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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELIAS MORALES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

JBI INTERIORS, LLC., a Delaware limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 21STCV43284

*[Assigned for All Purposes to Hon. Kenneth R.
Freeman, SSC-14]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 2, 2024
Time: 11:00 a.m.
Dept.: SSC-14

Action Filed: November 24, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 2, 2024 at 10:00 a.m. in Department SSC-14 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Elias Morales (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

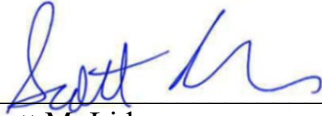
1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Elias Morales as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Settlement (herein “Settlement”);
5. Approving an award of \$200,000.00 in attorneys’ fees to Class Counsel;
6. Approving an award of \$15,159.91 in costs to Class Counsel;
7. Approving an award of \$6,950.00 in costs to Phoenix Class Action Administration Solutions for its settlement administration services;
8. Approving an incentive payment of \$5,000.00 to Plaintiff for his services as Class Representative;
9. Approving an award of \$22,500.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

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

1 Morales,¹ and Yami Burns of Phoenix Class Action Administration Solutions, and the exhibits attached
2 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
3 evidence or argument presented at the time of hearing.

4
5 Dated: June 3, 2024

Respectfully submitted,
LIDMAN LAW, APC

6
7 By: 

8 Scott M. Lidman
9 Attorney for Plaintiff
ELIAS MORALES

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28 ¹ The declaration of Plaintiff Elias Morales was originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Elias Morales (“Plaintiff”) submits this memorandum of points and authorities in support
4 of his motion for final approval of the class action settlement (the “Settlement”) with Defendant JBI
5 Interiors, LLC (hereinafter “JBI” or “Defendant”). The Settlement Class is defined as: all current and
6 former hourly-paid, non-exempt employees who worked for Defendant JBI Interiors, LLC in California
7 at any time from November 24, 2017 through January 9, 2024.

8 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
9 Member is approximately \$2,226.56. This is a favorable resolution of the highly disputed wage and hour
10 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
11 preliminary approval on January 9, 2024, nothing has changed to impact the propriety, fairness, adequacy
12 and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their
13 projected Settlement payments, no one has opted-out or submitted a written objection to the Settlement.

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

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 On November 24, 2021, Plaintiff filed the instant putative class action complaint. *See*
24 Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On November 24, 2021, Plaintiff submitted a
25 letter to the California Labor & Workforce Development Agency (“LWDA”) and JBI of his intention of
26 filing a PAGA claim based on the labor code violations alleged in his complaint. *Id.* On April 22, 2022,
27 after exhausting his administrative remedies, Plaintiff filed a First Amended Class and Representative
28 Action Complaint adding a cause of action for civil penalties under the PAGA. *Id.* Plaintiff’s primary

claims/allegations are that JBI: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages upon termination; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

A. Plaintiff’s Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of liability are related to Defendant’s alleged failure to pay for all time worked and failure to provide Settlement Class Members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶ 11. Specifically, Plaintiff alleges that he and Settlement Class members were not fully compensated for all of their time worked. *Id.* Plaintiff alleges that he and the Class Members were not fully compensated for all of their time worked because JBI would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. *Id.* Plaintiff also alleges that this time shaving and/or rounding practice utilized by JBI was not-even handed over time and would almost exclusively round and shave in JBI’s favor such that the employees were routinely underpaid for their time worked and it appeared on average to be an underpayment of approximately 40 minutes per week. *Id.*

Plaintiff alleges that he and the Class Members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 13. Specifically, Plaintiff alleges that JBI utilized a bell signaling system for meal periods, with the bell ringing exactly at 12:02 p.m. and 12:28 p.m. This means that Plaintiff and the other non-exempt employees did not receive a full 30-minute meal period because they were required to be back at their workstations ready to work within 2 minutes after the bell rang at 12:30 p.m. *Id.* As such, Plaintiff alleges that he and other non-exempt employees were not provided a full uninterrupted 30-minute meal period because they had to return from their meal periods early and be at their workstations ready to commence work. *Id.* Moreover, Plaintiff alleges that he and some other non-exempt employees were required to carry walkie talkie radios at all times, essentially being on call for their meal periods and unable to have duty-free meal periods in violation of California law. Further, based on the timekeeping data produced by JBI in connection with

mediation, it appears JBI did not require its non-exempt employees to clock in and out for meal periods. Instead, Plaintiff alleges that JBI automatically deducted 30 minutes of work time for purported meal periods whether or not a compliant meal period was actually taken. *Id.*

Plaintiff alleges that he and Settlement Class Members were also not authorized and permitted to take all required rest periods due to JBI's rest period policies and practices. Lidman Decl., ¶ 15. Specifically, Plaintiff alleges that JBI only authorized and permitted one 15-minute rest period during each shift, irrespective of the shift length. Thus, Plaintiff alleges that he and other non-exempt employees experienced at least one rest period violation on every shift worked in excess of 6.0 hours.

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

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

B. Mediation and Settlement

In advance of mediation, JBI produced a 16% sampling timekeeping and payroll data for the putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 24. JBI also provided a class list for Plaintiff to calculate the necessary metrics, including without limitation, class size, number of workweeks and pay periods. After the detailed review of the documents and data produced by JBI, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and JBI's defenses. *Id.*

On September 12, 2022, a mediation was held with Jeffrey Krivis, Esq., a well-respected wage and hour class action mediator. Lidman Decl., ¶ 25. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. Ultimately, the Parties agreed on a class-wide resolution. *Id.*

1 **C. Preliminary Approval of Settlement**

2 Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary
3 Approval on January 9, 2023. Lidman Decl., ¶ 26. On November 13, 2023, Plaintiff filed a supplemental
4 brief in support of preliminary approval along with an amended settlement agreement. On January 9,
5 2024, the Court granted preliminary approval signed an Order Granting Preliminary Approval of the
6 Settlement. *Id.*; Exh. A.

7 Plaintiff submitted the Settlement, the Amended Settlement, and the Court's Order Granting
8 Preliminary Approval of the Settlement to the LWDA via the LWDA's website on January 9, 2023,
9 November 13, 2023 and June 3, 2024 respectively. *See* Lidman Decl., ¶ 40; Exhs. D-F. Plaintiff will
10 also provide the LWDA with a copy of the instant motion for final approval and supporting documents
11 after the instant motion is filed and will file a supplemental proof of service prior to the hearing. *See*
12 Lidman Decl., ¶ 41.

13 On February 13, 2024, Phoenix mailed the Notice via U.S. first class mail, in English and
14 Spanish, to all 154 Settlement Class members on the Class List who had until April 15, 2024 to request
15 for exclusion, objections, and/or submit disputes. *See* Declaration of Yami Burns of Phoenix Class
16 Action Administration Solutions. ("Burns Decl."), ¶¶ 5 and 9-11. *Id.* at ¶¶ 6. As of the date of this filing,
17 there have been **no requests for exclusion**, **no objections**, and **no disputes** received. *Id.* at ¶¶ 9-11.
18 Plaintiff now respectfully submits the Settlement for this Court's final approval.

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

20 **A. Settlement Class Definition**

21 The Settlement Class encompasses: all current and former hourly-paid, non-exempt employees
22 who worked for Defendant JBI Interiors, LLC in California at any time from November 24, 2017 through
23 January 9, 2024. Lidman Decl., ¶ 27.

24 **B. Monetary Terms of the Settlement**

25 The Settlement provides for Defendant to pay a Gross Settlement Amount of \$600,000.00. *See*
26 Burns Decl., ¶ 13. The Net Settlement Amount is the amount remaining from the Gross Settlement
27 Amount after deducting requested Class Counsel attorneys' fees (\$200,000.00), and Class Counsel costs
28 (\$15,159.91), requested Service Award to Plaintiff (\$5,000.00), the payment to the LWDA for its share

of civil penalties (\$22,500.00), and the requested Settlement Administration Costs (\$6,950.00). *Id.* Based on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$350,390.09**. *Id.*

The Net Settlement Amount, shall be allocated to Settlement Class Members who worked during the Class Period, as follows: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$7,500.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

For purposes of calculating applicable taxes and withholdings, 33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 3.2.5.

Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. Settlement, ¶ 3.1.

C. Summary of Notice Process

1. Mailing of Notice Packets

On February 8, 2024, Defendant provided Phoenix with data files containing the names, last known mailing addresses, Social Security numbers, and workweeks for each Class Member during the Class Period. Burns Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Class Notice to 154 Settlement Class Members on February 13, 2024 in English and Spanish. *Id.* at ¶ 5. Following the initial mailing, 6 Class Notices were returned to Phoenix by the Post Office and 5 were re-

1 mailed. *Id.* at ¶ 7. As of the date of filing this final approval motion, 1 Class Notice remains undeliverable
2 because no forwarding address was provided and/or no new address could be located through Skip Trace.
3 *Id.* at ¶ 8.

4 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
5 disputes was April 15, 2024. Salinas Decl., ¶¶ 9-11. As of the date of this filing, there were no requests
6 for exclusion, no objections, and no disputes. *Id.* at ¶¶ 9-11. Accordingly, as of the date of this Motion,
7 the participation rate amongst the Settlement Class Members is 100% and the average estimated payment
8 is \$2,226.56, with the highest estimated payment to a Settlement Class Member being \$3,634.43, the
9 lowest estimated payment to a Settlement Class Member being \$11.39. *Id.* at ¶ 14.

10 **D. Timing of Payments**

11 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to
12 fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator as follows: (1)
13 The payment of \$600,000.00 shall be deposited with the Administrator within 30 days of the Effective
14 Date; and (2) the employer's share of payroll taxes be deposited with the Administrator within 30 days of
15 the Effective Date. "Effective Date" means the date by when both of the following have occurred: (a) the
16 Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is
17 final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class
18 Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating
19 Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the
20 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the
21 Judgment and issues a remittitur. Settlement, ¶ 1.20.

22 After disbursement, Settlement Class Members will have at least 180 days to cash their checks.
23 See Lidman Decl., ¶ 28; Settlement ¶ 4.4.1. Funds remaining unclaimed will be distributed to the
24 California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class
25 Member. See Lidman Decl., ¶ 28; Settlement ¶ 4.4.3.

26 **E. Notice of Judgment**

27 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class
28 members, the final judgment entered by the Court and any changes to the Final Approval hearing date or

location will be posted on the Settlement Administrator's website at morales-v-jbi-interiors.phoenixcases.com. *See* Burns Decl., ¶5, Exh. A.

IV. ARGUMENT

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

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

Here, this Court found that the Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on January 9, 2024. *See* Lidman Decl., ¶ 26; Exh. A. After the Court entered an order granting preliminary approval, no events have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement Class Member has requested for exclusion from the Settlement, no Settlement Class Member has objected to any portion of the Settlement, and no Settlement Class Member has disputed the Settlement. *See* Salinas Decl., ¶¶ 9-11. This Court should therefore confirm its conditional certification of the Settlement Class.

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

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

1 respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

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

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

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

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

Here, the Settlement resulted from extensive arm's length settlement negotiations between
qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate,
and reasonable for all Settlement Class Members. While Plaintiff maintains that his claims are
meritorious, Plaintiff acknowledges that his position includes substantial risks and uncertainty, which

1 justifies a downward departure from the maximum exposure that Plaintiff’s calculated each claim carried.

2 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
3 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect
4 to Plaintiff’s unlawful rounding claims, JBI contends that it compensated Class Members for all of their
5 time worked. Lidman Decl., ¶ 12. JBI also contends that its rounding practices were lawful, and any
6 unpaid time, if any, was *de minimis* and therefore non-compensable. *Id.* JBI argues that a number of the
7 Class Members signed arbitration agreements and that Plaintiff is unable to certify a class to include
8 individuals who signed arbitration agreements. *Id.* JBI further asserts that Plaintiff would be unable to
9 certify a rounding class given the individualized inquiries that would be required, and also that JBI’s
10 rounding policy/mechanism was, according to it, neutral on its face and in its application. *Id.*

11 As for Plaintiff’s meal period claims, JBI counters that it has always maintained a lawful meal
12 period policy and provided non-exempt employees with an opportunity to take legally compliant meal
13 periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the
14 result of employee choice, rather than any policy or practice of JBI. Lidman Decl., ¶ 14. JBI points out
15 that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to
16 “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that they have
17 always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally, JBI contends
18 Plaintiff’s meal period claim is not suited for class certification, given that a number of Class Members
19 signed arbitration agreement and since individual inquiries would be required to assess which employees
20 took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons
21 why a particular employee took a non-compliant meal period or missed a meal period during a particular
22 shift. *Id.*

23 As for Plaintiff’s rest period claims, JBI contends it has always maintained and enforced lawful
24 rest period policies and practices, and that Settlement Class Members were authorized and permitted to
25 take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 16. JBI also argues that
26 Plaintiff’s rest period claim is inherently unsuited for class treatment as a number of Class Members signed
27 arbitration agreements and it requires an individualized inquiry into whether each Settlement Class
28

1 Member was in fact authorized and permitted to take a compliant rest period, which would devolve into
2 an unmanageable series of mini-trials. *Id.*

3 As for Plaintiff's claim for wage statement violations, JBI further argues that its alleged wage
4 statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show
5 that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as
6 required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 18.

7 As for Plaintiff's claim for waiting time penalties, JBI asserts it has strong defenses to the waiting
8 time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding
9 imposition of penalties. Lidman Decl., ¶ 20. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute
10 that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12
11 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt
12 precluded imposition of waiting time penalties over contested wages owed). *Id.*

13 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims, JBI
14 argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail.
15 Lidman Decl., ¶ 22; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the
16 underlying causes of action fail, the derivative UCL and PAGA claims also fail."). JBI also maintains
17 that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any
18 PAGA penalties if it were to find JBI liable for any of Plaintiff's claims. *See* Lab. Code § 2699(e)(2);
19 *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of
20 PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx),
21 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.*

22 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also
23 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
24 litigation. Lidman Decl., ¶ 23. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted
25 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages
26 figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
27 adequate, and reasonable in view of them. *Id.*

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

4 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
5 number of Workweeks worked by all Participating Class Members during the Class Period and (b)
6 multiplying the result by each Participating Class Member's Workweeks. *See* Settlement, ¶ 3.2.e. This
7 method of distribution compensates Settlement Class Members based on the estimated extent of their
8 injuries, as Settlement Class Members who worked more workweeks, would have been subject to more
9 of the alleged wage and hour violations than those who worked fewer weeks. Thus, the formula for
10 compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages
11 and penalties that could be recovered by them.

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

14 Class members' response to a settlement is relevant in evaluating whether it merits final approval.
15 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
16 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
17 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
18 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion,
19 not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member
20 have elected to opt-out of the Settlement. In addition, only 1 of the 154 Notice Packets were returned
21 undeliverable. Burns Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further
22 confirms that the Settlement is fair, adequate, and reasonable.

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

25 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
26 their attorneys' fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
27 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
28 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
 Inc. v. Obledo, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,

91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman Decl., ¶ 38.

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

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

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

Laffitte also held that trial courts have discretion to assess reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold further that trial courts have

1 discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the
2 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
3 requested percentage fee.”)

4 Here, Class Counsel’s fee request of \$200,000.00 (one-third of the Gross Settlement Amount) is
5 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
6 “regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
7 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
8 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
9 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
10 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
11 class actions…”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
12 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
13 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
14 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 29. Thus, the percentage sought by
15 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

24 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
25 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
26 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
27 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
28 class actions such as this one, where the value of the benefit conferred to the class “can be monetized

with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of \$201,932.50 which results in an approximate 1.01 multiplier compare to the \$200,000.00 fee request. *See* Lidman Decl., ¶ 34. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. *Id.*

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (23rd Year Attorney)	\$900	72.3	\$65,070
Elizabeth Nguyen (16th Year Attorney)	\$800	74.8	\$59,840
Paul K. Haines (15th Year Attorney)	\$800	20.1	\$16,080
Milan Moore (6th Year Attorney)	\$650	87.7	\$57,005
Paralegals	\$175	22.5	\$3,937.50
Total Lodestar			\$201,932.50

The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. Lidman Decl., ¶ 35, Exh. C. Based on the *Laffey* Matrix, the hourly rate for a 24rd year attorney is \$997, the hourly rate for a 16th year attorney is \$829, and the hourly rate for a 6th year attorney is \$508. *Id.* The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees).

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class Member has objected to the Settlement or to Class Counsel’s requested fees as of the date of this filing. *See* Burns Decl., ¶¶ 9-11.

1 Additionally, the *average* settlement payment in this case of approximately \$2,226.56 is in line with, and
2 above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v.*
3 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action
4 settlement approved where average class member recovery was approximately \$60); *Schiller v. David's*
5 *Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that
6 average payment to class members of less than \$200 was a “good” result); *Williams v. Centerplate, Inc.*,
7 Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting
8 final approval of class action settlement where average recovery for each class member was
9 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted
10 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the
11 strength of the results achieved.

12 As discussed above, this case presented significant risk as to both class certification and merits
13 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
14 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
15 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
16 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
17 compensation for over three years. Lidman Decl., ¶ 31. During this time, Class Counsel have expended
18 a total of \$14,709.91 in actual costs and have devoted substantial time to this litigation and expect to incur
19 approximately \$450.00 in future costs for filing the final declaration regarding distribution of settlement,
20 Case Anywhere fees, service and messenger fees, postage fees, and/or online fees to retrieve conformed
21 copies of documents.² Lidman Decl., ¶ 31; Exh. B. Class Counsel’s efforts have included conducting
22 pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, propounding formal
23 written discovery, analyzing timekeeping data and payroll records, preparing for and attending mediation,
24 negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the
25 case. *See* Lidman Decl., ¶ 30. Moreover, Class Counsel have expended time, effort, and money that they
26 could have expended on less risky cases instead. Given the considerable potential for adverse outcomes
27

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

1 in this case, including, but not limited to losing on class certification and/or merits issues, the contingent
2 risk borne by Class Counsel was great. Lidman Decl., ¶¶ 30-33.

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

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

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

21 Class Counsel seek to be reimbursed a total of \$15,159.91³ in litigation costs. Class Counsel’s
22 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
23 *See* Lidman Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
24 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should rec
25 over “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v.*
26 *Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)(“costs of reproducing pleadings,

27 ³ Class Counsel have expended a total of \$14,709.91 in actual costs and anticipates incurring costs in the amount
28 of \$450.00 for filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and
messenger fees, postage fees, and/or online fees to retrieve conformed copies of documents.

1 motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable);
2 *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253,
3 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities*
4 *Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert
5 fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
6 Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no
7 Settlement Class Member has objected to them, Plaintiff respectfully requests the Court should grant the
8 request for actual costs incurred.

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

10 Plaintiff also requests that the Court approve \$6,950.00 in administration costs to the Settlement
11 Administrator, Phoenix. As detailed in the declaration of Yami Burns on Behalf of Phoenix Class Action
12 Administration Solutions submitted herewith, Phoenix performed duties in connection with this
13 Settlement that were integral in effectuating the Settlement and the Notice process. Among other things,
14 Phoenix calculated each Settlement Class Member’s individual settlement payment, updated addresses
15 contained in the class data supplied by Defendant, formatted Class Notices for mailing, mailed Class
16 Notices to all 154 Settlement Class Members in English and Spanish, kept the parties informed of any
17 objections or requests for exclusion, and have otherwise administered the Settlement. *See Burns Decl.*,
18 ¶¶ 2-17. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be
19 finally approved.

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

22 Courts routinely approve service payments to compensate named plaintiffs for the services they
23 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
24 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in
25 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
26 \$50,000 service payment). In analyzing the requested service payment, courts consider the following
27 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the
28 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has

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

5 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
6 \$5,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook
7 on behalf of Settlement Class Members. *See* Lidman Decl., ¶ 39; Declaration of Elias Morales ("Morales
8 Decl."), ¶¶ 6-12. Plaintiff gathered documents for use in the lawsuit, and worked with Class Counsel on
9 the case, including preparing for mediation and discussing the case, the merits, the defenses, and
10 settlement. *See* Lidman Decl., ¶ 39; Morales Decl., ¶¶ 6 and 8. The class has benefited from Plaintiff's
11 actions as the average settlement amount is \$2,226.56.

12 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
13 lawsuit could stigmatize him and/or affect future employment. *See* Lidman Decl., ¶ 39; Martinez Decl.,
14 ¶ 7. Plaintiff also understood the risk that he could be liable for Defendant's costs if he lost the case. *See*
15 Lidman Decl., ¶ 39; Morales Decl., ¶ 7. Plaintiff accepted these risks and burdens because he wanted
16 Defendants to compensate their current and former employees for unpaid wages. Morales Decl., ¶¶ 7.
17 Plaintiff estimates he spent 8-10 hours on activities related to this case. *Id.* at ¶ 8.

18 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
19 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendant
20 and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving
21 all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Lidman Decl., ¶ 39;
22 Settlement ¶ 3.2.1.

23 Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff,
24 no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See* Burns
25 Decl., ¶ 10. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and
26 should be finally approved.

27 //

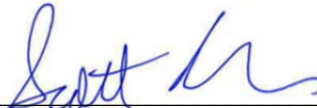
28 //

1 **V. CONCLUSION**

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

5
6 Dated: June 3, 2024

Respectfully submitted,
LIDMAN LAW, APC

7
8 By: 
9 Scott M. Lidman
Attorney for Plaintiff
ELIAS MORALES