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LUIS MANUEL JARA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

LUIS MANUEL JARA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

REID PRODUCTS, INC., a California
corporation; and DOES 1 through 100, inclusive.

Defendants.

Case No. CIVSB2204688

*[Assigned for all purposes to the
Hon. Gilbert Ochoa, Dept. S-24]*

**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: April 30, 2024
Time: 9:00 a.m.
Dept.: S-24

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April
3 30, 2024 at 9:00 a.m. in Department S-24 of the above-entitled Court, located at 247 West Third Street,
4 San Bernardino, California 92415, Plaintiff Luis Manuel Jara (“Plaintiff”), individually and on behalf of
5 a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Confirming the certification of the Settlement Class for settlement purposes under Section
7 382 of the California Code of Civil Procedure;
- 8 2. Confirming the appointment of Plaintiff Luis Manuel Jara as Class Representative for
9 settlement purposes;
- 10 3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC, and
11 Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
- 12 4. Granting final approval of the Stipulation of Settlement (herein “Settlement”);
- 13 5. Approving an award of \$158,333.33 in attorneys’ fees to Class Counsel;
- 14 6. Approving an award of \$11,702.17 in costs to Class Counsel;
- 15 7. Approving an award of \$8,500.00 in costs to Phoenix Settlement Administrators for its
16 settlement administration services;
- 17 8. Approving an incentive payment of \$10,000.00 to Plaintiff Luis Manuel Jara for his services
18 as Class Representative;
- 19 9. Approving an award of \$15,000.00 to the Labor & Workforce Development Agency
20 (“LWDA”); and
- 21 10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action
22 Settlement and Final Judgment filed concurrently herewith.

23 This Motion is based on this notice of motion, the attached memorandum of points and authorities
24 attached hereto, the declarations of Scott M. Lidman, Paul K. Haines, Milan Moore, Plaintiff Luis Manuel
25 Jara,¹ and Yami Burns of Phoenix Settlement Administrators, and the exhibits attached thereto, the
26

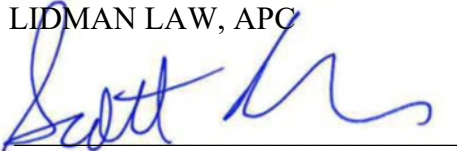
27 _____
28 ¹ The declaration of Plaintiff Luis Manuel Jara was originally filed with this Court in connection with the Motion
for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant
Motion.

1 pleadings and other papers filed in this action, and on any further oral or documentary evidence or
2 argument presented at the time of hearing.

3
4 Dated: April 8, 2024

Respectfully submitted,
LIDMAN LAW, APC

5
6 By:



7 Scott M. Lidman
8 Attorney for Plaintiff
9 LUIS MANUEL JARA
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Luis Manuel Jara (“Plaintiff”) submits this memorandum of points and authorities in
4 support of his motion for final approval of the class action settlement (the “Settlement”) with Defendant
5 Reid Products, Inc. (hereinafter referred to as “Reid Products” or “Defendant”). The Settlement Class is
6 defined as: all current and former non-exempt, hourly employees of Defendant Reid Products, Inc. who
7 worked at any time in California during the Class Period. For purposes of the Settlement, the “Class
8 Period” shall mean the time period between March 14, 2018 and June 7, 2023.

9 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
10 Member is approximately \$1,837.69. This is a favorable resolution of the highly disputed wage and hour
11 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
12 preliminary approval on November 29, 2023, nothing has changed to impact the propriety, fairness,
13 adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and
14 of their projected Settlement payments, there no written objections and only 9 Settlement Class Members
15 have opted-out.

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

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 On March 14, 2022, Plaintiff filed a putative class action complaint against Defendant in San
26 Bernardino County Superior Court. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On
27 March 11, 2022, Plaintiff submitted a letter to the California Labor Workforce Development Agency
28 (“LWDA”) and Reid Products regarding Defendant’s alleged Labor Code violations and hiss intent to

bring a claim for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). *See* Settlement, Exh. A. On August 5, 2022, Plaintiff filed a First Amended Class and Representative Action Complaint. Lidman Decl., ¶ 10. Plaintiff’s operative complaint alleges that Reid Products: (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 separation of employment; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the PAGA. *Id.*

A. Plaintiff’s Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of liability are related to Defendant’s alleged failure to pay for all time worked and failure to provide Settlement Class Members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶¶ 11-22. Plaintiff alleges that Defendant failed to compensate its non-exempt employees for all time worked. Lidman Decl., ¶ 11. Specifically, Plaintiff alleges that Defendant would keep track of Plaintiff’s time worked and would unlawfully round/shave time worked such that Plaintiff would not be fully paid for all time worked. *Id.* This time-shaving and/or rounding practice utilized by Defendant was not even-handed over time and would almost exclusively round and shave in Defendant’s favor such that Plaintiff was routinely underpaid for all his time worked. *Id.* Additionally, from approximately March 23, 2020 through November 10, 2021, Defendant required Plaintiff and other non-exempt employees to be subjected to temperature checks due to the COVID-19 pandemic. *Id.* Despite being under Defendant’s direction and control, Defendant failed to compensate its non-exempt employees for such time. As a result, Defendant failed to pay Plaintiff and other non-exempt employees for all minimum and overtime wages owed. *Id.*

Plaintiff alleges that he and Settlement Class Members were not provided with all legally-required meal periods in compliance with California law due to Defendant’s unlawful meal period policies/practices. Lidman Decl., ¶ 13. Due to work demands, Plaintiff was often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. Additionally, Reid Products required its employees to remain on the work premises

1 for meal periods during the COVID-19 pandemic. *Id.* Also, there was a 100% violation rate for second
2 meal periods on shifts over 10.0 hours. *Id.*

3 Plaintiff alleges that he and other Settlement Class Members were not authorized and permitted
4 to take all required rest periods due to Reid Products' rest period policies/practices which fail to authorize
5 and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 15.
6 Specifically, Plaintiff worked shifts in excess of 10.0 hours, but was not authorized or permitted to take
7 a ten-minute paid rest period. *Id.* Additionally, Plaintiff contends he and other Settlement Class
8 Members were required to remain on the work premises during the COVID-19 pandemic. *Id.*

9 As a result of the alleged unpaid wages and unpaid meal period and rest period premium wages
10 described above, Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor
11 Code § 226, failed to pay all wages to Settlement Class Members upon their separation of employment,
12 and is thus liable for civil penalties under the Labor Code Private Attorney General Act ("PAGA").
13 Nguyen Decl., ¶¶ 17-22.

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

17 **B. Mediation and Settlement**

18 After agreeing to participate in early mediation, Reid Products informally produced documents
19 and information relevant to the claims alleged in advance of mediation, including without limitation
20 timekeeping and payroll data for a 20% sampling of the putative class. Lidman Decl., ¶ 24. Additionally,
21 Reid Products produced information and data points needed for a fruitful mediation, including without
22 limitation, the number of employees, workweeks at issue, pay periods at issue, meal and rest period
23 policies and procedures, and payroll policies. After a review and analysis of the documents and
24 information produced by Reid Products, Class Counsel drew on their extensive experience in similar
25 cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties
26 to assess the merits and value of Plaintiff's claims and Reid Products' defenses thereto, if a settlement
27 could not be reached. *Id.*

28 As discussed in the preliminary approval papers, on June 7, 2023, a mediation was held with

1 Katherine J. Edwards, Esq., a well-respected mediator. Lidman Decl., ¶ 25. During mediation, the parties
2 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and
3 the legal basis for the claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution.
4 In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of
5 Class Action and PAGA Settlement (“Settlement”). *Id.*

6 **C. Preliminary Approval of Settlement**

7 Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary
8 Approval on October 19, 2023. Lidman Decl., ¶ 26. On November 29, 2023, the Court granted
9 Preliminary Approval of the Settlement. *Id.*; Exh. A.

10 Plaintiff submitted the Settlement and the Court’s Signed Tentative Order Granting Preliminary
11 Approval of the Settlement to the LWDA via the LWDA’s website on October 19, 2023 and November
12 29, 2023, respectively. *See* Lidman Decl., ¶ 41; Exhs. D and E. Plaintiff will also provide the LWDA
13 with a copy of the instant motion for final approval and supporting documents after the instant motion is
14 filed and will file a supplemental proof of service prior to the hearing. Lidman Decl., ¶ 40.

15 On January 4, 2024, the Settlement Administrator mailed the Court-approved Notice Packet
16 (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of
17 Individual Settlement Award) in English and Spanish to the 154 Settlement Class Members, who had
18 until March 4, 2024 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of
19 Yami Burns of Phoenix Settlement Administrators (“Yami Decl.”), ¶ 8. As of the date of this filing, there
20 have been **no objections**, **no disputes**, and **only 9 opt-outs** received. *Id.* at ¶¶ 13-15. Plaintiff now
21 respectfully submits the Settlement for this Court’s final approval.

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

23 **A. Settlement Class Definition**

24 After the preliminary approval was granted, the Settlement Administrator advised the total
25 number of workweeks worked is 12,108, confirming the escalator clause was not triggered. Burns Decl.,
26 ¶ 3. Therefore, the Settlement Class is defined as: current and former non-exempt, hourly employees of
27 Defendant Reid Products, Inc. who worked at any time in California during the Class Period. For
28

purposes of the Settlement, the “Class Period” shall mean the time period between March 14, 2018 and June 7, 2023. Lidman Decl., ¶ 26.

B. Monetary Terms of the Settlement

The Settlement provides for Defendant to pay a Gross Settlement Amount of \$475,000.00. Burns Decl., ¶ 12. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys’ fees (\$158,333.33) and verified costs (\$11,702.17), proposed Class Representative Service Award to Plaintiff (\$10,000.00), Settlement Administration costs (\$8,500.00), and PAGA payment (\$20,000.00). *Id.* Based on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$266,464.50**. *Id.*

The Individual Settlement Awards shall be determined as follows:

- i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of weeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member’s total workweeks worked as a non-exempt employees during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period. *See* Settlement, ¶ 6.B.i.
- ii. PAGA Amount: Five Thousand Five Hundred Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099. *See* Settlement, ¶ 6.C.

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: 67% as penalties and interest; and 33% as wages. Settlement, ¶ 6.E.

Defendant will pay the employer’s share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. *See* Burns Decl., ¶ 15.

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1 **C. Summary of Notice Process**

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

3 On December 19, 2023, Defendant provided Phoenix with data files containing the names, last
4 known addresses, phone numbers, social security numbers, the dates of employment during the Class
5 Period, the number of workweeks worked by each Settlement Class member while employed during the
6 Class Period, and the number of workweeks worked by each PAGA Employee during the PAGA Period.
7 Burns Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Notice Packet
8 to the 154 Settlement Class Members on January 4, 2024 in English and Spanish. *Id.* at ¶4. Following
9 the initial mailing, 12 Notice Packets was returned to Phoenix by the Post Office. *Id.* at ¶ 6. After
10 Phoenix performed a Skip Trace, 12 Notice Packets were re-mailed. *Id.* As of the date of filing this final
11 approval motion, 3 Notice Packets remain undeliverable because no forwarding address was provided
12 and/or no new address could be located through Skip Trace. *Id.*

13 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
14 disputes was March 4, 2024. Burns Decl., ¶ 8. As of the date of this filing, there were no objections, no
15 disputes, and only 9 opt-outs. *Id.* at ¶¶ 13-15. Accordingly, as of the date of this Motion, the participation
16 rate amongst the Settlement Class Members is 94.16% and the average estimated payment is \$1,837.69,
17 with the highest estimated payment to a Settlement Class Member being \$6,644.88, and the lowest
18 estimated payment to a Settlement Class Member being \$24.79. *Id.* at ¶¶ 13-19.

19 **D. Timing of Payments**

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

1 After disbursement, Settlement Class Members will have 180 days to cash their checks. *See*
2 Settlement ¶ 5.E. Funds remaining unclaimed will be distributed to the California State Controller's
3 Office – Unclaimed Property Fund in the name of the Settlement Class Member. *Id.*; Lidman Decl., ¶28.

4 **E. Notice of Judgment**

5 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class
6 members, the final judgment entered by the Court and any changes to the Final Approval hearing date or
7 location will be posted on the Settlement Administrator's website at [jara-v-reid-](http://jara-v-reid-products.phoenixcases.com)
8 products.phoenixcases.com. *See* Yami Decl., ¶6, Exh A.

9 **IV. ARGUMENT**

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

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

18 Here, this Court found that the Class meets all the requirements for class certification for
19 settlement purposes when it granted preliminary approval of the Settlement on November 29, 2023. *See*
20 Lidman Decl., ¶ 26; Exh. A. After the Court entered an order granting preliminary approval, no events
21 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
22 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement
23 Class Members have objected to any portion of the Settlement. *See* Burns Decl., ¶¶ 9-11. This Court
24 should therefore confirm its conditional certification of the Settlement Class.

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

26 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
27 *Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a
28 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*

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

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

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

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

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

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

6 As detailed in Plaintiff's Preliminary Approval Motion, there is significant risk of non-
7 certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example,
8 with respect to Plaintiff's unlawful rounding claims, Reid Products contends that it compensated
9 Settlement Class members for all of their time worked, that its rounding practices were lawful, and any
10 unpaid time was *de minimis* and therefore non-compensable. Lidman Decl., ¶ 12. Reid Products
11 contends it began paying to the minute started in June 2022. Reid Products further asserts that Plaintiff
12 would be unable to certify a rounding class given the individualized inquiries that would be required, and
13 also that Reid Products rounding mechanism was, according to it, allegedly facially neutral. Reid
14 Products contends the COVID-19 screenings occurred after the employees clocked in and were therefore
15 paid for this time, which was *de minimis*. Further, Reid Products contends that Plaintiff's assessment of
16 the claim at the overtime rate is inflated and incorrect. *Id.*

17 As for Plaintiff's meal period claims, Reid Products counters that it has always provided non-
18 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
19 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
20 than any policy or practice of Reid Products. Lidman Decl., ¶ 14. Reid Products also points out that
21 under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to
22 "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have
23 always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Reid Products also
24 contends that because its production stops during meal periods, it does not have to keep track of meal
25 periods. Reid Products contends there are no second meal period violations because the employee signed
26 valid second meal period waivers. Finally, Reid Products contends Plaintiff's meal period claim is not
27 suited for class certification and individual inquiries would be required to assess which employees took
28 non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons

1 why a particular employee took a non-compliant meal period or missed a meal period during a particular
2 shift. *Id.*

3 As for Plaintiff’s rest period claims, Reid Products contends it has always maintained and
4 enforced lawful rest period policies and practices, and that Settlement Class Members were authorized
5 and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 16.
6 Reid Products argues that Plaintiff’s rest period claims are inherently unsuited for class treatment as it
7 requires an individualized inquiry into whether each Settlement Class member was in fact authorized and
8 permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-
9 trials. *Id.*

10 As for Plaintiff’s claim for wage statement penalties, Reid Products argued that meal and rest
11 period claims could not support a claim for wage statement penalties. Reid Products further argues that
12 its alleged wage statement violations could not be shown to be “knowing and intentional,” and that
13 Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a result of the alleged wage
14 statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 18.

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

21 Lastly, since Plaintiff’s PAGA claim is a derivative claim based on the underlying claims, Reid
22 Products argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims will
23 fail. Nguyen Decl., ¶ 22. Reid Products also maintains that, given its good faith defenses, this Court
24 would exercise its discretion to substantially reduce any PAGA penalties if it were to find Reid Products
25 liable for any of Plaintiff’s claims. *Id.*

26 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also
27 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
28 litigation. Lidman Decl., ¶ 23. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted

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

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

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

3. *The 94.16% Participation Rate and Absence of Any Objections Further Confirms That the Settlement is Fair, Adequate, and Reasonable*

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a fairness presumption. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, as of the filing of this Motion, not a single Settlement Class Member has objected to the Settlement and 9 Settlement Class Members have elected to opt-out of the Settlement. In addition, 0 of the 154 Notice Packets were returned undeliverable. Burns Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

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

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

1 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,
2 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

3 Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman Decl.,
4 ¶ 38.

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

8 The recognized advantages of the percentage method—including relative ease of calculation,
9 alignment of incentives between counsel and the class, a better approximation of market
10 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.

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

24 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools
25 such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar (hours
26 worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed to bring the
27 lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may
28 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
2 the 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 \$158,333.33 (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., ¶ 27. 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 **\$165,372.50** which is 1.04 times more than the \$158,333.33 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. 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 25th year attorney is \$997, the hourly rate for a 16th and 17th year attorney is \$829, and the hourly rate for a 7th year attorney is \$508. *Id.*

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (25th Year Attorney)	\$900	55.2	\$49,680.00
Elizabeth Nguyen (17th Year Attorney)	\$800	71.1	\$56,880.00
Paul K. Haines (16th Year Attorney)	\$800	14.8	\$11,840.00
Milan Moore (7th Year Attorney)	\$650	68.9	\$44,785.00
Paralegals	\$175	12.5	\$2,187.50
Total Lodestar			\$165,372.50

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

1 current participation rate of 94.16%, and not a single Settlement Class Member has objected to the
2 Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Burns Decl., ¶¶ 9-11.
3 Additionally, the *average* settlement payment in this case of approximately \$1,837.69 is in line with, and
4 above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v.*
5 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action
6 settlement approved where average class member recovery was approximately \$60); *Schiller v. David's*
7 *Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that
8 average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*,
9 Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting
10 final approval of class action settlement where average recovery for each class member was
11 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted
12 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the
13 strength of the results achieved.

14 As discussed above, this case presented significant risk as to both class certification and merits
15 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
16 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
17 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
18 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
19 compensation for over two years. Lidman Decl., ¶ 31. During this time, Class Counsel have expended a
20 total of \$11,352.17 in actual costs and have devoted substantial time to this litigation and expect to incur
21 approximately \$350.00 in future costs for filing the instant motion, filing the final declaration regarding
22 distribution of settlement, service and messenger fees, postage fees, and/or court costs for future court
23 appearances.² Lidman Decl., ¶ 31; Exh. B. Class Counsel's efforts have included conducting pre-filing
24 investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's documents
25 and policies, analyzing Settlement Class Members' timekeeping data and payroll records, preparing for
26 and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and
27

28

2 This includes total costs incurred by both law firms.

1 otherwise litigating the case. *See* Lidman Decl., ¶ 30. Moreover, Class Counsel have expended time,
2 effort, and money that they could have expended on less risky cases instead. Given the considerable
3 potential for adverse outcomes in this case, including, but not limited to losing on class certification
4 and/or merits issues, the contingent risk borne by Class Counsel was great. Lidman Decl., ¶¶ 28-31.

5 Class Counsel’s previous experience in litigating wage and hour class actions also supports the
6 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
7 hour class action litigation, with substantial experience litigating claims for meal and rest period
8 violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration of Paul K. Haines (“Haines
9 Decl.”), ¶¶ 3-8. They have been certified as class counsel in numerous other cases. *Id.* Their experience
10 in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendants
11 and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 30. Practice in the narrow field of wage
12 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and
13 federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to
14 compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-
15 third of the Gross Settlement Amount is reasonable.

16 Other factors also show that the fee amount requested in this case is reasonable under the
17 circumstances. This case involved nuanced legal issues including questions surrounding Defendant’s
18 requirement to “provide” meal periods and “authorize and permit” rest periods, and the propriety of
19 statutory penalties, to name just a few. Lidman Decl., ¶¶ 11-22. Thus, Class Counsel’s requested fee
20 award is fair, reasonable, and adequate and should be approved.

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

23 Class Counsel seek to be reimbursed a total of \$11,702.17³ in litigation costs. Class Counsel’s
24 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
25 *See* Lidman Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
26 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover

27 ³ Class Counsel have expended a total of \$11,352.17 in actual costs and anticipates incurring costs in the amount
28 of \$350.00 for filing fees, service and messenger fees, and/or postage fees. This is substantially less than the
\$20,000.00 costs cap included in the settlement agreement.

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

E. The Court Should Finally Approve the Requested Administration Costs

Plaintiff also requests that the Court approve \$8,500.00 in administration costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Yami Burns on Behalf of Phoenix submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class Member’s individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 154 Settlement Class Members in English and Spanish, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Yami Decl., ¶¶ 2-16. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be finally approved.

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

Courts routinely approve service payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 service payment). In analyzing the requested service payment, courts consider the following factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the 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)
4 175 Cal.App.4th 785, 804.

5 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
6 \$10,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook
7 on behalf of Settlement Class Members. Lidman Decl., ¶ 39; Declaration of Luis Manuel Jara ("Jara
8 Decl."), ¶¶ 6-11. 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; Jara Decl., ¶¶ 6-10. The class has benefited from Plaintiff's actions
11 as the average settlement amount is \$1,837.69.

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. Jara Decl., ¶ 8. Plaintiff also understood
14 the risk that he could be liable for Defendant's costs if he lost the case. *Id.* at ¶ 7. Plaintiff accepted these
15 risks and burdens because he wanted Defendants to compensate their current and former employees for
16 unpaid wages. *Id.* at ¶¶ 7-8. Plaintiff estimates he spent between 8-10 hours on activities related to this
17 case. *Id.* at ¶ 10.

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 Defendants
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* Settlement ¶ 3.E.

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

26 //

27 //

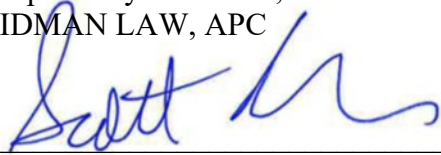
28 //

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: April 8, 2024

Respectfully submitted,
LIDMAN LAW, APC

7
8 By: 

Scott M. Lidman
Attorney for Plaintiff
LUIS MANUEL JARA