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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ARTURO RODRIGUEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

GREEN SET, INC., a California limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

Case No. 21STCV30141

*[Assigned for all purposes to the Hon. Carolyn B.
Kuhl, SSC-12]*

**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: January 18, 2023
Time: 10:30 a.m.
Dept.: SSC-12

Action filed: August 16, 2021
Trial Date: None set

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

3 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on January
4 18, 2023 at 10:30 a.m. in Department SSC-12 of the above-entitled Court, located at 312 N. Spring Street,
5 Los Angeles, California 90012, Plaintiff Arturo Rodriguez (“Plaintiff”), individually and on behalf of a
6 class of similarly situated individuals, will and hereby does move this Court for:

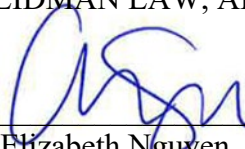
- 7 1. Confirming the certification of the Settlement Class for settlement purposes under Section 382
8 of the California Code of Civil Procedure;
- 9 2. Confirming the appointment of Plaintiff Arturo Rodriguez as Class Representative for
10 settlement purposes;
- 11 3. Confirming the appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
12 Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for
13 settlement purposes;
- 14 4. Granting final approval of the Stipulation of Settlement (herein “Settlement”);
- 15 5. Approving an award of \$150,000.00 in attorneys’ fees to Class Counsel;
- 16 6. Approving an award of \$14,443.63 in costs to Class Counsel;
- 17 7. Approving an award of \$4,900.00 in costs to Simpluris, Inc. for its settlement administration
18 services;
- 19 8. Approving an incentive payment of \$5,000.00 to Plaintiff Arturo Rodriguez for his services as
20 Class Representative;
- 21 9. Approving an award of \$15,000.00 to the Labor & Workforce Development Agency
22 (“LWDA”); and
- 23 10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action
24 Settlement and Final Judgment filed concurrently herewith.

25 This Motion is based on this notice of motion, the attached memorandum of points and authorities
26 attached hereto, the declarations of Scott M. Lidman, Elizabeth Nguyen, Paul K. Haines, Milan Moore,
27
28

1 Plaintiff Arturo Rodriguez,¹ and Evelin Reyes of Simpluris, Inc., and the exhibits attached thereto, the
2 pleadings and other papers filed in this action, and on any further oral or documentary evidence or
3 argument presented at the time of hearing.

4
5 Dated: December 21, 2022

Respectfully submitted,
LIDMAN LAW, APC

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7 By: 

Elizabeth Nguyen
Attorney for Plaintiff
ARTURO RODRIGUEZ

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¹ The declaration of Plaintiff Arturo Rodriguez was originally filed with this Court on July 25, 2022 in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Arturo Rodriguez (“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 Green Set, Inc. (hereinafter “Green Set” or “Defendant”). the Settlement Class is defined as: all current
6 and former non-exempt, hourly employees of Defendant Green Set, Inc. who worked in California at any
7 time between August 16, 2017 and August 23, 2022.

8 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
9 Member is approximately \$1,194.66. 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 August 23, 2022, 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 August 16, 2021, Plaintiff filed a putative class action complaint against Green Set in Los
24 Angeles County Superior Court. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. On April
25 29, 2022, in connection with the Parties’ settlement, Plaintiff submitted a letter to the California Labor
26 & Workforce Development Agency (“LWDA”) and Green Set of his intention of filing a PAGA claim
27 based on the labor code violations as alleged in his complaint. *Id.* Therefore, on July 25, 2022, after
28 exhausting his administrative remedies, Plaintiff filed a First Amended Class Complaint adding causes

of action for: (i) failure to provide accurate, itemized wage statements and (ii) civil penalties under the PAGA. In the FAC, Plaintiff's primary allegations are that Green Set: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum 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 pay all final wages upon separation of employment; (6) failed to provide accurate itemized wage statements; (7) engaged in unlawful business practices; and (8) liable for civil penalties under 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. Nguyen Decl., ¶¶ 11-22. Specifically, Plaintiff alleges that he and Settlement Class members were not fully compensated for all of their time worked. *Id.* at ¶ 11. Plaintiff alleges Green Set would keep track of his hours and the hours of the other non-exempt employees, and 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 Green Set was not-even handed over time and would almost exclusively round and shave in Green Set's favor such that the employees were routinely underpaid for their time worked. *Id.*

Plaintiff alleges that he and Settlement Class members were not provided with all legally-compliant first meal periods beginning before the end of the sixth hour of work. Nguyen Decl., ¶ 13. Specifically, Specifically, due to the work demands imposed by Green Set, Plaintiff alleges that in approximately 19% of the meal-enabling shifts, there was either a late, short, or missed meal period. *Id.*

Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to Green Set's rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Nguyen Decl., ¶ 15. Specifically, Plaintiff alleges that Green Set failed to authorize and permit Plaintiff and other non-exempt employees to take second rest period when they worked shifts in excess of 6.0 hours. *Id.*

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”). Nguyen Decl., ¶¶ 17-22.

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

B. Mediation and Settlement

After agreeing to participate in early mediation, Green Set informally produced time records and payroll data for a sampling of the putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged in advance of mediation. Nguyen Decl., ¶ 24. After the detailed review of the payroll and time records and other documents and policies produced by Green Set, 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 Green Set’s defenses thereto, if a settlement could not be reached. *Id.*

On April 18, 2022, after extensive research and analysis, a mediation was held with Jeffrey Krivis, a well-respected wage and hour class action mediator. Nguyen 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. *Id.* Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Settlement (“Settlement”). *Id.*

C. Preliminary Approval of Settlement

Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary Approval on July 25, 2022. Nguyen Decl., ¶ 26. On August 23, 2022, the Court signed an Order Granting Preliminary Approval of the Settlement. *Id.*; Exh. A.

Plaintiff submitted the Settlement and the Court’s Order Granting Preliminary Approval of the Settlement to the LWDA via the LWDA’s website on July 25, 2022 and December 20, 2022, respectively. *See* Nguyen Decl., ¶ 40; Exhs. D and E. Plaintiff will also provide the LWDA with a copy of the instant motion for final approval and supporting documents after the instant motion is filed and

1 will file a supplemental proof of service prior to the hearing. Nguyen Decl., ¶ 42.

2 On September 26, 2022, the Settlement Administrator mailed the Court-approved Notice Packet
3 (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of
4 Individual Settlement Award) in English and Spanish to the 214 Settlement Class Members, who had
5 until November 28, 2022 to submit disputes, objections, and/or requests for exclusion. *See* Declaration
6 of Evelin Reyes of Simpluris, Inc. (“Reyes Decl.”), ¶ 8. As of the date of this filing, there have been **no**
7 **objections, no disputes, and no opt-outs** received. *Id.* at ¶¶ 13-15. Plaintiff now respectfully submits
8 the Settlement for this Court’s final approval.

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

10 **A. Settlement Class Definition**

11 The Settlement Class encompasses: All current and former non-exempt, hourly employees of
12 Defendant Green Set, Inc. who worked in California at any time between August 16, 2017 and August
13 23, 2022. Nguyen Decl., ¶ 27.

14 At preliminary approval on August 23, 2022, the Settlement Class was defined as: “all current and
15 former non-exempt, hourly employees of Defendant Green Set, Inc. who worked in California at any time
16 between August 16, 2017 and the date of preliminary approval, or the date on which the workweeks
17 worked by the Class Members reaches 17,602, whichever is earlier.”

18 After the preliminary approval was granted, the Settlement Administrator advised the total number
19 of workweeks worked is 17,229. Reyes Decl., ¶ 19. As a result, the Class Period closed on August 23,
20 2022 (the date on which the Court granted preliminary approval). Therefore, the Settlement Class is
21 defined as: all current and former non-exempt, hourly employees of Defendant Green Set, Inc. who
22 worked in California at any time between August 16, 2017 and August 23, 2022.

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

24 The Settlement provides for Defendant to pay a Gross Settlement Amount of Four Hundred Fifty
25 Thousand Dollars and Zero Cents (\$450,000.00). Reyes Decl., ¶ 16. The Net Settlement Amount is the
26 amount remaining from the Gross Settlement Amount after deducting requested attorneys’ fees
27 (\$150,000.00) and verified costs (\$14,443.63), proposed Class Representative Service Award to Plaintiff
28 (\$5,000.00), Settlement Administration costs (\$4,900.00), and PAGA payment (\$20,000.00). *Id.* Based

on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$255,656.37**.
Id.

The Net Settlement Amount, shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period. Settlement, ¶ 6.B.i.

The Settlement Administrator will also be responsible for calculating each PAGA Employee's share of the PAGA Settlement Amount, as follows: Five Thousand Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the 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 workweeks worked during the PAGA Period, and the denominator of which is the total number of workweeks worked by all PAGA Employees during the PAGA Period. Each PAGA Employee will be issued a check for their share of the PAGA Amount regardless of whether they submit a valid Request for Exclusion from the Settlement. Settlement, ¶ 6.B.ii.

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: 75% as penalties and interest; and 25% as wages. Settlement, ¶ 6.D.

Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. *See* Reyes Decl., ¶ 18.

C. Summary of Notice Process

1. Mailing of Notice Packets

On September 13, 2022, Defendant provided Simpluris with data files containing the names, last known addresses, phone numbers, social security numbers, positions held, the dates of employment during the Class Period, the number of workweeks worked by each Settlement Class member while employed during the Class Period, and the number of workweeks worked by each PAGA Employee

1 during the PAGA Period. Reyes Decl., ¶ 4. After performing address updates and verifications,
2 Simpluris mailed the Notice Packet to the 214 Settlement Class Members on September 26, 2022 in
3 English and Spanish. *Id.* at ¶ 8. Following the initial mailing, 5 Notice Packets was returned to Simpluris
4 by the Post Office. *Id.* at ¶ 9. After Simpluris performed a Skip Trace, 2 Notice Packets were re-mailed.
5 *Id.* As of the date of filing this final approval motion, 3 Notice Packets remain undeliverable because no
6 forwarding address was provided and/or no new address could be located through Skip Trace. *Id.*

7 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
8 disputes was November 28, 2022. Reyes Decl., ¶ 8. As of the date of this filing, there were no objections,
9 no disputes, and no opt-outs. *Id.* at ¶¶ 13-15. Accordingly, as of the date of this Motion, the participation
10 rate amongst the Settlement Class Members is 100% and the average estimated payment is \$1,194.66,
11 with the highest estimated payment to a Settlement Class Member being \$3,902.58, the lowest estimated
12 payment to a Settlement Class Member being \$14.84, and the median amount being is \$378.39. *Id.* at
13 ¶¶ 13-19.

14 **D. Timing of Payments**

15 The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set
16 up by the Settlement Administrator for the benefit of participating Settlement Class Members. Defendant
17 agrees to deposit the Gross Settlement Amount and the employer's (Defendant's) share of payroll taxes
18 with the Settlement Administrator the later of February 15, 2023 or within thirty (30) calendar days of the
19 "Effective Date". *See* Settlement, ¶ 5.B.

20 After disbursement, Settlement Class Members will have 180 days to cash their checks. *See*
21 Settlement ¶ 6.E. Funds remaining unclaimed will be distributed to the California State Controller's Office
22 – Unclaimed Property Fund in the name of the Settlement Class Member. *Id.*; Nguyen Decl., ¶ 28.

23 **E. Notice of Judgment**

24 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class
25 members, the final judgment entered by the Court and any changes to the Final Approval hearing date or
26 location will be posted on the Settlement Administrator's website at [www.Simpluris.com/Case-](http://www.Simpluris.com/Case-Information)
27 Information. *See* Reyes Decl., ¶6, Exh A.
28

1 **IV. ARGUMENT**

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

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

11 Here, this Court found that the Class meets all the requirements for class certification for
12 settlement purposes when it granted preliminary approval of the Settlement on August 23, 2022. *See*
13 *Nguyen Decl.*, ¶ 26; Exh. A. After the Court entered an order granting preliminary approval, no events
14 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
15 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement
16 Class Members have objected to any portion of the Settlement and no Settlement Class Member has
17 elected to opt-out of the Settlement. *See Reyes Decl.*, ¶¶ 13-15. This Court should therefore confirm its
18 conditional certification of the Settlement Class.

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

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

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

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

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

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

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

1 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
2 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect
3 to Plaintiff’s unlawful rounding claims, Green Set contends that it compensated Settlement Class members
4 for all of their time worked. Nguyen Decl., ¶ 12. Green Set also contends that its rounding practices were
5 lawful, and any unpaid time was *de minimis* and therefore non-compensable. *Id.* Green Set also contends
6 that Plaintiff and the other non-exempt employees are subject to a Collective Bargaining Agreement
7 (“CBA”) and Green Set paid its employees in compliance with the CBA. Green Set further asserts that
8 Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be
9 required, and also that Green Set rounding mechanism was, according to it, allegedly facially neutral.
10 Further, Green Set contends that Plaintiff’s assessment of the claim at the overtime rate is incorrect. *Id.*

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

23 As for Plaintiff’s rest period claims, Green Set contends it has always maintained and enforced
24 lawful rest period policies and practices, and that Settlement Class Members were authorized and
25 permitted to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 16. Further,
26 Green Set argues that Plaintiff’s rest period claim is inherently unsuited for class treatment as it requires
27 an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted
28 to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.*

1 As for Plaintiff’s claim for wage statement penalties, Green Set argues that meal and rest period
2 claims cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services,*
3 *Inc.* (2019) 40 Cal. App. 5th 444, *review granted*² and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53
4 Cal.4th 1244 (*see, e.g., Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012)
5 2012 WL 3264081 at **8-9). Green Set further argues that its alleged wage statement violations could
6 not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee
7 “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e)
8 for imposition of penalties. Nguyen Decl., ¶ 18.

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

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

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

26
27
28 ² The California Supreme Court issued its decision in *Naranjo v. Spectrum Security Services, Inc.*, No. S258966,
on May 23, 2022, after the Parties settled this matter.

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 Individual settlement payments will be calculated based on the number of workweeks worked by
5 each Settlement Class Member during the Class Period. *See* Settlement, ¶ 6.B. This method of
6 distribution compensates Settlement Class Members based on the estimated extent of their injuries, as
7 Settlement Class Members who worked more workweeks, would have been subject to more of the alleged
8 wage and hour violations than those who worked fewer weeks. Thus, the formula for compensating
9 Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties
10 that could be recovered by them.

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

13 Class members' response to a settlement is relevant in evaluating whether it merits final approval.
14 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
15 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
16 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
17 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion,
18 not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member
19 have elected to opt-out of the Settlement. In addition, only 3 of the 214 Notice Packets were returned
20 undeliverable. Reyes Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further
21 confirms that the Settlement is fair, adequate, and reasonable.

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

24 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
25 their attorneys' fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
26 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
27 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
28 *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).

1 Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen Decl.,
2 ¶ 38.

3 The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506
4 (2016), that "[t]he percentage of fund method survives in California class action cases." Specifically, the
5 *Laffitte* Court held:

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

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

25 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools
26 such as the "lodestar cross-check," whereby the trial court calculates class counsel's lodestar (hours
27 worked multiplied by hourly rate) and determines whether the "lodestar multiplier" needed to bring the
28 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
discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the

1 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
2 requested percentage fee.”)

3 Here, Class Counsel’s fee request of \$150,000.00 (one-third of the Gross Settlement Amount) is
4 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
5 “regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
6 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
7 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
8 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
9 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
10 class actions…”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
11 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
12 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
13 in similar wage and hour class action matters. *See* Nguyen Decl., ¶ 29. Thus, the percentage sought by
14 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

23 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
24 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
25 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
26 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
27 class actions such as this one, where the value of the benefit conferred to the class “can be monetized
28 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 **\$179,625** which more than the \$150,000.00 fee request. *See* Nguyen 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. Nguyen Decl., ¶ 35, Exh. C. Based on the *Laffey* Matrix, the hourly rate for a 23rd year attorney is \$914, the hourly rate for a 16th year attorney is \$759, and the hourly rate for a 6th year attorney is \$465. *Id.*

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (24th Year Attorney)	\$750	53.3	\$39,975
Elizabeth Nguyen (16th Year Attorney)	\$650	98.1	\$63,765
Paul K. Haines (15th Year Attorney)	\$675	18.9	\$12,757.50
Milan Moore (6th Year Attorney)	\$450	107.5	\$48,375
Paralegals	\$175	84.3	\$14,752.50
Total Lodestar			\$179,625

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* Reyes Decl., ¶¶ 13-15.

1 Additionally, the *average* settlement payment in this case of approximately \$1,194.66 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 one year. Nguyen Decl., ¶ 31. During this time, Class Counsel have expended a
18 total of \$12,443.63 in actual costs and have devoted substantial time to this litigation and expect to incur
19 approximately \$2,000.00 in future costs for filing the instant motion, filing the final declaration regarding
20 distribution of settlement, Case Anywhere fees for approximately seven quarters following final approval
21 until case closure which alone is estimated to be \$1,806, service and messenger fees, postage fees, and/or
22 court costs for future court appearances.³ Nguyen Decl., ¶ 31; Exh. B. Class Counsel’s efforts have
23 included conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research,
24 reviewing Defendant’s documents and policies, analyzing Settlement Class Members’ timekeeping data
25 and payroll records, preparing for and attending mediation, negotiating and revising the long-form
26 Settlement Agreement, preparing the Motions for Preliminary and Final Approval, overseeing the
27

28 ³ This includes total costs incurred by both law firms.

1 settlement administration process, communicating with Settlement Class Members, and otherwise
2 litigating this case. *See* Nguyen Decl., ¶ 30. Moreover, Class Counsel have expended time, effort, and
3 money that they could have expended on less risky cases instead. Given the considerable potential for
4 adverse outcomes in this case, including, but not limited to losing on class certification and/or merits
5 issues, the contingent risk borne by Class Counsel was great. Nguyen Decl., ¶¶ 30-33.

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

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

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

24 Class Counsel seek to be reimbursed a total of \$14,443.63⁴ in litigation costs. Class Counsel’s
25 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
26 *See* Nguyen Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely

27
28 ⁴ Class Counsel have expended a total of \$12,443.63 in actual costs and anticipates incurring costs in the amount
of \$2,000 for filing fees, Case Anywhere fees for seven quarters, service and messenger fees, and/or postage fees..

approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “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 \$4,900.00 in administration costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Evelin Reyes on Behalf of Simpluris, Inc. submitted herewith, Simpluris performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Simpluris 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 214 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 Reyes Decl.*, ¶¶ 2-20. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be finally approved.

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

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

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

6 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
7 \$5,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook
8 on behalf of Settlement Class Members. Nguyen Decl., ¶ 39; Declaration of Arturo Rodriguez
9 ("Rodriguez Decl."), ¶¶ 6-11. Plaintiff gathered documents for use in the lawsuit, and worked with Class
10 Counsel on the case, including preparing for mediation and discussing the case, the merits, the defenses,
11 and settlement. *See* Nguyen Decl., ¶ 39; Rodriguez Decl., ¶¶ 6-10. The class has benefited from
12 Plaintiff's actions as the average settlement amount is \$1,194.66.

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

19 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
20 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendants
21 and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving
22 all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Settlement ¶ 4.F.

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* Reyes
25 Decl., ¶ 15. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and
26 should be finally approved.

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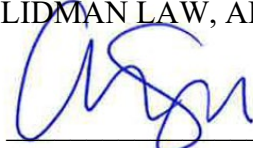
1 **V. CONCLUSION**

2 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: December 21, 2022

Respectfully submitted,
LIDMAN LAW, APC

7
8 By:



Elizabeth Nguyen
Attorney for Plaintiff
ARTURO RODRIGUEZ