discrepancies in the data provided by Defendant. (*Savoy Decl.*, at ¶ 10.)

14 For example, Defendants' written records did not indicate when or if a majority of the meal breaks
15 had been taken by a given employee during a given work shift, leading to the rebuttable presumption that
16 no meal breaks were taken on those occasions. Through information and statements provided by Plaintiff
17 and other employees of Defendant, it was determined that an overwhelming majority of the non-exempt
18 hourly employees that worked for Defendant worked identical shifts and schedules; therefore, most, if not
19 all, meal breaks for the shift were necessarily given at the same time. However, when the business
20 workload was greater than normal, or a shift had a fewer employees than necessary to handle the day's
21 workload, preset meal break periods shifted. When this did occur, employees were required to work
22 longer continuous periods or partially cover missing employee's duties during the present employee's
23 scheduled meal period. This resulted in either a late, missed, or shortened meal period. (*Savoy Decl.*, at ¶
24 11.) This information could not have been gleaned from the face of the payroll and timekeeping records
25 themselves.

26 Plaintiff's statistical experts analyzed this information, including data for approximately 2,288
27 unique workweeks, and Plaintiff's counsel evaluated the potential liability and damages for the Class
28 Members. Based upon this information, Plaintiff's counsel was able to act intelligently and effectively in

1 negotiating the proposed Settlement. (*Savoy Decl.*, at ¶ 12.)

2 My firm is informed and believes that the existence of an ascertainable class can be established
3 through Defendant's own records. (*Savoy Decl.*, at ¶ 12.)

4 **D. Settlement Negotiations**

5 The Settlement was reached following extensive negotiations during and after a private mediation
6 with professional mediator Joel Grossman, Esq. The settlement negotiations were at arm's length and,
7 although conducted in a professional manner, were adversarial. The parties went into the mediation
8 session willing to explore the potential for a settlement of the dispute, but each side was also prepared to
9 litigate its position through trial and appeal if a settlement had not been reached. (*Savoy Decl.* ¶¶ 13 - 15.)

10 During mediation, Plaintiff strongly asserted the validity of his arguments and his assessment that
11 this case could be worth a substantial amount of money. However, as the mediation progressed,
12 Defendant presented their arguments as to various issues, and it became apparent that many issues would
13 be highly disputed and could pose a risk to both parties in going forward with litigation. As a result, the
14 parties agreed to resolve this matter. (*Id.*)

15 Moreover, Mr. Grossman presided over the back and forth exchange of information, and helped
16 guide the parties towards what he believed, based on his experience, was a reasonable resolution given the
17 disputed issues of liability. (*Id.*)

18 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence
19 to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v.*
20 *Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust*
21 *Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the
22 proponents, particularly where, as here, settlement has been reached with the participation of experienced
23 counsel familiar with the litigation. (*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004)
24 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey*
25 (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp.
26 1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571,
27 580.)

28 **E. The Settlement Class**

1 “Settlement Class” or “Class” or “Class Members” means all current and former non-exempt
2 California employees who worked for Defendant at any time from August 12, 2017 until January 5, 2023.
3 The Class is estimated to consist of 15 persons with an estimated 2,288 workweeks, and includes 11
4 “PAGA Aggrieved Employees”, defined as all nonexempt Class Members in California employed at any
5 time from August 11, 2020 until January 5, 2023, who worked an estimated 464 PAGA pay periods.
6 (*Settlement*, sections 1.3, 1.20.)

7 **F. Preliminary Approval**

8 On January 5, 2023, the Court granted preliminary approval of the Settlement.

9 **III. SETTLEMENT TERMS**

10 In exchange for a release of claims against Defendant, as set forth in the Settlement, the payment terms
11 of the Settlement are as follows:

12 1. The “Maximum Settlement Amount” or “MSA” refers to the maximum total payment Defendant
13 shall be obligated to make in the amount of \$220,000.00 pursuant to this Settlement. The Maximum
14 Settlement Amount shall include (a) attorneys’ fees of up to \$73,333.33, (b) Plaintiff’s reasonable
15 litigation costs and expenses up to \$25,000.00, (c) reasonable third party administration costs in an amount
16 not to exceed \$3,750.00, (d) a PAGA Penalty Payment of \$41,000.00, of which \$30,750.00 will be paid to
17 the Labor Workforce Development Agency, representing 75% of PAGA civil penalties, with the
18 remaining 25%, \$10,250.00, to be distributed among the PAGA Aggrieved Employees (“Individual
19 PAGA Payment Amount”), (e) a class representative Service Payment in the amount of \$7,500.00, and
20 Net Settlement Amount as described in Paragraph 1.21 of the Settlement and Paragraph 2 herein.
21 Defendant’s share of any employer-payroll taxes attributed to Individual Payment Amounts shall be paid
22 separately and in addition to the Maximum Settlement Amount, and shall be determined by the Settlement
23 Administrator. (*Settlement*, sections 1.20.) Subject to Court approval, this amount shall be allocated as
24 follows:

25 2. The “Net Settlement Amount” or “NSA” is the remaining portion of the Maximum Settlement
26 Amount after deduction of the court-approved attorneys’ fees and costs, including any attorney liens,
27 Settlement Administration Costs, the payment to the Labor Workforce Development Agency in the
28 amount of \$30,750.00 (representing 75% of the PAGA Penalty Payment), and the Class Representative’s

1 Service Payment. The Net Settlement Amount will be attributed to the portion of Individual Payment
2 Amounts and distributed to Settlement Class Members and the PAGA Aggrieved Employees, as described
3 in Paragraph 4.2 of the Settlement Agreement. (*Settlement*, sections 1.21, 4.2.)

4 a. Subject to Court approval, the Settlement Administrator will pay an “Individual Payment
5 Amount” from the NSA to each Participating Class Member as follows:

6 i. Each Class Member’s Individual Payment Amount shall be calculated by (i) dividing the
7 Settlement Class Member’s total number of workweeks worked for Defendant in California during the
8 Class Period by the total number of workweeks worked by all Settlement Class Members for Defendant
9 during the Class Period, and (ii) multiplying that pro rata share by the allocated amount of the Net
10 Settlement Amount. Any workweeks during the Class Period in which a Settlement Class Member did not
11 actually work (for example, while on a leave of absence, etc.) are not included in calculating that
12 Settlement Class Member’s Individual Payment Amount. The calculation of a Settlement Class Member’s
13 total workweeks worked in California shall be construed from Defendant’s records.

14 ii. Each Settlement Class Member’s Individual Payment Amount shall be distributed to that
15 Settlement Class Member, less applicable withholdings attributed to the portion of Individual Payment
16 Amounts designated as wages, as described in Paragraph 4.2.4(a) of the Settlement Agreement.

17 iii. Similarly, each Class Member’s Individual PAGA Payment Amount, where applicable,
18 shall be calculated by (i) dividing the Aggrieved Employee’s total number of PAGA pay periods worked
19 for Defendant in California during the PAGA Period by the total number of workweeks worked by all
20 Aggrieved Employees who worked for Defendant during the PAGA Period, and (ii) multiplying that pro
21 rata share by the allocated amount of the Net PAGA Settlement Amount. Any pay periods during the
22 PAGA Period in which a PAGA Aggrieved Employee did not actually work (for example, while on a
23 leave of absence, etc.) are not included in calculating that Settlement Class Member’s Individual PAGA
24 Payment Amount. The calculation of the Aggrieved Employee’s total PAGA pay periods worked in
25 California shall be construed from Defendant’s records. (*Settlement*, sections 1.19, 4.2.2.)

26 b. Each Settlement Class Member’s Individual Payment Amount (including Individual PAGA
27 Payment Amounts) shall be distributed as follows:

i. Thirty percent (30%) of the Individual Payment Amounts shall be allocated for payment of disputed wages to Settlement Class Members. For this portion of the Individual Payment Amounts, Settlement Class Members shall receive a W-2 form.

ii. Seventy percent (70%) of the Individual Payment Amounts shall be allocated for disputed penalties and interest. This portion of the Individual Payment Amounts consists of other income, not wages, for which Settlement Class Members shall receive a 1099 form.

iii. The Individual PAGA Payment Amounts shall be counted as penalties rather than wages for tax purposes, for which the Settlement Class Member shall receive a 1099 form.

(Settlement, sections 4.2.4.)

3. After one-hundred eighty (180) days of issuance, funds from undeposited checks, along with any amounts that would have been paid to Class members who request exclusion, will be delivered to the California State Controller (Unclaimed Property) by the Settlement Administrator, or shall otherwise be distributed as ordered by the Court. The failure by any Class Member to claim or deposit any check issued by the Settlement Administrator shall have no effect on that Class Member's release of all Released Claims (as defined in paragraph 1.27 of the Settlement). The Settlement Administrator shall also enable Class Counsel to file a declaration attesting to the distribution of the Maximum Settlement Amount and the distribution of any "residual" funds as further ordered by the Court. Also, the Court may issue an appropriate Order, transmitting any unclaimed funds that would have otherwise been payable to Class Members in settlement checks that remain uncashed, along with any accrued interest thereon, to the California State Controller (Unclaimed Property). (Settlement, section 4.11.4.)

///

///

///

IV. CLASS NOTICE HAS BEEN EFFECTUATED AND COMPORTS WITH CALIFORNIA LAW AND DUE PROCESS

To protect the rights of absent class members, the trial court must provide the best notice practicable to class members. (See *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v.*

1 *Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175.) There is no requirement that all class members
2 receive actual notice, whether by mail or some other means; rather, “individual notice must be provided to
3 those class members who are identifiable through reasonable effort.” (*Eisen*, 417 U.S. at 175.)

4 The notice plan, as approved by the Court, has been fully implemented by the Settlement
5 Administrator, Phoenix. On or about January 3, 2023, Phoenix received from Defendant’s counsel data for
6 15 Class Members, including their contact and the workweek information. (*Declaration of Kevin Lee*
7 (“*Lee Decl.*”), at ¶ 3.) Phoenix updated the mailing addresses utilizing the National Change of Address
8 Database maintained by the U.S. Postal Service. (*Id.* at ¶ 4.) On or about January 25, 2023, Phoenix
9 mailed Notice Packets containing the Notice of Class Action Settlement, in both English and Spanish, to
10 all 15 Class Members. (*Id.* at ¶ 5.) The Notice Packet advised Class Members that they could take no
11 action and become Settlement Class Members, opt-out of the settlement, dispute their Workweeks or
12 contact information, or submit an objection postmarked by the Response Deadline of March 27, 2023. (*Id.*
13 at ¶ 7.)

14 As of February 21, 2023, zero (0) Notice Packets have been returned to Phoenix. (*Id.* at ¶ 6.) As of
15 February 21, 2023, Phoenix has received zero (0) valid Request for Exclusion from a Class Member
16 opting out of the Settlement. (*Id.* at ¶ 7.) As of July 11, 2018, Phoenix has received zero (0) objections to
17 the Settlement and zero (0) disputes regarding the payment information. (*Id.* at 8 and 9.) If the Court
18 approves Class Counsel’s requested award of attorney’s fees and costs, the Class Representative Service
19 Awards, and the Settlement Administration Costs, then the average estimated Individual Settlement
20 Payment will be approximately \$5,262.04, and the highest estimated Individual Settlement Payment will
21 be approximately \$8,381.96. (*Lee Decl.*, at ¶ 12; *Savoy Decl.*, at ¶ 26.) Since there will be no residue from
22 the fund, there will necessarily be no Reapportioned Settlement Payments to Class Members.

23 ///

24 ///

25 **V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

26 The trial court has broad discretion to determine whether a proposed class action settlement is fair.
27 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138.) There is a presumption of fairness of a
28 class action settlement when: (1) the settlement is reached as a result of arm’s length negotiations; (2)

1 there has been sufficient investigation and discovery; (3) counsel is experienced in similar litigation; and
2 (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)
3 Before approving a class action settlement, a trial court must develop an understanding “of the amount that
4 is in controversy and the realistic range of outcomes of the litigation.” (*Kullar v. Foot Locker Retail, Inc.*
5 (2008) 168 Cal.App.4th 116, 120.) However, the parties need not provide an explicit statement of the
6 maximum amount plaintiffs could have potentially recovered. (*Munoz v. BCI Coca-Cola Bottling Co. of*
7 *Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

8 **A. The Proposed Settlement Was Reached Through Arm’s Length Bargaining**

9 The Settlement was reached following extensive negotiations during and after a private mediation
10 with professional mediator Joel Grossman, Esq. The settlement negotiations were at arm’s length and,
11 although conducted in a professional manner, were adversarial. The parties went into the mediation
12 session willing to explore the potential for a settlement of the dispute, but each side was also prepared to
13 litigate its position through trial and appeal if a settlement had not been reached. (*Savoy Decl.* ¶¶ 13 - 26.)

14 During mediation, Plaintiff strongly asserted the validity of his arguments and his assessment that
15 this case could be worth a substantial amount of money. However, as the mediation progressed,
16 Defendant presented their arguments as to various issues, and it became apparent that many issues would
17 be highly disputed and could pose a risk to both parties in going forward with litigation. As a result, the
18 parties agreed to resolve this matter. (*Savoy Decl.* ¶ 22.)

19 Moreover, Mr. Grossman presided over the back and forth exchange of information, and helped
20 guide the parties towards what he believed, based on his experience, was a reasonable resolution given the
21 disputed issues of liability. (*Savoy Decl.* ¶ 23.)

22 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence
23 to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v.*
24 *Continental Illinois Nat’l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust*
25 *Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the
26 proponents, particularly where, as here, settlement has been reached with the participation of experienced
27 counsel familiar with the litigation. (*Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004)
28 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey*

(S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.)

B. Settlement Negotiations Were Conducted Based on Sufficient Investigation and Discovery

Prior to the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by Plaintiff, conducted legal research, and engaged in extensive formal and informal discovery. Prior to mediation, the Parties met and conferred regarding the scope of discovery necessary for the Parties to engage in a productive mediation. It was agreed that the Parties would exchange agreed upon documents and class records/data prior to mediation. (*Savoy Decl.*, at ¶ 8.)

Defendant Maran produced numerous documents relating to its policies, practices, and procedures regarding its wage and hour practices, paying non-exempt employees for all hours worked, meal and rest period policies, meal premiums paid, and payroll and operational policies. As part of Defendant's production, Class Counsel represents it also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. (*Savoy Decl.*, at ¶ 9.)

Through discovery and investigation, my office was able to identify multiple current and former employees of Defendant that provided valuable information that allowed my office and our expert to clarify any apparent discrepancies in the data provided by Defendant. (*Savoy Decl.*, at ¶ 10.)

For example, Defendants' written records did not indicate when or if a majority of the meal breaks had been taken by a given employee during a given work shift, leading to the rebuttable presumption that no meal breaks were taken on those occasions. Through information and statements provided by Plaintiff and other employees of Defendant, it was determined that an overwhelming majority of the non-exempt hourly employees that worked for Defendant worked identical shifts and schedules; therefore, most, if not all, meal breaks for the shift were necessarily given at the same time. However, when the business workload was greater than normal, or a shift had a fewer employees than necessary to handle the day's

workload, preset meal break periods shifted. When this did occur, employees were required to work longer continuous periods or partially cover missing employee's duties during the present employee's scheduled meal period. This resulted in either a late, missed, or shortened meal period. (*Savoy Decl.*, at ¶ 11.) This information could not have been gleaned from the face of the payroll and timekeeping records themselves.

Plaintiff's statistical experts analyzed this information, including data for approximately 2,288 unique workweeks, and Plaintiff's counsel evaluated the potential liability and damages for the Class Members. Based upon this information, Plaintiff's counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Savoy Decl.*, at ¶ 12.)

C. None of the Class Members Have Objected to the Settlement

The Class Members' positive response is indicative of the fairness of the Settlement. To date, zero objections have been submitted to the Settlement Administrator, and 100% of the Class Members are participating in the Settlement. (*Lee Decl.*, ¶ 6-10.)

D. Assessment of Amount in Controversy and Risks Associated with Proceeding

Class Action Settlement Amount is Fair, Just, and Reasonable

Plaintiff and Plaintiff's counsel remain confident of the merits of Plaintiff's claims. Plaintiff and Plaintiff's counsel considered several factors in reaching the decision to settle at this point in the litigation. Plaintiff's counsel has calculated the maximum damages of the Class Members, excluding solely derivative claims, to be approximately Eight Hundred Seven Thousand Nine Hundred and Forty Dollars (\$807,940.00) and believes this amount would be the maximum damage potential should the case proceed to trial. (*Savoy Decl.*, at ¶ 16.)

Given the maximum potential damages, the settlement sum of Two Hundred and Twenty Thousand Dollars (\$220,000.00) is reasonable considering the substantial risks entailed by this case. My firm estimates a Sixty Percent (60%) likelihood of obtaining and maintaining certification of Plaintiff's claims, which reduces the value of these claims. My office further estimates that there is a Sixty Percent (60%) chance that Plaintiff will prevail at trial on his individual and class claims, further reducing the value of the claims. Taking these two risk factors into account, a more realistic damages recovery analysis brings values the instant action at approximately \$290,858.40. The MSA is approximately Seventy-Six

1 Percent (76%) of the revised and reduced total damages exposure. The significant risk that this Court may
2 deny class certification is obviated by the Settlement. Moreover, continued litigation would very likely
3 reduce and substantially delay recovery by Class Members. In contrast, because of the proposed
4 Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable judgment and
5 avoids the possibility of having all, or a portion, of the class and representative claims lost to dispositive
6 motion, which was not included as a factor in reaching the above reduced damages amount. (*Savoy Decl.*,
7 at ¶ 18.)

8 Defendant, on the other hand, strongly contends that its policies and practices do not violate any
9 laws and that it complied with all applicable laws. Specifically, Defendant maintains that Plaintiff's claims
10 that he and class members were not paid for all hours worked is factually incorrect. It is Defendant's
11 position that there would be no liability for unpaid wages and overtime, and therefore, the derivative
12 claims of waiting time penalties, untimely wage payments and inaccurate wage statements therefore also
13 fail. Defendant further contends that it provided meal and rest breaks as required by law and is not
14 required to ensure that employees took every meal and rest period made available to them. (*Brinker*
15 *Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012).) Even if the data were to show that meal
16 periods were not taken, time records alone cannot establish a meal break violation under California law.
17 (*See Donohue v. AMN Servs., LLC*, 29 Cal. App. 5th 1068, 1088 n. 25, as modified (Dec. 28, 2018),
18 review granted, 2019 WL 1388808, at *1 (Cal. Mar. 27, 2019) (finding that "an employer's time records
19 may . . . [only] reflect a section 226.7 violation" in the class certification context, and not on the merits
20 either at trial or on summary judgment); *Brown v. Federal Express Corp.*, 249 F.R.D. 580, 587 (C.D. Cal.
21 2008) (time records could not prove break claims as they would not provide reason for missed breaks).)

22 Additionally, Defendant contends that Plaintiff would not obtain class certification on his claims,
23 particularly because the claims would require an individualized inquiry. (*See Koval v. Pacific Bell*
24 *Telephone Co.*, 232 Cal. App. 4th 1050, 1062 (2014) (denying certification and holding that plaintiff's
25 failure to demonstrate that allegedly unlawful policies were consistently applied "create[d] a shifting
26 kaleidoscope of liability determinations that render this case unsuitable for class action treatment"); *Dailey*
27 *v. Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 1002 (2013) (denying class certification of meal period
28 and rest break claims of employees alleging that they did not regularly take uninterrupted meal and rest

breaks where there was no evidence of a uniform policy showing that the Company required the employees to forego breaks.) In such an event, there would be no recovery for Class Members at all. A discount was required at this stage of the litigation for settlement purposes based on these risk factors. The significant risks that this Court may deny class certification or rule against Plaintiff on the merits are obviated by the Settlement, as is any risk associated with trial. Moreover, continued litigation would very likely reduce and substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable judgment.

Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each cause of action. It must be noted that the lion share of the non-derivative and non-penalty class damages are attributable to unrecorded meal periods (approximately 56% of all non-derivative, non-penalty damages). As noted, the uniform scheduling of all Class Members utilized by Defendant's business operations necessarily required all employees in a given shift to take a meal break at the same time. It was largely those employees that were required to cover absent employee's work duties, or those employees working during days with abnormally heavy workloads, that suffered meal period violations, potentially drastically reducing Plaintiff's asserted class damages. (*Savoy Decl.*, at ¶ 15.) Plaintiff also recognizes that proving the amount of wages due to each individual Class Member, while feasible, would be an expensive, time-consuming, and extremely uncertain proposition. (*Savoy Decl.*, at ¶ 16.)

With full participation of all 15 employees in the settlement, we estimate that each class member will recover on average \$5,262.04. The average workweek recovery from the NSA is 29.78. The maximum recovery for a class member is approximately \$8,381.96. The minimum recovery for a class member is approximately \$114.96. (*Lee Decl.*, at ¶ 12.) On average, this amount is far from insignificant, especially because most class members will never pursue their individual claims. Moreover, the Class Members are longer-term employees of Defendant, working most, if not all, of the eligible workweeks and will receive close to the average recovery of \$5,262.04. (*Savoy Decl.*, at ¶ 26.)

In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiff's claims, it is clear that the Maximum settlement amount is fair,

adequate, and reasonable. (*Savoy Decl.*, at ¶ 21.)

Settlement Amount Allocated to PAGA Claim Is Fair, Just, and Reasonable

Plaintiff's expert statistician has calculated the number of unique PAGA pay periods to be 464. At a 100% violation rate (i.e. one Labor Code violation per unique pay period), Defendant's maximum PAGA penalty exposure is approximately Ninety-One Thousand Three Hundred Dollars (\$91,300.00). As noted, Plaintiff estimates a sixty percent (60%) chance of beating a motion for summary judgment/adjudication on the underlying Labor Code causes of action, as well as a 60% chance of a favorable outcome at trial. This reduces Defendant's potential PAGA penalty exposure to \$32,868.00. However, as explained below, this number must be greatly reduced when the facts and evidence presented during litigation and mediation are taken into account. Plaintiff asserts that \$41,000.00 attributed to PAGA penalties, which is One Hundred and Twenty-Five percent (125%) of the reduced/adjusted PAGA exposure, is more than fair, just, and reasonable. (*Savoy Decl.*, 28.)

Through discovery and investigation, as well as further evidence presented at mediation, it became abundantly clear that the majority of all Labor Code violations occurred within the first three (3) years of the alleged class period. Defendant's meal and rest break policies for the entire class period appear facially valid. Based on timekeeping records and interviews with Plaintiff and aggrieved employees, Defendant's apparent practice and enforcement of said policies appears to have changed during the class period. Plaintiff's PAGA penalty claims are based primarily on unrecorded meal breaks, as the majority of the class timekeeping records fail to evidence recorded meal periods from for the applicable PAGA period. (*Savoy Decl.*, 29.)

For those unrecorded and short meal periods occurring during the PAGA period, Defendant provided a rebuttal to the presumption that no recorded meal period is presumed to mean no meal period was taken. The uniform shift and schedule configuration of Defendant's business operations necessarily requires all employees in a given shift to take a meal break at the same time. Information was provided that all employees working on a given assembly line did in fact take a meal break at the same time. It was largely those employees that were required to cover an absent employee's work duties that suffered meal period violations, drastically reducing Plaintiff's asserted meal break violation rate. Based on this information and information obtained from Plaintiff and other aggrieved employees, Plaintiff was required

1 to reduce alleged penalties associated with meal break violations during the PAGA period. (*Savoy Decl.*,
2 at ¶ 30.)

3 Due to the violation rate and trouble in proving the underlying meal break violations during the
4 applicable PAGA period, Plaintiff believes it is proper to attribute approximately Nineteen percent (19%)
5 of the Net Settlement Amount to PAGA penalties. Moreover, attributing a larger portion of the settlement
6 to non-PAGA penalties insures that a greater amount of the Net Settlement Amount will go to the putative
7 class. (*Savoy Decl.*, at ¶ 31.)

8 **VI. THE CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE**

9 Plaintiffs in class action lawsuits are eligible for reasonable service payments as compensation “for
10 the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v.*
11 *BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) The Settlement
12 provides for a Class Representative Service Award not to exceed \$7,500.00 for Plaintiff. (*Settlement*, ¶
13 1.21.) The requested service payment is reasonable according to controlling and persuasive case law.
14 (*See Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 805-6.) The payment is
15 intended to recognize the substantial time and effort that Plaintiff expended on behalf of the Class. (*Savoy*
16 *Decl.* ¶¶ 32.) Throughout this litigation, Plaintiff cooperated with counsel and took actions to protect the
17 interests of the Class. (*Savoy Decl.* ¶ 33; *Declaration of Michael Garcia Juarez* (“*Garcia Juarez Decl.*”),
18 ¶¶ 5-8.) Plaintiff provided valuable information regarding potential witnesses, Defendant’s meal period
19 and rest period practices, Defendant’s reimbursement practices, and Defendant’s failure to properly
20 compensate for overtime hours. (*Id.*) Plaintiff kept informed of the developments in the Action, informed
21 counsel of information relevant to the Action, participated in decisions concerning the Action, provided
22 counsel with the names and contact information of potential witnesses, and was engaged and present
23 during all mediation proceedings. (*Id.*) The information and documentation provided by Plaintiff was
24 instrumental in establishing the wage and hour violations alleged in the Action, and the recovery provided
25 for in the Settlement Agreement would have been impossible to obtain without Plaintiff’s active
26 participation. (*Id.*)

27 Plaintiff faced many risks in bringing the lawsuits as class actions. (*Savoy Decl.* ¶ 34; *Garcia*
28 *Juarez Decl.*, ¶¶ 5-8.) Because of Plaintiff’s efforts, approximately 15 Class Members will now have the

1 opportunity to participate in a settlement and to recover payment for wage violations they may have never
2 known about on their own or been willing to pursue on their own. (*Id.*) If each Class Member attempted
3 to pursue his or her legal remedies individually, each person would have been required to expend a
4 significant amount of his or her own monetary resources and time. (*Id.*) In sum, the Action would not
5 have been possible without the aid of Plaintiff, who put his own time and effort into the litigation,
6 sacrificed the value of his own individual claims, and placed himself at risk for the sake of the other Class
7 Members (*Id.*) The requested Class Representative Service Award of \$7,500.00 to Plaintiff is therefore
8 reasonable to compensate Plaintiff for his active participation in the Action. (*Id.*)

9 **VII. CLASS COUNSEL IS ENTITLED TO AN AWARD OF REASONABLE ATTORNEY'S**
10 **FEES AND COSTS**

11 The Settlement provides for attorney's fees and costs to Class Counsel in an amount up to one-
12 third (33 & 1/3%) of the Maximum Settlement Amount, for a maximum fee award of \$73,333.33, plus
13 actual litigation expenses not to exceed \$25,000.00. (*Settlement*, ¶ 1.20, 1.21.) Plaintiffs request
14 attorney's fees pursuant to the "common fund theory" with a lodestar cross-check. The requested fees are
15 far below the range of fees generally sought and approved in common fund class action cases and the fees
16 are also reasonable based on Class Counsel's total lodestar. (*Savoy Decl.*, ¶¶ 35.)

17 **A. The Requested Attorney's Fees Are Reasonable Under the Common Fund Theory**

18 The request for attorney's fees as a percentage of the Maximum Settlement Amount is supported
19 by the "common fund theory," where "one who expends attorney's fees in winning a suit which creates a
20 fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
21 litigation costs." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 35.) The percentage is properly based upon the
22 gross settlement, rather than on the amount of claims made. (*Williams v. MGM-Pathe Communications*
23 *Co.* (9th Cir. 1997) 129 F.3d 1026, 1027.) The lodestar may be cross-checked against the percentage-of-
24 recovery method. (See *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480, 506 (2016); *In re Consumer*
25 *Privacy Cases* (2009) 175 Cal.App.4th 545, 556-558.)

26 The purpose of the common fund/percentage approach is to "spread litigation costs proportionally
27 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*
28 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *City and County of San Francisco v.*

1 Sweet (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has
2 been applied “consistently in California when an action brought by one party creates a fund in which other
3 persons are entitled to share.” (*Id.* at 110.)

4 Several courts have expressed frustration with the alternative “lodestar” approach for deciding
5 fees, which usually involves wading through voluminous and often indecipherable time records. (*See, e.g.,*
6 *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375.) The recognized
7 advantages of the percentage of the fund method include “relative ease of calculation, alignment of
8 incentives between class counsel and the class, a better approximation of market conditions in a
9 contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
10 unnecessarily prolonging the litigation.” (*Laffitte*, 1 Cal.5th at 503.) Since *Serrano*, California appellate
11 courts routinely apply the percentage method to award attorney’s fees in common fund cases. (*See, e.g.,*
12 *Lafitte*, 1 Cal. 5th at 506; *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 (“It is not an
13 abuse of discretion to choose [the percentage] method over [the lodestar method] as long as the method
14 chosen is applied consistently using percentage figures that accurately reflect the marketplace.”); *Chavez*
15 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 63 (“[F]ees based on a percentage of the benefits are ...
16 appropriate in large class actions when the benefit per class member is relatively low”); *Annie Computer*
17 *Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1271 (“[A]ttorneys’ fees awarded under the common
18 fund doctrine are based on a ‘percentage-of-the-benefit’ analysis”); *Lealao v. Beneficial California, Inc.*
19 (2000) 82 Cal.App.4th 19, 27 (“Percentage fees have traditionally been allowed in ... common fund
20 cases”).)

21 The percentage of attorney’s fees set forth in the Settlement Agreement, i.e. 33 1/3% of the
22 Maximum Settlement Amount, is reasonable. Historically, courts have awarded percentage fees in the
23 range of 20% to 50%, depending on the circumstances of the case. (*Newberg on Class Actions*, 4th Ed.
24 2002, § 14: 6.) Furthermore, California and federal courts have long recognized that a percentage of
25 recovery for attorney’s fees is properly awarded on the basis of the total settlement fund. (*Boeing v. Van*
26 *Gemert* (1980) 444 U.S. 472, 480-481; see also *In re Consumer Privacy Cases*, 175 Cal.App.4th at 558
27 n.13 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is
28 used, fee awards in class actions average around one-third of the recovery”) (emphasis added).)

1 Here, the Maximum Settlement Amount is \$220,000.00. The requested attorney's fees are one-
2 third (1/3) of that total, or \$73,333.33, which is the standard attorney fee requested per the common fund
3 theory. The requested fee percentage is less than that charged by Class Counsel for other employment
4 cases, which is 40%. Moreover, Class Counsel invested significant time and resources into this case, with
5 payment deferred to the end of the case and entirely contingent on the outcome. (*Savoy Decl.*, generally.)
6 It has been a long-recognized principle that an attorney merits a significantly larger fee when the
7 compensation is contingent, rather than being fixed on a time or contractual basis. (See *Vizcaino v.*
8 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-51.) In the almost two years that this case has been
9 pending, Class Counsel has advanced all expenses and has not received any compensation or
10 reimbursement for efforts in prosecuting the action on behalf of Class Members. The significant outlay of
11 monetary and personnel resources has been completely at risk and wholly dependent upon obtaining a
12 substantial recovery for the Class. (*Id.*) Class Counsel should not be penalized with a lower fee for settling
13 the case prior to filing a motion for class certification, because the percentage of the fund method
14 "encourages early settlement, which avoids protracted litigation." (*Laffitte*, 1 Cal.5th at 490.) Thus, the
15 requested award of attorney's fees is reasonable under the percentage of the fund method.

16 **B. The Requested Attorney's Fees Are Reasonable Under the Lodestar Method**

17 Plaintiff's fee application is reasonable based on Class Counsel's lodestar. Under the lodestar
18 method, the court considers a compilation of the time spent and a reasonable hourly compensation of each
19 attorney to evaluate the reasonableness of the fee requested.

20 Here, Class Counsel's total lodestar is approximately \$167,625.00, which is based upon 223.5 hours of
21 attorney time at customary hourly rates recently approved by the United States District Court, Central
22 District (\$750.00 per hour). (*Savoy Decl.* ¶¶ 36-39.) Thus, Plaintiffs' request for \$73,333.33 in attorney's
23 fees, which is approximately 44 percent of the actual lodestar, is reasonable under the lodestar method.

24 **1. Class Counsel's Hours Are Reasonable**

25 In determining whether the number of hours expended on the litigation was reasonable, the court
26 must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort
27 to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.'" (*Jordan v.*
28 *Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 n.8.) The court "should defer to the winning

1 lawyer's professional judgment as to how much time he was required to spend on the case." (*Moreno v.*
2 *City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 (noting that "[l]awyers are not likely to spend
3 unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain,
4 as to both the result and the amount of the fee."). "Testimony of an attorney as to the number of hours
5 worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence
6 of detailed time records" (citations omitted). *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559; see also
7 *Wershba*, 91 Cal.App.4th at 255 ("California permits fee awards in the absence of detailed time sheets");
8 *Laffitte*, 1 Cal.5th at 505 (trial court properly exercised its discretion to perform the lodestar cross-check
9 "using counsel declarations summarizing overall time spent rather than demanding and scrutinizing daily
10 time sheets in which the work performed was broken down by individual task").)

11 Here, Class Counsel has spent **223.5** hours litigating this case to bring it to resolution, not including the
12 estimated dozens of hours preparing for and attending the final approval hearing and monitoring the
13 administration of the settlement and distribution of funds to Participating Class Members. The efforts
14 expended by Class Counsel to achieve this excellent result include, but are not limited to, the following:
15 interviews with Plaintiff and class members/witnesses and review of documents provided by Plaintiff and
16 class members/witnesses; preparation of class action complaint; filing of the class action complaint;
17 meeting and conferring with Defendants' counsel to obtain relevant documents and information; preparing
18 and filing an amended complaint to comport with the agreed upon terms of the settlement; communicating
19 with Plaintiff and witnesses regularly regarding the status of the case; propounding requests for production
20 of documents, special interrogatories, requests for admission, and form interrogatories to Defendant;
21 meeting and conferring with Defendants' counsel about Defendants' production of sample class data;
22 review and analysis of a substantial sampling of time records, payroll records, and other employment
23 records; working with an expert statistician to analyze the data sample; legal research regarding
24 Defendants' wage and hour practices; preparing for and attending two separate mediations; engaging in
25 month's long settlement negotiations; appearing at multiple status conferences and informal conferences;
26 participating in settlement discussions; drafting, negotiation, and revision of the Settlement, the Notice
27 Packet, and Motion for Preliminary Approval; communicating with the Settlement Administrator and
28 monitoring the notice and objection process; negotiating the revised notice plan and obtaining court

1 approval of the process; and drafting the Motion for Final Approval and supporting papers. (*Savoy Decl.*,
2 generally.) Class Counsel also bears the risk of taking whatever actions are necessary if Defendants fail to
3 pay. (*Savoy Decl.*, generally.) Thus, the Court should find that Class Counsel's hours were necessary and
4 reasonable to achieve the excellent result on behalf of the Class.

5 **2. Class Counsel's Hourly Rates Are Reasonable**

6 The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group,*
7 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "[I]n assessing a reasonable hourly rate, the trial court is
8 allowed to consider the attorney's skill as reflected in the quality of work, as well as the attorney's
9 reputation and status." (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The trial
10 court may also "find hourly rates reasonable based on evidence of other courts approving similar rates."
11 (*Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.)

12 The current prevailing billing rates in the Southern California area range from \$275 to \$900 per hour.
13 Class Counsel are experienced litigators specializing in employment law, with a substantial wage and hour
14 class action practice. (*Savoy Decl.*, generally.) Several courts, including this Honorable Court, and most
15 recently, the United States District Court, for the Central District of California, have approved Class
16 Counsel's hourly rates in the range of \$650 to \$750 per hour. Given the skill and experience of Class
17 Counsel in this case, and the excellent result achieved for the Class, the requested rates are reasonable.
18 (*Savoy Decl.*, 39.)

19 ///

20 **C. Class Counsel's Costs Are Reasonable**

21 The Settlement Agreement provides for reimbursement of Class Counsel's costs not to exceed
22 \$25,000.00. (*Settlement*, ¶ 1.20, 4.7.) Class Counsel seeks an award of actual costs incurred in the amount
23 of \$15,486.65, far below the "not to exceed" amount of \$25,000.00 bargained for by the Parties. (*Savoy*
24 *Decl.* ¶¶ 45-46.) Class Counsel were required to expend the funds prosecuting this case to a successful
25 resolution on, among other things, court filing fees, document service, mediation fees, the services of
26 statistical experts, court reporters and transcripts, postage, and copying. Because these costs are reasonable
27 and far below the capped "not to exceed" amount of \$25,000.00, which no Class Member has objected to,
28

Class Counsel respectfully request that the Court approve an award of costs in the amount of \$15,486.65. (Savoy Decl., ¶ 46.)

D. Neither Defendants Nor the Class Members Oppose the Request for Fees and Costs

Significantly, none of the Class Members objected to the requested award of fees and costs. (*Lee Decl.*, ¶ 8.) Additionally, Defendants do not oppose the requested award of fees and costs. (Settlement ¶ 4.9). The Court should grant final approval of the attorney’s fees and costs agreed upon by the parties.

VIII. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

The Settlement Administrator’s costs in the amount of \$3,750.00 are reasonable, given the tasks performed and remaining to be performed. (*Lee Decl.*, generally.) Plaintiff respectfully requests that the Court approve Settlement Administration Costs in the amount of \$3,750.00.

IX. NOTICE TO LABOR AND WORKFORCE DEVELOPMENT AGENCY

On or about February 24, 2023, my office caused a copy of Plaintiff’s Motion for Final Approval of Joint Stipulation of Class Action and PAGA Settlement and the Joint Stipulation of Class Action and PAGA Settlement to be submitted to the California Department of Industrial Relations, Labor and Workforce Development Agency via the Department’s online portal and received a receipt of submission. A true and accurate copy of the Receipt of Submission is attached to the Declaration of Grant Joseph Savoy as **Exhibit “A.”**

X. CONCLUSION

For the foregoing reasons, the proposed Settlement is fair, adequate, and reasonable, and represents an excellent opportunity for Class Members to recover for allegedly illegal wage and hour practices. Plaintiff respectfully requests that the Court grant final approval of the Settlement and enter the proposed order and judgment.

SOLOUKI | SAVOY, LLP

Dated: February 24, 2023

/s/ Grant Joseph Savoy
SHOHAM J. SOLOUKI, ESQ.
GRANT JOSEPH SAVOY, ESQ.
*Attorneys for Plaintiff Michael Garcia Juarez
and Those Similarly Situated*