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

IGNACIO MENDEZ and ADRIANA
RODRIGUEZ, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

WTMG, INC., a California corporation, et al,

Defendants.

Case No.: STK-CV-UOE-2021-0009144
*Assigned to Hon. George J. Abdallah,
Dept. 10A*

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

**[Filed concurrently with Notice of
Motion and Motion for Final
Approval, Declarations of Aaron
Gundzik, Rodrigo Guevara, Galen
Shimoda, Ignacio Mendez, Adriana
Rodriguez and Jarrod Salinas of
Phoenix Settlement Administrators;
[Proposed] Order and [Proposed]
Judgment]**

**Date: November 1, 2024
Time: 9:00 a.m.
Place: Department 10A**

Complaint Filed: September 29, 2021

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On June 6, 2024, this Court granted preliminary approval to the wage and hour class
4 and Private Attorneys' General Act ("PAGA") action settlement of one million five hundred
5 thousand dollars (\$1,500,000) that is the subject of this Motion. In doing so, the Court
6 preliminarily concluded that the proposed settlement is fair and reasonable, preliminarily
7 appointed the named Plaintiffs as the Class Representatives, and preliminarily appointed
8 Aaron C. Gundzik of Gundzik Gundzik Heeger LLP, Galen Shimoda of Shimoda &
9 Rogriguez Law Corp. and Rodrigo Guevara of Abogado, APC as Class Counsel. As ordered,
10 notice of the proposed settlement has been distributed to all 1,270 Class Members.
11 Declaration of Jarrod Salinas ("Salinas Decl."), ¶¶ 3-7. As of the date of this filing, only one
12 Class Member has opted out of the proposed settlement and none have objected to it. Salinas
13 Decl., ¶¶ 9-10. The opt out deadline was September 2, 2024.

14 As this Court is aware, this is a class action filed by Plaintiffs Ignacio Mendez and
15 Adriana Rodriguez against Defendant WTMG, Inc. ("Defendant" or "WTMG") on behalf of
16 approximately 1,270¹ individuals who were employed by Defendant in California as non-
17 exempt employees at any time during the Class Period (September 29, 2017, through
18 January 11, 2024). The settlement that is the subject of Plaintiffs' motion resolves class and
19 PAGA claims that were initially filed in two separate cases pending in this Court: *Mendez v.*
20 *WTMG, Inc.*, STK-CV-UOE-2021-9144 ("*Mendez*") and *Rodriguez v. WTMG, Inc.*, STK-
21 CV-UOE-2020-1355 ("*Rodriguez*"). Generally, the terms of the parties' settlement require
22 Defendant to pay the sum of \$1,500,000. By this Motion, Plaintiffs seek approval for the
23 distribution of these funds to the Class Members, less service and release payments to the
24 named Plaintiffs, attorneys' fees and costs, a payment to the LWDA, a payment to the
25 aggrieved employees and settlement administration expenses. If this Motion is granted in
26

27 ¹ Upon receipt of the Class Data, the parties determined that the Class size is 1,270, which is
28 less than the 1,321 number reported to the Court in connection with Plaintiffs' Motion for
Preliminary Approval.

1 full, 1,269 Class Members will receive a settlement payment resulting in individual gross
2 payments to Class Members ranging between \$28.41 and \$4,261.67, and the average
3 settlement payment will be \$676.52. Salinas Decl., ¶ 16.

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

6 **II. FACTUAL BACKGROUND**

7 **A. Plaintiffs' Factual Allegations**

8 As discussed in Plaintiffs' Motion for Preliminary Approval, based upon their
9 discovery and investigation, Plaintiffs made the following contentions: Defendant WTMG
10 Inc., which is owned by Defendant Blain J. Bibb, provides cleaning and janitorial services
11 for commercial buildings and other facilities in California. Plaintiff Mendez worked as a
12 janitor and in the company's warehouse. Ms. Rodriguez worked as a janitor and supervisor.
13 Declaration of Aaron C. Gundzik ("Gundzik Decl."), ¶ 12. Plaintiffs and Class Members
14 contended that due to their work obligations, they did not have sufficient time to take
15 compliant meal and rest breaks during their shifts. Gundzik Decl., ¶ 13. Plaintiffs and the
16 Class Members also contended that Defendant altered time records so as to limit the amount
17 of overtime paid to an employee or to create a record that compliant meal periods were
18 provided. Gundzik Decl., ¶ 14. Also, Plaintiffs and class members contended that they had
19 to use their personal cell phones to clock in and out for shifts and meals, but that Defendant
20 did not generally reimburse employees for these expenses. Gundzik Decl., ¶ 15. Finally,
21 Plaintiffs contended that they and class members were not paid for time spent traveling
22 between assignments or for use of their personal vehicles on these trips. Gundzik Decl., ¶
23 16.

24 Defendant ardently opposes the merits of this case, denies Plaintiffs' factual
25 allegations and maintains that Plaintiffs face substantial risk with respect to certifying their
26 claims (for any purpose other than settlement), proving liability for any of the alleged Labor
27 Code violations or recovering any of the penalties sought in connection with their derivative
28 claims. Defendant contended, among other things, that Plaintiffs and the Class Members

1 were paid all wages due to them. Moreover, Defendant argued that it met its meal and rest
2 period obligations. Furthermore, to the extent Plaintiffs received wage statements that were
3 allegedly inaccurate, Defendant asserted that Plaintiffs suffered no actual damage or harm as
4 a result.

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

6 The *Mendez* Action was filed on September 29, 2021, and the *Rodriguez* Action was
7 filed on January 28, 2020. Those wage and hour claims are now combined in Plaintiffs’
8 Second Amended Complaint, filed on March 12, 2024. The Second Amended Complaint
9 asserts causes of action against Defendant and its owner, Blain J. Bibb. It alleges the
10 following causes of action: (1) failure to pay wages for all work performed; (2) failure to
11 pay overtime; (3) failure to provide compliant meal and rest breaks; (4) inaccurate wage
12 statements; (5) failure to reimburse necessary expenses; (6) failure to pay unpaid wages at
13 separation; (7) unfair business practices; and (8) recovery of civil penalties pursuant to the
14 Private Attorneys General Act, Cal. Lab. Code §§2698-2699.5 (“PAGA”).

15 The *Rodriguez* action included Adriana Rodriguez’s individual claims for
16 discrimination as well as individual and PAGA claims for Labor Code violations. Ms.
17 Rodriguez’s individual discrimination claims are the subject of a separately-negotiated
18 settlement with Defendant, while her wage and hour claims have been added to the *Mendez*
19 case as part of the Second Amended Complaint. Gundzik Decl., ¶ 6.

20 Soon after the *Mendez* Action case was filed, Defendant moved to compel
21 arbitration. Gundzik Decl., ¶ 7. The Motion to Compel Arbitration was denied by this Court
22 in February 2022. *Id.* Defendant WTMG appealed that ruling to the Court of Appeal, Third
23 Appellate District. *Id.* The Court of Appeal affirmed this Court in February 2023. *Id.* The
24 Court of Appeal also denied Defendant’s petition for rehearing and in May 2023, the
25 California Supreme Court declined to grant review. *Id.*

26 On January 11, 2024, both of the Representative Plaintiffs, attorneys Aaron Gundzik,
27 Rebecca Gundzik, Galen Shimoda and Rodrigo Guevara, as well as Defendant and
28 Defendant’s counsel, attended a mediation session with Hon. Ronald Sabraw (Ret.).

1 Gundzik Decl. ¶ 17. Judge Sabraw has substantial experience presiding over and mediating
2 wage and hour class actions and PAGA representative actions like this one. *Id.* The case
3 settled after a full day of negotiation pursuant to a mediator's proposal. *Id.*

4 In connection with Plaintiffs' investigation and formal discovery, Plaintiffs and
5 Plaintiffs' counsel extensively investigated Plaintiffs' claims against Defendant. Gundzik
6 Decl. ¶¶ 8-11. They have thoroughly investigated Plaintiffs' claims, reviewed and analyzed
7 records and information produced by Defendant, and worked to develop information on
8 potential damages. *Id.* They engaged in informal discovery and exchanged additional
9 substantial information and documents for the mediation. Gundzik Decl., ¶ 8. In connection
10 with the mediation, Defendant produced a large sample of time records and pay records
11 which represented slightly less than 50% of the class's total pay periods. *Id.* Defendant also
12 provided personnel records, handbooks and policies. *Id.* In addition, Plaintiffs' counsel
13 interviewed approximately 40 class members about their experiences working for
14 Defendant. *Id.* Plaintiffs also investigated and compiled publicly available information about
15 Defendant and its related businesses. *Id.* Based on this information, as well as information
16 provided by the Plaintiffs, Plaintiffs' counsel was able to assess Defendant's potential
17 liability and prepare an estimate the damages incurred by the Class. Gundzik Decl., ¶ 10.

18 **C. Plaintiffs' Counsel's Estimate of Potential Recovery**

19 The First Cause of Action is for failure to pay for work performed. This claim was
20 based on the contention that Defendant failed to pay employees who worked off the clock.
21 Gundzik Decl., ¶ 22. Class members who were interviewed stated that they were often asked
22 to work after their shifts were completed, to work after they had clocked out, or to clock out
23 and then complete their work. *Id.* Based on these interviews, Plaintiffs' counsel determined
24 that the maximum value of this claim is about \$1.15 million, based upon two unpaid hours
25 per pay period, an average hourly rate of \$17.31 and 33,325 pay periods. *Id.* However,
26 certifying this claim would be very difficult because there is no data to support these
27 instances of unpaid time and the claim is based solely on class member statements. *Id.*
28 Moreover, Defendant could successfully contend that there are manageability issues and

1 individualized issues as to whether and to what extent Class Members worked off the clock.
2 *Id.* Plaintiffs' counsel therefore determined that the minimum value of this claim is \$0. *Id.*

3 The Second Cause of Action is for failure to pay for overtime work at overtime rates
4 of pay. This claim was based on Defendant's failure to pay Plaintiffs and the other Class
5 Members at overtime rates of pay for unrecorded hours that would have qualified as
6 overtime. Gundzik Decl., ¶ 23. After analyzing class member records, Plaintiffs' counsel
7 determined that this claim had minimal value because the average shift length was only
8 about 5.3 hours. *Id.* Therefore, it is unlikely that the unrecorded time would have resulted in
9 the employer's obligation to pay overtime. *Id.* Consequently, Plaintiffs' counsel did not
10 allocate any separate damages amount to this claim. *Id.*

11 The Third Cause of Action is for failure to provide compliant meal and rest periods.
12 This claim was based on Defendant's failure to provide compliant meal and rest breaks as
13 well as its failure to pay Class Members meal and rest break premiums. Gundzik Decl., ¶ 24.
14 Defendant's records revealed that Class Members were often denied compliant breaks.
15 Based on the records reviewed, Plaintiffs' counsel determined that the maximum value of
16 the meal break portion of this claim is \$1.67 million. *Id.* After extrapolating from the
17 sample, Plaintiffs' counsel estimated a total of about 96,500 violations during the class
18 period. (96,500 violations x \$17.31 average hourly rate = \$1,670,000.) *Id.* Based on the
19 Class Member interviews they conducted, Plaintiffs' counsel estimated that the maximum
20 value of the rest break portion of this claim is about \$2.9 million. *Id.* This is based on an
21 assumed violation rate of 60%. (280,000 shifts greater than 3.5 hours x 60% x \$17.31
22 average hourly rate = \$2,908,080.) *Id.* However, because of the lack of documentary
23 evidence regarding rest break violations, the fact that many meal period violations were only
24 one or two minutes short or late, and the possibility that Defendant could successfully
25 contend that the meal and rest break violations were individualized incidents which did not
26 support a class award, Plaintiffs' counsel concluded that the minimum value of this claim is
27 \$0. *Id.*

1 The Fourth Cause of Action is for failure to provide compliant wage statements. The
2 statute of limitations on such a claim is one year. This claim is based on the fact that the
3 wage statements issued to Plaintiffs and the Class are incorrect in that they did not include
4 all of the unpaid hours worked and do not reflect meal and rest break wage premiums that
5 should have been paid. Gundzik Decl., ¶ 25. The penalties for inaccurate wage statements
6 are \$50 per employee for the first violation and \$100 per employee per violation for all
7 subsequent violations. Penalties per employee are limited to \$4,000. Plaintiffs' counsel
8 determined that Defendant issued about 6,700 wage statements to employees during the one-
9 year limitations period. *Id.* Based upon the number of wage statements, Plaintiffs' counsel
10 estimated that the maximum value of this claim is approximately \$650,000 and that this
11 claim has a minimum value of \$0. *Id.*

12 The Fifth Cause of Action is for failure to reimburse employees for all necessary
13 expenditures. This claim was based upon Plaintiffs' contention that Class Members were
14 required to use their personal cell phones to communicate with their supervisors and to clock
15 in and out of their shifts. Gundzik Decl., ¶ 26. Additionally, janitors who worked at more
16 than one location during a shift were required to use their own vehicles to drive between job
17 sites. *Id.* And administrative employees who were required to work from home during the
18 pandemic were required to have internet access and a home computer. *Id.* Plaintiffs' counsel
19 determined that the maximum value of this claim is approximately \$667,000, which assumes
20 a reimbursement rate of \$20 per pay period, and that the minimum value is \$0. *Id.*

21 The Sixth Cause of Action is for failure to pay separated employees all wages due at
22 the time of separation. This claim is based on Defendant's alleged failure to pay Class
23 Members all wages due when they separated, as their final pay did not include amounts due
24 for meal or rest period premiums, non-productive time or for all of their overtime work.
25 Gundzik Decl., ¶ 27. There are 805 putative Class Members who were separated during the
26 relevant statutory period. *Id.* At an average hourly rate of \$17.31 and average shift length of
27 5.4 hours, Plaintiffs' counsel determined that the maximum value of this claims is
28 approximately \$2.2 million and that the minimum value is \$0. *Id.*

1 The Seventh Cause of Action is for violation of Business & Professions Code section
2 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of limitations that
3 is available under the UCL for the meal period violations. Gundzik Decl., ¶ 28. This cause
4 of action is derivative of the other claims that have already been analyzed. *Id.* Accordingly,
5 the damages available under this cause of action have already been analyzed or are
6 duplicative of the damages discussed. *Id.*

7 The Eighth Cause of Action is for violations of the Private Attorneys General Act
8 (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA claim
9 would be impacted by the factors discussed above for the non-PAGA claims. Gundzik Decl.,
10 ¶ 29. Based on recent PAGA decisions, Plaintiffs’ counsel concluded that even if Plaintiffs
11 were successful on this claim through trial, the Court may well have exercised its discretion
12 under PAGA and significantly reduced the penalties. *Id.*; Cal. Labor Code §2699(e)(2). In
13 addition, the settlement was primarily directed at recovering wages and unpaid premiums
14 owed to Class Members and the bulk of the settlement funds were intended to compensate
15 for these wages. *Id.* Based on these factors, Plaintiffs’ counsel believes that the maximum
16 reasonable value of the PAGA claim is approximately \$1.5 million and the minimum value
17 is nothing, and therefore concluded that the \$50,000 that the parties allocated to PAGA, 75%
18 of which will be paid to the LWDA, is a reasonable settlement of that claim. *Id.*

19 Based upon the forgoing, Plaintiffs’ counsel determined that the class claims in this
20 case had a minimum value of \$0 and a maximum estimated value of about \$9.2 million, not
21 including the PAGA penalties. Gundzik Decl., ¶ 30. Based on a Class size of approximately
22 1,270, the reasonable estimate of the average net amount that Class Members could have
23 obtained if Plaintiffs prevailed at trial on behalf of the entire Class, if the Class was certified,
24 would be a minimum of \$0 and a maximum of about \$7,240. *Id.* However, the maximum
25 amount is almost never recovered at trial and never in a settlement. Settlements, by their
26 nature, must account for the weaknesses in a plaintiff’s case, which are discussed above. *Id.*
27 Indeed, because Defendant raised a colorable legal or factual defense to each of the claims
28 Plaintiffs alleged, it is possible that, after trial, the Class would recover nothing. *Id.*

1 Defendant also is a relatively small company with limited finances, and Plaintiffs and their
2 counsel concerned that it would not be able to satisfy a judgment in excess of the settlement
3 amount and that if the litigation continued, it may not have been able to remain a viable
4 business (which would have meant that the Class Members would not receive any amounts
5 whatsoever). *Id.*

6 The PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.* 72 Cal.
7 App. 5th 56, 77 (2021), because “it is fair, reasonable, and adequate in view of PAGA’s
8 purposes to remediate present labor law violations, deter future ones, and to maximize
9 enforcement of state labor laws.” Gundzik Decl., ¶ 31. In the settlement, \$50,000 is
10 allocated to Plaintiffs’ PAGA claim, which is approximately 3% of the Gross Settlement
11 Amount. In conjunction with the class settlement, pursuant to which Class Members will
12 receive a total of approximately \$858,500, not including the PAGA payment, this settlement
13 will serve to remediate Defendant’s labor law violations. *Id.* Given that Defendant will be
14 paying \$1,500,000 as a result of the alleged violations, the Class and PAGA settlement is a
15 large disincentive for Defendant to engage in similar Labor Code violations in the future. *Id.*
16 And, because all Class Members will receive a notice of settlement with contact information
17 for Plaintiffs’ counsel, those employees will know to contact them in the future if Defendant
18 attempts to engage in similar practices. *Id.* These factors—the payment of a large sum and
19 employee notice of violations and potential violations—serve to maximize enforcement of
20 state labor laws. *Id.* Also, unlike in *Moniz*, here there is no unsubstantiated and
21 disproportionate allocation of civil penalties between different groups of employees. *Id.* All
22 aggrieved employees will receive an allocation of PAGA civil penalties based on the
23 number of qualifying pay periods that they worked for Defendant. *Id.*

24 **D. Summary of Settlement Negotiations**

25 On January 11, 2024, Plaintiffs and their counsel, as well as Defendant and
26 Defendant’s mediation counsel, attended a mediation session with Hon. Ronald Sabraw
27 (Ret.). Gundzik Decl., ¶ 17. The case settled after a full day of negotiation pursuant to a
28

mediator's proposal. *Id.* The settlement was negotiated at arms' length and was in no sense collusive. *Id.*

Plaintiffs' counsel and their clients concluded, after taking into account the sharply disputed factual and legal issues involved in the lawsuit, the risks attending further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the action, that the settlement is in the best interests of the Class and is fair and reasonable. Gundzik Decl., ¶ 18. They also considered the possibility that the Class would not be certified and factored in the additional delay in recovery for Class Members if the settlement were rejected and the case went to trial. *Id.* And they considered Defendant's contention that it did not have sufficient assets to satisfy a larger judgment. *Id.*

E. The Representative Plaintiffs' Involvement and Release

Both before and after deciding to become class representatives and take on the lawsuit, Plaintiffs met with and engaged in lengthy conversations with Class Counsel about all aspects of the case, their employment, their jobs and job duties for WTMG. Declaration of Ignacio Mendez ("Mendez Decl."), ¶ 19; Declaration of Adriana Rodriguez ("Rodriguez Decl."), ¶ 19. They were prompt and responsive and spoke with Class Counsel's office many times regarding the case, the mediation and the settlement. Mendez Decl., ¶¶ 19-20; Rodriguez Decl., ¶¶ 19-20. They identified relevant witnesses to Class Counsel and provided Class Counsel with relevant documents. *Id.* They spoke with other employees regarding their treatment while employed by Defendant and provided this information to Class Counsel. *Id.* They were both proactive and requested regular updates from Class Counsel and inquired as to how class actions worked so they could understand the process. *Id.*

To assist Class Counsel, Plaintiffs reviewed and collected all of their documents in connection with his employment for Defendant. Mendez Decl., ¶¶ 19-20; Rodriguez Decl., ¶¶ 19-20. They spent a great deal of time assisting Class Counsel identifying witnesses and consulting with Class Counsel in advance of the mediation. *Id.* And, Mr. Mendez spent time consulting with his counsel regarding the arbitration agreement, the other documents provided to him during onboarding on the first day of his job, his declaration in connection

1 with Defendant’s motion to compel arbitration, and the status of the appellate proceedings.
2 Mendez Decl., ¶¶ 19-20. Both Mr. Mendez and Ms. Rodriguez missed a full day of work to
3 attend and participate in the mediation. *Id.* And, they had several meetings with Class
4 Counsel to discuss the proposed settlement and the settlement agreement. *Id.* In all, Plaintiff
5 Mendez spent in excess of 80 hours on the lawsuit and Plaintiff Rodriguez spent in excess of
6 60 hours on the lawsuit. *Id.*

7 Filing the lawsuit posed risks for Plaintiffs. Mendez Decl., ¶ 17; Rodriguez Decl., ¶
8 17. They understood that if the class action was unsuccessful, they could be responsible for
9 Defendant’s litigation costs, which could have been substantial. *Id.* They were concerned
10 about the attention a publicly-filed lawsuit, and especially a class action, would attract, as
11 their named would be associated with a lawsuit that they had filed against his former
12 employer. *Id.* They were aware that it is possible and relatively easy to perform background
13 checks of publicly-filed documents on the internet and were concerned that future
14 prospective employers and others might find out that they had sued Defendant, which could
15 hurt their future job prospects. *Id.*

16 In addition, the settlement agreement required Mr. Mendez to sign a broad general
17 release which is broader than the release that will bind other Class Members and requires
18 him to waive Section 1542 of the California Civil Code. Gundzik Decl., ¶ 19, Ex. 1, ¶ VII.A.
19 Ms. Rodriguez is also required to waive Section 1542 of the Civil Code but has retained the
20 individual claims included in the *Rodriguez* Action. *Id.*

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

22 On June 6, 2024, the Court granted preliminary approval to the settlement of this
23 matter. See Gundzik Decl., ¶ 35, Ex. 2. The terms of the settlement are more specifically set
24 forth in the parties’ Settlement Agreement. Gundzik Decl., ¶ 19, Ex. 1.

25 The provisionally-certified settlement class is defined as “all individuals who were
26 employed by Defendant in California as non-exempt employees during the Class Period
27 (September 17, 2017 through January 11, 2024). Gundzik Decl., ¶ 19, and Ex. 1, ¶¶ II.C, II.
28 I. There are 1,269 Class Members. Salinas Decl., ¶ 13.

1 The Settlement Agreement provides that Defendant agreed to pay a gross settlement
2 amount of \$1,500,000 (“Gross Settlement Amount”). Gundzik Decl., ¶ 19, Ex. 1, ¶ I. Within
3 five calendar days after the Court’s Final Approval Order, Defendant is required to deliver
4 50% of the Gross Settlement Amount and Employer’s Withholding Share to the Settlement
5 Administrator and is required to deliver the other 50% of the Gross Settlement Amount to
6 the Settlement Administrator within 180 days of the Effective (which is the date of entry of
7 the order of the Final Approval Order and the date that the Court’s Order of Final Approval
8 is final). Gundzik Decl., ¶ 19, Ex. 1, ¶¶ II. N; IV.N.

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

11 Pursuant to the time-table established in the Settlement Agreement and previously
12 approved by this Court, Phoenix mailed the Notice of Proposed Class Action Settlement
13 (“Notice of Settlement”) to 1,270 Class Members on July 18, 202. Salinas Decl., ¶ 7. As a
14 result of this mailing, Phoenix has provided all of the Class Members with a notice of the
15 settlement which calculates the approximate value of their settlement payment and
16 information on how to opt out of and object to the proposed settlement. Salinas Decl., ¶¶ 6-
17 7.

18 ➤ On June 14, 2024, Phoenix received from Defendant complete information
19 including the names, last known addresses, applicable employment information
20 and Social Security numbers for 1,270 Class Members.

21 Salinas Decl., ¶ 3.

22 ➤ On July 12, 2024, Phoenix completed a National Change of Address (NCOA)
23 search for new addresses.

24 Salinas Decl., ¶ 6.

25 ➤ On July 18, 2024, the Notices of Settlement were mailed to the 1,270 Class
26 Members at the most recent addresses available to Phoenix. The notices provided
27 information about the action, the proposed settlement and instructions on how to
28 opt out, object, or obtain further information. The notices advised Class Members

1 that any objections or opt outs must be postmarked by September 2, 2024.

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

3 ➤ Subsequent to these mailings, 14 of the notices were returned after the initial
4 mailing, all of those were remailed, and none were determined to be
5 undeliverable.

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

7 ➤ Phoenix has received one requests to opt out of the settlement and no objections.
8 Class Counsel has not received any opt-out requests or objections to the proposed
9 settlement. The opt out deadline was September 2, 2024.

10 Salinas Decl., ¶¶ 9-10, and Ex. B thereto; Gundzik Decl., ¶ 39.

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

12 Based upon the Settlement Agreement and this Court’s preliminary approval order,
13 Plaintiffs propose that within ten (10) days of the receipt of the Gross Settlement Amount
14 from Defendant, the Gross Settlement Amount be disbursed as follows:

- 15 • Settlement administration costs, in the amount of \$16,500, to Phoenix;
- 16 • A service and release payment in the amount of \$10,000 to Plaintiff Ignacio
17 Mendez;
- 18 • A service and release payment in the amount of \$5,000 to Plaintiff Adriana
19 Rodriguez;
- 20 • An allocation of \$50,000 to Plaintiffs’ PAGA claims (the “PAGA Amount”),
21 \$37,500 of which will be paid to the California Labor and Workforce
22 Development Agency, and the remaining \$12,500 of which will be
23 distributed to the Aggrieved Employees.
- 24 • Class Counsel’s attorneys’ fees, in the amount of \$525,000, which is 35% of
25 the gross settlement amount;
- 26 • Class counsel’s costs of \$35,000;
- 27 • The remainder of the gross settlement amount (the “Net Settlement
28 Amount”), in the amount of approximately \$858,500, will be distributed to

1 Class Members based on the formula contained in the Settlement Agreement
2 (which is based on the number of Qualifying Pay Periods that they were
3 employed by Defendant during the Class Period).

4 Gundzik Decl., ¶ 19, Ex. 1, ¶ IV.L.1.

5 **I. Determination of Settlement Payments to Individual Class Members and**
6 **PAGA Employees**

7 The Settlement Agreement provides that all payments to Class Members shall be
8 made by the Settlement Administrator, based on the number of Qualifying Pay Periods that
9 each Class Member worked during the Class Period. Gundzik Decl., ¶ 19, and Ex. 1, ¶
10 IV.L.1.

11 ➤ Phoenix determined each Settlement Class Member's individual Qualifying Pay
12 Periods by adding the total number of Qualifying Pay Periods in which he or she
13 was employed in a Class Member position by Defendant during the Class Period.

14 Salinas Decl., ¶ 15.

15 ➤ Phoenix then determined the total of all of the Qualifying Pay Periods of all the
16 Settlement Class Members. Each Class Member's settlement payment was
17 determined by dividing his or her Qualifying Pay Period Number by the total
18 number of Qualifying Pay Periods worked by all Class Members during the Class
19 Period and multiplying the result by each Class Members's Qualifying Pay
20 Periods. The amount of the individual settlement payment was then indicated on
21 each Class Member's Notice.

22 Salinas Decl., ¶ 15.

23 ➤ Based on these calculations, Phoenix determined the estimated amount of the
24 class settlement payment due to each Class Member. The approximate range of
25 class settlement pay-outs is expected to be between \$28.41 and \$4,261.67, and
26 the average settlement payment will be in the amount of approximately \$676.52.

27 Salinas Decl., ¶ 16.

28

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

5 dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of
6 \$12,500 by the total number of PAGA Pay Periods for all Aggrieved Employees
7 during the PAGA Period and multiplying the result by each Aggrieved Employee's
8 PAGA Pay Periods.

9 Salinas Decl., ¶ 18.

10 ➤ Based on these calculations, Phoenix determined the estimated amount of the
11 PAGA settlement payment due to each Aggrieved Employee. The average
12 PAGA settlement payment will be in the amount of approximately \$16.69.

13 Salinas Decl., ¶ 19.

14 ➤ The payments to Settlement Class Members will be characterized as one-quarter
15 wages, to be reports on a W-2 form, one-quarter penalties, one-quarter as interest
16 and one-quarter as unreimbursed expenses. The amount of unreimbursed
17 expenses, interest and penalties will be reported on IRS 1099 Forms.

18 Gundzik Decl., ¶ 19, Ex. 1, ¶ IV.L.6.

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

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

27 It is the desire of the Representative Plaintiff, Class Members (except those who
28 exclude themselves from the Settlement), and Defendant to fully, finally, and forever
settle, compromise, and discharge the Released Claims. Upon entry of the Final

1 Approval Order and Judgment and Defendants' payment of the Gross Settlement
2 Amount and Employer's Withholding Share, and except as to such rights or claims
3 as may be created by this Settlement Agreement, the Settlement Class Members, on
4 behalf of themselves, and each of their heirs, representatives, successors, assigns,
and attorneys, shall be deemed to have, and by operation of the final judgment shall
have, fully released and discharged the Released Parties from any and all Released
Claims that accrued during the Class Period.

5 Gundzik Decl., ¶ 19; Ex. 1, ¶ VI.A. The Released Claims are defined as:

6 all causes of action and factual or legal theories arising during the Class Period that
7 were alleged in the Complaint or arise from facts alleged in the Complaint, including
8 all damages, penalties, interest and other amounts recoverable under said claims,
causes of action or legal theories of relief. Class Members shall not waive section
1542 of the California Civil Code.

9 This release does not include any claims that are outside of the scope of the facts alleged in
10 the operative pleadings and does not include the PAGA Released Claims. *Id.*

11 The release applicable to the Aggrieved Employees provides:

12 Regardless of whether they submitted a valid Request for Exclusion, all PAGA
13 Employees shall fully, finally, and forever settle, compromise, and discharge the
14 PAGA Released Claims. Upon entry of the Final Approval Order and Judgment
15 and Defendants' payment of the Gross Settlement Amount, and except as to such
16 rights or claims as may be created by this Settlement Agreement, all PAGA
17 Employees, on behalf of themselves, and each of their heirs, representatives,
successors, assigns, and attorneys, shall be deemed to have, and by operation of
the final judgment shall have, fully released and discharged the Released Parties
from any and all PAGA Released Claims arising during the PAGA Period.

18 Gundzik Decl., ¶ 19, Ex. 1, ¶ VI.B. The PAGA Released Claims are defined as:

19 any and all PAGA claims, causes of action and legal theories for recovery of civil
20 penalties asserted in the Complaint as well as PAGA claims, causes of action and
21 legal theories that could have been asserted in the Complaint that are based upon
22 the same or similar facts, allegations and/or claims, including, without limitation,
PAGA claims for violations of the following California Labor Code sections: 201,
202, 203, 204, 226(a), 226(b), 226.7, 510, 512, 1197 and 2802. PAGA Employees
shall not waive section 1542 of the California Civil Code.

23 Gundzik Decl., ¶ 19, Ex. 1, ¶ II.BB.

24 The Settlement Agreement defines "Released Parties" as:

25 Defendant and its past, present and/or future officers, directors, members, managers,
26 employees, agents, representatives, attorneys, insurers, partners, investors,
27 shareholders, administrators, parent companies, subsidiaries, affiliates, divisions,
28 predecessors, successors, assigns, and joint venturers, but only as to the Released
Claims.

1 l., ¶ 19, Ex. 1, ¶ II.HH.

2 The Settlement Agreement does not constitute an admission of the merits of any
3 claim by Plaintiffs or the Class or address any defense of Defendant. Gundzik Decl., ¶ 19,
4 Ex. 1, ¶ V.A.

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

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

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

20 Before granting preliminary approval of a class and PAGA action settlement, this
21 Court was required to find—and did find—that there is sufficient evidence that the proposed
22 settlement would be fair, reasonable, and adequate, and not a product of fraud, overreaching,
23 or collusion. *See* Gundzik Decl., ¶ 36, Ex. 2; Cal. Rules of Court, Rule 3.769 (g); Cal. Civ.
24 Proc. § 382; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801. In order to preliminarily
25 determine that the proposed settlement was fair, reasonable, and adequate, and thus
26 appropriate for preliminary approval, the Court was required to find that the following three
27 factors were satisfied: (1) the parties reached settlement after arms-length negotiations;
28 (2) counsel conducted sufficient investigation and discovery to allow themselves and the

1 court to act intelligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802. *See*
2 *also 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146
3 (2000). In applying this determination for the purpose of granting final approval, as
4 discussed below, although not determinative, the Court may also consider the percentage of
5 objectors in determining whether a presumption of fairness exists. *Id.*

6 All of these considerations are satisfied here. The parties conducted significant
7 formal and informal discovery and investigation and participated in a full-day mediation,
8 and thereafter continued to negotiate for several months regarding the Settlement Agreement
9 which is the subject of this motion. Gundzik Decl., ¶¶ 8-34. Moreover, only one of the 1,270
10 Class Members have opted out of the proposed settlement (which is a 99.9% acceptance
11 rate), and not one of the Class Members has objected to it. Salinas Decl., ¶¶ 9-10.

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

13 There was no collusion between the parties in this case. After extensive informal
14 discovery, interviews of approximately 40 other employees, and the exchange of
15 information and voluminous pages of documents, the parties engaged in mediation with a
16 well-respected and highly knowledgeable wage and hour mediator, Jude Ronald Sabraw
17 (Ret.). Gundzik Decl., ¶¶ 8-17. The involvement of a neutral third-party mediator is a factor
18 that favors approval and evidences the presumptive fairness of the arms-length negotiations.
19 Indeed, the California Court of Appeal in *Kullar v. Foot Locker Retail, Inc.* expressed that
20 courts should give considerable weight to the competency and integrity of counsel and the
21 involvement of a neutral mediator in assuring themselves that a settlement agreement
22 represents an arms-length transaction entered without self-dealing or other potential
23 misconduct. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008).

24 **C. The Settlement is Supported by Substantial Investigative and Discovery**
25 **Efforts.**

26 As set forth in the Declaration of Aaron Gundzik, Class Counsel engaged in
27 substantial investigation and discovery. This investigation included (1) preparing pleadings
28 and other documents filed with the Court, (2) extensively investigating Plaintiffs' claims, (3)

1 engaging in informal discovery and reviewing and analyzing numerous handbooks, policies
2 and documents regarding Class Member reimbursements, including records and information
3 produced by Defendant, (4) extensively analyzing Defendant's arbitration agreements,
4 onboarding policies and the other documents and information provided to employees during
5 Defendant's onboarding process, (5) interviewing approximately 40 Class Members, (6)
6 reviewing and analyzing policies and pay records for the proposed Class Members,
7 including Plaintiff, as well as records for the PAGA Aggrieved Employees, (7) investigating
8 and compiling publicly-available information about Defendant and its business, (8)
9 negotiating extensively with Defendant regarding the mediation, its scope, and the
10 information to be exchanged in connection with the mediation, and (9) working to develop
11 information on potential damages. Gundzik Decl., ¶¶ 8-11, 22-32, 45-52, and Ex. 3.

12 Class Counsel's analysis enabled them to pinpoint the relevant issues and claims and
13 to assess potential liability and damages. These efforts resulted in the parties having a clear
14 view of the strengths and weaknesses of their respective cases and achieving a resolution on
15 favorable terms. Gundzik Decl., ¶¶ 8-11, 22-32.

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

18 The endorsement of qualified and well-informed counsel of the settlement as fair is
19 entitled to significant weight. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1802; *Ellis v.*
20 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). As discussed in the motion
21 for preliminary approval papers and the declarations supporting both that motion and the
22 instant motion, Class Counsel have represented, litigated, mediated and settled many other
23 employee class actions in wage and hour litigation and have knowledge of the strengths and
24 weaknesses of the claims against Defendant and the benefits of the proposed settlement
25 under the circumstances of the case. Gundzik Decl., ¶¶ 22-32, 41-44. Class Counsel believes
26 that the settlement is fair, adequate, reasonable and in the best interests of the Class as a
27 whole. Gundzik Decl., ¶ 34.

1 **E. The Class Members’ Positive Reaction to the Settlement Favors Final**
2 **Approval.**

3 The reaction of the Class to proposed settlement has been extremely positive. Only
4 one of the 1,270 Class Members has opted out of the proposed settlement and none have
5 objected to it. Salinas Decl., ¶¶ 9-10.

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

13 **F. The Proposed Service and Release Payment to the Named Plaintiffs is**
14 **Reasonable and Should be Approved.**

15 The Settlement Agreement provides for a service and release payment in the amount
16 of \$10,000 to class representative Ignacio Mendez and \$5,000 to class representative
17 Adriana Rodriguez. The purpose of this payment is to provide additional compensation to
18 Plaintiffs for the time and effort that they put into the litigation and the settlement of this
19 matter, as well as the risks they undertook by agreeing to sue their former employer.

20 “In determining whether to make an incentive award, the court may consider (1) the
21 risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the
22 notoriety and personal difficulties encountered by the class representative; (3) the amount of
23 time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
24 personal benefit received by the class representative as a result of the litigation.” *Golba v.*
25 *Dick’s Sporting Goods, Inc.*, 238 Cal. App. 4th 1251, 1272 (2015). Additional factors to be
26 considered include “the actions the plaintiff has taken to protect the interests of the class, the
27 degree to which the class has benefitted from those actions, and the amount of time and
28 effort the plaintiff expended in pursuing the litigation.” *Clark v. American Residential*

1 *Services LLC*, 175 Cal. App. 4th 785, 804 (2009).

2 The factors enunciated in both *Golba* and *Clark* favor the approval of the requested
3 service and release payments to Plaintiffs. They undertook significant risks in getting
4 involved in the lawsuit, knowing that it could impact their future employment. Mendez
5 Decl., ¶ 17; Rodriguez Decl., ¶ 17. They understood that if the class action was
6 unsuccessful, they could be responsible for Defendant's litigation costs, which could have
7 been substantial. *Id.* They were concerned by the attention of a publicly-filed lawsuit, and
8 especially a class action, would attract, as their names would be associated with a lawsuit
9 that they had brought against an employer. They were reasonably concerned about the
10 notoriety that would attend their involvement, as they knew that it is possible and relatively
11 easy to perform background checks of publicly-filed documents on the internet and were
12 concerned that it could hurt their future employment prospects. *Id.*

13 Plaintiffs spent a significant amount of time on the lawsuit. They both had many
14 telephone and Zoom conferences with Class Counsel regarding the case and the mediation.
15 Mendez Decl., ¶¶ 19-20; Rodriguez Decl., ¶¶ 19-20. They both missed a full day of work in
16 order to attend the mediation in person. Mendez Decl., ¶ 20; Rodriguez Decl., ¶ 20. They
17 had conferences to discuss the proposed settlement with Class Counsel, and to discuss the
18 Settlement Agreement and related motions. *Id.* Additionally, And, Mr. Mendez spent time
19 consulting with his counsel regarding the arbitration agreement, the other documents
20 provided to him during onboarding on the first day of his job, his declaration in connection
21 with Defendant's motion to compel arbitration, and the status of the appellate proceedings.
22 Mendez Decl., ¶¶ 19-20.

23 To assist Class Counsel, Plaintiffs reviewed and collected all of their documents in
24 connection with their employment for Defendant. Mendez Decl., ¶ 20; Rodriguez Decl., ¶
25 20. And they spent a great deal of time assisting Class Counsel identifying witnesses, and
26 consulting with Class Counsel in advance of the mediation. *Id.* In all, In all, Plaintiff
27 Mendez spent in excess of 80 hours on the lawsuit and Plaintiff Rodriguez spent in excess of
28 60 hours on the lawsuit. *Id.*

1 Had they been unwilling to step up, none of the Class Members would have received
2 any amounts whatsoever. By agreeing to serve as the class representatives, Mr. Mendez and
3 Ms. Rodriguez have taken significant action to protect the interests of the Class, and the
4 Class has significantly benefitted from those actions. *Clark v. American Residential Services*
5 *LLC*, 175 Cal. App. 4th at 804. Although they could have filed claims with the Department
6 of Labor and possibly received more money, instead of acting in their own self-interest they
7 got involved in this lawsuit to protect the interests of the Class. And as a result of those
8 efforts, 1,269 Class Members will be receiving settlement payments.

9 The additional payments proposed for the named Plaintiffs are also intended to
10 compensate them for the broader releases that Defendant has demanded of him. While all
11 other Class Members will only be releasing the Released Claims, the settlement agreement
12 required Mr. Mendez to sign a broad general release which is broader than the release that
13 will bind other Class Members and requires him to waive Section 1542 of the California
14 Civil Code. Gundzik Decl., ¶ 19, Ex. 1, ¶ VII.A. Ms. Rodriguez is also required to waive
15 Section 1542 of the Civil Code but has retained the individual claims included in the
16 Rodriguez Action. *Id.*

17 Awarding larger amounts to class representatives is permissible and is often
18 approved by the courts. See, e.g., *Bell v Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726
19 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing class
20 case). As explained by the court in the *Cellphone Termination Fee Cases*, incentive awards
21 are “intended to compensate class representatives for work done on behalf of the class, to
22 make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
23 to recognize their willingness to act as a private attorney general.” *Cellphone Termination*
24 *Fee Cases*, 186 Cal.App.4th 1380, 1393-1394 (2010).

25 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. West*
26 *Publication Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 Newberg on Class Actions
27 (4th ed. 2002) § 11:38, p. 81); Eisenberg & Miller, Incentive Awards to Class Action
28 Plaintiff: An Empirical Study (2006) 53 UCLA L.Rev. 1303. “Since without a named

1 plaintiff there can be no class action, such compensation as may be necessary to induce him
2 to participate in the suit could be thought the equivalent of the lawyers' nonlegal but
3 essential case-specific expenses, such as long-distance phone calls, which are reimbursable.”
4 *Clark v. American Residential Services LLC*, 175 Cal.App.4th at 804 (fn. omitted), citing
5 *Matter of Continental Illinois Securities Litigation*, 962 F.2d 566, 571 (7th Cir. 1992).

6 The additional payment to the named Plaintiffs also takes into account the additional
7 risks that they incurred in acting on behalf of the Class. These risks included the potential of
8 a judgment against them if this case had been unsuccessful, as class representatives are
9 deemed the losing party that is liable for the prevailing party’s costs. *Earley v. Superior*
10 *Court*, 79 Cal.App.4th 1420, 1433-1434 (2000). Taking that risk here resulted in substantial
11 benefit to the Class. Plaintiffs also took the very real risk that this lawsuit would have a
12 negative impact on their future employment. Mendez Decl., ¶ 17; Rodriguez Decl., ¶ 17;
13 see, e.g., *Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir 2003) (fear of workplace retaliation is
14 one justification behind reasonable class representative incentive payments).

15 If Plaintiffs had not come forward, or had not agreed to take on the risks of stepping
16 up and taking on the class action, Plaintiffs may have recovered compensation for
17 themselves, but no compensation would have been received by 1,269 current and former
18 employees. Because Plaintiffs have advanced California’s public policy goal of enforcing
19 wage and hour laws (*See Sav-On Drug Stores, Inc. v. Super.Ct.*, 34 Cal.4th 319, 340
20 (2004)), the Court should approve of the proposed service and release payments to the
21 Representative Plaintiffs.

22 **G. The Court Should Approve the Request for Class Counsel’s Fees.**

23 Subject to Court approval, the settlement amount of \$1,500,000 includes Class
24 Counsel’s attorneys’ fees of \$525,000. Gundzik Decl., ¶¶ 19, 40, Ex. 1, ¶ IV.Q; Declaration
25 of Rodrigo Guevara (“Guevara Decl.”), ¶¶ 8-10; Declaration of Galen Shimoda (“Shimoda
26 Decl.”), ¶ 17. It is well-settled that representative plaintiffs and class members are entitled to
27 recover their attorneys’ fees and costs in wage and hour class action disputes. California
28

1 Labor Code § 218.5; Cal. Code Civ. Proc. § 1021.5(a); *Earley v. Super. Ct.*, 79 Cal. App.
2 4th at 1420.

3 A fee award is justified when benefits are obtained for the class irrespective of
4 whether there is a final judgment in its favor, such as when those benefits are the result of a
5 settlement. *See Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-353
6 (1983). “Courts recognize two methods for calculating attorney fees in civil class actions:
7 the lodestar/multiplier method and the percentage of recovery method.” *Wershba v. Apple*
8 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *See Lealao v. Beneficial California, Inc.*,
9 82 Cal.App.4th 19, 27 (2000). In California, both methods are proper, although courts often
10 use a lodestar-multiplier method as a check against the reasonableness of a percentage fee
11 award. *See, e.g., Serrano v. Priest (Serrano III)*, 20 Cal.3d 25, 48-49, at fn. 23 (1977);
12 *People ex rel. Dept. of Transportation v. Yuki*, 31 Cal.App.4th 1754, 1769-1772 (1995);
13 *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal.App.3d 914, 954 (1985).

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

17 In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California
18 Supreme Court approved the use of “percentage of the benefit” attorney fee awards in class
19 actions. “[W]hen class action litigation establishes a monetary fund for the benefit of the
20 class members, and the trial court in its equitable powers awards class counsel a fee out of
21 that fund, the court may determine the amount of a reasonable fee by choosing an
22 appropriate percentage of the fund created.” The *Laffitte* court explained that “[t]he
23 percentage method ‘is easy to calculate; it establishes reasonable expectations on the part of
24 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
25 avoids protracted litigation.” 1 Cal. 5th at 490 (quoting *Rawlings v. Prudential-Bache*
26 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). Pursuant to the “percentage of the benefit”
27 doctrine, “a litigant or lawyer who recovers a common fund for the benefit of persons other
28 than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”

1 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “The ultimate goal ... is the award of a
2 reasonable fee to compensate counsel for their efforts, irrespective of the method of
3 calculation. It is not an abuse of discretion to choose one method over another as long as the
4 method chosen is applied consistently using percentage figures that accurately reflect the
5 marketplace.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-558 (2009).

6 Class Counsel’s request for thirty-five percent of the monetary fund recovered is
7 California’s standard benchmark and well within the range customarily approved by the
8 California courts in comparable class actions and other class actions, as well as the standard
9 contingency contracts negotiated by plaintiffs and their counsel. Historically, attorneys’ fee
10 awards in common fund cases in general range from 20% to 50% of the fund, depending on
11 the circumstances of the case. See *Newberg on Class Actions*, (3rd Ed.), 1992, §14.03
12 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
13 generally approved as reasonable in wage and hour class actions that result in recovery of a
14 common fund under \$10 million. See *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
15 482, 491-492 (E.D. Ca. 2010) (citing to five recent wage and hour class actions where
16 federal district courts approved attorney fee awards ranging from 30 to 33%); *Singer v.*
17 *Becton Dickenson and Co.*, 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca.
18 June 1, 2010) (approving attorney fee award of 33.33% of the common fund and holding
19 that award was similar to awards in three other wage and hour class action cases where fees
20 ranged from 33% to 40%); *Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS
21 86270, 2007 WL 3492841 (E.D. Ca. Nov. 14, 2007); See *Martin v. Ameripride Servs.*, 2011
22 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011).

23 Plaintiffs’ request of thirty-five percent (35%) of the settlement sum for attorneys’
24 fees is within established rates for fee awards in class settlements pursuant to the common
25 fund doctrine, especially in light of the excellent results achieved in this case. See *In re*
26 *Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989); *Watson v. Raytheon*
27 *Company*, USDC Southern District, Case No. 3:10-cv-00634; *Dirienzo v. Dunbar Armored,*
28 *Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske Logistics,*

1 *L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur*,
2 USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC
3 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC
4 Eastern District, Case No. 1:00-cv-05695.

5 To determine whether a percentage is reasonable, a court should consider: (1) the
6 percentage that would likely be negotiated between parties in a similar case; (2) the
7 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the
8 award; and (5) whether there are any objections by class members. See *In re Ikon Office*
9 *Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond*
10 *Litig.*, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) (“the absence of objections or
11 disapproval by class members to class counsel’s fee request further supports finding the fee
12 request reasonable”).

13 Plaintiffs’ request of 35% falls within the 30%-40% range noted by the above
14 precedent. The quality of counsel and the average size of settlement payments to Class
15 Members (\$676.52) also support the fee request when compared to other settlements courts
16 have considered as good results. See *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS
17 80776 at *48 (E.D. Cal. 2012) (“Class Members will receive an average of approximately
18 \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court
19 finds that the results achieved are good, which is highlighted by the fact that there was no
20 objection to the settlement amount or the attorneys’ fees requested.”); *Gardner v. GC Servs.*,
21 *LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the results achieved in this case
22 were very favorable. Class members are provided with immediate monetary relief, with an
23 average award of around several hundred dollars and a minimum award of \$50”).

24 Class Counsel seeks \$525,000, which is thirty-five percent of the \$1,500,000 Gross
25 Settlement Amount. This request is reasonable and justified considering the settlement
26 secured for the Class Members and the amount of work performed by Class Counsel. It is
27 also consistent with both the Settlement Agreement (See Gundzik Decl., ¶¶ 19, 40, Ex. 1, ¶
28 IV.Q) and the engagement agreement the named Plaintiffs entered into with Class Counsel.

1 In that agreement, Plaintiffs agreed that Class Counsel would be paid the greater of 1) one-
2 third of all amounts obtained or received in the lawsuit, or 2) the hours worked multiplied by
3 the hourly rates of the attorneys working on the case, plus any additional multiplier awarded
4 by the Court. Gundzik Decl., ¶ 62.

5 Thus, as per the Settlement Agreement, Plaintiffs respectfully request that this Court
6 award Class Counsel's requested attorneys' fees.

7 **2. Class Counsel's Requested Fees Are Reasonable Under the**
8 **Lodestar/Multiplier Method.**

9 Under the lodestar/multiplier method of determining an attorneys' fee award, "the
10 lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly
11 rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba v.*
12 *Apple Computer, Inc.*, 91 Cal.App.4th at 254; *Rebney v. Wells Fargo Bank*, 232 Cal.App.3d
13 1344, 1347 (1991). "California case law permits fee awards in the absence of detailed time
14 sheets." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, citing *Sommers v. Erb*, 2
15 Cal.App.4th 1644, 1651 (1992). And, "[m]ultipliers can range from 2 to 4 or even higher."
16 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, citing *Coalition for L.A. County*
17 *Planning etc. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (1977); accord, *In re*
18 *Lugo*, 164 Cal.App.4th 1522, 1546 (2008); See, e.g., *Vizcaino v. Microsoft Corp.*, 290 F.3d
19 1043, 1050 (9th Cir. 2002) (multiplier of 3.65); *Craft v. Cnty. of San Bernardino*, 624 F.
20 Supp. 2d 1113, 1125 (C.D. Cal. 2008) (multiplier of 5.2); See also *Galeener v. Source*
21 *Refrigeration & HVAC, Inc.*, 2015 U.S. Dist. LEXIS 193096 (N.D. Cal. Aug. 21, 2015)
22 (multiplier of 2.67 approved in granting award of \$3,000,000 in attorneys' fees from a \$10
23 million common fund); See also *Lazarin v. Pro Unlimited, Inc.*, 2013 U.S. Dist. LEXIS
24 97213 (N.D. Cal. July 11, 2013, *28-29) (multiplier of 3.36 approved in granting attorneys'
25 fee award of \$312,500 where loadstar was \$92,824).

26 Here, Class Counsel has expended more time on this matter than the \$525,000 fee
27 award being requested. Gundzik Decl., ¶¶ 45-52, and Ex. 3 thereto. Class Counsel's total
28 lodestar is \$638,790.00. Gundzik Decl., ¶¶ 51-52, Ex. 3; Guevara Decl., ¶¶ 8-13; Shimoda

1 Decl., ¶ 17. Class Counsel has attached detailed timesheets and well as a chart specifying the
2 tasks performed on behalf of the Class. *Id.* Because the lodestar exceeds the \$525,000 that
3 Class Counsel is requesting, the Court need not consider any multiplier. Instead, the Court
4 need only determine if the \$525,000 award is reasonable compensation for Class Counsel's
5 efforts. Class Counsel's hourly rates of \$750 (Aaron Gundzik and Rebecca Gundzik), \$725
6 (Galen Shimoda) and \$500 (Rodrigo Guevara) for this matter are reasonable based upon
7 their qualifications and experience. Gundzik Decl., ¶¶ 41-44; Guevara Decl., ¶¶ 2-4;
8 Shimoda Decl., ¶¶ 5-16.

9 Both Aaron Gundzik and Rebecca Gundzik have been practicing law in Southern
10 California for over 35 years, Mr. Shimoda has been practicing for over 20 year, and Mr.
11 Guevara has been practicing 15 years. Gundzik Decl., ¶¶ 41-44; Guevara Decl., ¶ 3;
12 Shimoda Decl., ¶¶ 6-16. Aaron Gundzik worked for many years at and was an equity partner
13 of the international law firm formerly known as LeBoeuf, Lamb, Greene & MacRae, and has
14 been involved in the litigation of complex cases throughout his career. Gundzik Decl., ¶ 41.
15 Rebecca Gundzik also worked at well-respected law firms and handled complex litigation
16 matters for many years. Gundzik Decl., ¶ 42. Aaron Gundzik has served as Class Counsel on
17 many wage and hour class action matters, and he and Rebecca Gundzik tried and prevailed
18 on appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013), which
19 helped establish the law regarding an employee's right to be paid for all time under an
20 employer's control. Gundzik Decl., ¶¶ 41-42. Mr. Shimoda and Mr. Guevara also have
21 significant experience with wage and hour class actions and labor and employment matters.
22 Guevara Decl., ¶ 3; Shimoda Decl., ¶¶ 6-16.

23 Class Counsel's rates for this case are within the range of prevailing market rates.
24 Gundzik Decl., ¶¶ 58-61, and Ex. 4, National Association of Legal Fee Analysis, 2020 Class
25 Action Hourly Rate Survey (hourly rates for attorneys in 16 largest U.S. legal markets for
26 attorneys with 20 or more years in practice range from \$801-\$900 per hour); Guevara Decl.,
27 ¶ 4; Shimoda Decl., ¶ 16.

28 //

1 **a. Time and Effort**

2 Class Counsel, who are experienced wage and hour class action attorneys, have put a
3 significant number of hours into prosecuting this case. Class Counsel had to conduct
4 substantial investigation, engage in formal written discovery, meet and confer extensively
5 regarding discovery, interview Class Members, review and analyze nearly thousands of
6 pages of time records and other documents, research numerous issues and review and
7 analyze policies, independently analyze time records, as well as dedicate substantial time to
8 analyze data and other documents related to Defendant's compensation policies. Gundzik
9 Decl., ¶¶ 8-11, 45-52, and Ex. 3 thereto. Those efforts, along with negotiating the settlement
10 and obtaining preliminary and final approval, required a significant amount of time and
11 labor. The total amount of attorney time expended through September 25, 2024, is 1,032.9
12 hours. Class Counsel's base lodestar for these hours equates to attorneys' fees of
13 \$647,812.50. Gundzik Decl., ¶¶ 45-52, and Ex. 3 thereto; Guevara Decl., ¶ 10; Shimoda
14 Decl., ¶ 17.

15 **b. Extent Litigation Precluded Other Employment**

16 Inherent to class action litigation is the large amount of time and labor required to
17 properly adjudicate the case. From start to settlement, judgment or verdict, class action
18 litigation commands commitment, an extensive amount of time, labor and resources.
19 Although this litigation did not conclusively preclude other employment, it did impact
20 Plaintiffs' counsel's ability to take on other class action cases. Plaintiffs' counsel are small
21 law firms with few attorneys and staff. Gundzik Decl., ¶ 54.

22 **c. Continent Nature of the Agreement**

23 Class counsel agreed to work on this case on a contingency basis. If they had not
24 successfully resolved the case, they would not have earned any fees. Moreover, they would
25 not have recouped the substantial litigation expenses that they incurred. Gundzik Decl., ¶ 53.
26 The courts have recognized that higher attorneys' fees are justified in contingency matters
27 because of the contingent nature of their recovery. *See Ketchum v. Moses*, 24 Cal. 4th 1122,
28 1132 (2001). Class action contingency cases are inherently risky. Upon retention, class

1 counsel makes a commitment to litigate the case through trial. These types of cases can take
2 years, hundreds of hours of work and cost an enormous amount of money—risks which are
3 known upon retention. Class Counsel has had to front significant litigation expenses, as well
4 as office overhead expenses. Gundzik Decl., ¶ 53, and Ex. 3 thereto; Guevara Decl., ¶ 15,
5 Ex. A; Shimoda Decl., ¶¶ 18, Ex A. The risks involved coupled with the contingency basis
6 of this case further support Class Counsel’s request for attorneys’ fees and costs.

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

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

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

21 **d. Experience, Reputation, and Ability of Plaintiffs’ Counsel**

22 As set forth in the Declarations of Aaron Gundzik, Galen Shimoda and Rodrigo
23 Guevara, Class Counsel’s skill and experience in litigating wage and hour class actions, in
24 state and federal forums, contributed to the results obtained on behalf of the Class Members.
25 All four attorneys who were primarily responsible for the case have significant experience
26 litigating wage and hour class actions, and each have been practicing law for many years.
27 Gundzik Decl., ¶¶ 40-44; Shimoda Decl., ¶¶ 5-16; Guevara Decl., ¶ 3.

1 **e. Results Obtained On Behalf of the Class by Plaintiffs’**
2 **Counsel**

3 An award of attorneys’ fees should reflect the successful outcome of the case.
4 *Hensley v Eckerhart*, 461 U.S. 424, 440 (1983), abrogated in part as stated in *McKee v.*
5 *Comm’r of Soc. Sec.*, 2008 U.S. Dist. LEXIS 86793 (M.D. Fla. 2008), superseded by statute
6 as stated in *Laube v. Allen*, 506 F. Supp. 2d 969, 2007 U.S. Dist. LEXIS 64916 (M.D. Ala.
7 2007). As already discussed herein and in the Motion for Preliminary Approval, this case
8 involves numerous and difficult issues requiring a highly technical analysis and largely
9 precluding a clear-cut outcome as to liability. There also were significant issues regarding
10 Defendant’s ultimate liability and its ability to pay a larger amount, as Defendant
11 consistently denied that it had violated California’s wage and hour laws and provided
12 financial documents regarding its financial condition. In fact, Defendant raised a colorable
13 legal or factual defense to each claim Plaintiffs alleged. Gundzik Decl., ¶ 30.

14 Nevertheless, despite these obstacles, Class Counsel obtained significant financial
15 compensation for the Class Members. Defendant agreed to pay a gross settlement amount of
16 \$1,500,000 as well as the employer’s portion of all payroll taxes. After payment of
17 attorneys’ fees and costs, service and release payments and class administration costs, the
18 remainder of the Net Settlement Amount will be approximately \$858,500. Despite the
19 complexity of the case, Class Counsel have, through the investment of substantial effort, and
20 the resources of their law firm, been able to secure an outstanding settlement on behalf of
21 the Class Members.

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

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

27 In sum, based on the six factors discussed above, Class Counsel’s requested fees
28 should be awarded.

1 **H. Class Counsel’s Requested Costs are Reasonable.**

2 The settlement provides for repayment of Class Counsel’s actual and reasonable
3 costs of litigation in an amount not to exceed \$35,000. Gundzik Decl., ¶ 17, Ex. 1, ¶ 34.
4 Class Counsel incurred reasonable litigation costs in bringing this matter to a resolution
5 before trial. The total of out-of-pocket costs incurred and to be incurred by Class Counsel in
6 this litigation are \$38,884.65. Gundzik Decl., ¶¶ 51, 53, and Ex. 3; Shimoda Decl., ¶ 18;
7 Guevara Decl., ¶ 15. Because their actual fees exceed the amount agreed to in the settlement
8 agreement, Plaintiffs are not seeking reimbursement of all of their fees, but are only seeking
9 \$35,000. *Id.*

10 **I. The Settlement Administrator’s Requested Expenses are Reasonable.**

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

26 **IV. CONCLUSION**

27 For the foregoing reasons, Plaintiffs, on behalf of themselves and the Class,
28 respectfully requests that the Court grant final approval of the settlement, award a service

1 and release payment to named Plaintiff Ignacio Mendez in the amount of \$10,000, award a
2 service and release payment to named Plaintiff Adriana Rodriguez in the amount of \$5,000,
3 approve of the payment to the LWDA in the amount of \$37,500 and \$12,500 to the
4 Aggrieved Employees, award attorneys' fees in the amount of \$525,000 and Class
5 Counsel's costs in the amount of \$35,000, and award the Settlement Administrator its fees
6 in the amount of \$16,500, all of which will be paid from the Gross Settlement Amount.

7 DATED: October 8, 2024

GUNDZIK GUNDZIK HEEGER LLP

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By: 

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Rebecca Gundzik

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Attorneys for Plaintiffs Ignacio Mendez and
Adriana Rodriguez, individually and on behalf
of all others similarly situated

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