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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHRISTINA WILLIAMS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

AVALONBAY COMMUNITIES, INC., a
Maryland corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 22STCV14614

*[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: May 8, 2024
Time: 10:30 a.m.
Dept.: SSC-12

Action filed: May 2, 2022
Trial Date: None set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 8, 2024 at 10:30 a.m. in Department SSC-12 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Christina Williams (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Christina Williams as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman, and Milan Moore of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Class Action and PAGA Settlement Agreement and Class Notice (herein “Settlement”);
5. Approving an award of \$361,666.66 in attorneys’ fees to Class Counsel;
6. Approving an award of \$8,174.16 in costs to Class Counsel;
7. Approving an award of \$21,000.00 in costs to Phoenix Class Action Administration Solutions for its settlement administration services;
8. Approving an incentive payment of \$5,000.00 to Plaintiff Christina Williams for her services as Class Representative;
9. Approving an award of \$81,375.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is based on this notice of motion, the attached memorandum of points and authorities attached hereto, the declarations of Scott M. Lidman, Paul K. Haines, Milan Moore, Plaintiff Christina Williams,¹ and Taylor Mitzner of Phoenix Class Action Administration Solutions, and the exhibits

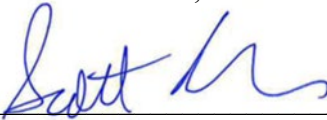
¹ The declaration of Plaintiff was originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed her declaration with the instant Motion.

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

3
4 Dated: April 16, 2024

Respectfully submitted,
LIDMAN LAW, APC

5
6 By:



7 Scott M. Lidman
8 Attorney for Plaintiff
9 CHRISTINA WILLIAMS
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Christina Williams (“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 AvalonBay Communities, Inc. (hereinafter “AvalonBay” or “Defendant”). The Settlement Class is
6 defined as: all current and former non-exempt, hourly employees of AvalonBay who worked in California
7 at any time during the Class Period. Class Period means the period between May 2, 2018 and July 22,
8 2023.

9 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
10 Member is approximately \$277.56. 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 December 12, 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, zero (0) Settlement Class Members have opted-out and no one
15 submitted a written objection to the Settlement.

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 May 2, 2022, Plaintiff filed a putative class action against AvalonBay in this Court captioned
26 *Christina Williams v. AvalonBay Communities, Inc.*, Case No. 22STCV14614. See Declaration of Scott
27 M. Lidman (“Lidman Decl.”), ¶ 10. On May 2, 2022, pursuant to California Labor Code § 2699.3(a),
28 Plaintiff gave written notice to AvalonBay and the LWDA by sending the PAGA Notice. *Id.* On June 8,

2022, AvalonBay filed a Notice of Removal under the Class Action Fairness Act of 2005 to the Central District of California of United States District Court, Case No. 22-CV-03933 (“Federal Action”). *Id.* On October 5, 2022, Plaintiff filed a First Amended Complaint in the Federal Action alleging the following putative class action and representative claim against AvalonBay: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate, itemized wage statements; (7) failure to timely pay all wages due upon separation; (8) unfair competition under California Business & Professions Code §§ 17200 *et seq.*; and (9) civil penalties under California Private Attorneys General Act of 2004. *Id.*

On April 10, 2023, pursuant to the Parties’ joint stipulation the District Court remanded the action back to State Court. *Id.*

Further, in connection with the effectuating the terms of the settlement, the Parties submitted a stipulation seeking leave from the Court to file a Second Amended Complaint concurrently herewith. Thus, Plaintiff’s primary allegations are that AvalonBay: (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 reimburse necessary business expenses; (6) failed to provide accurate, itemized wage statements; (7) failed to timely pay all wages upon separation of employment; (8) engaged in unlawful business practices; (9) liable for civil penalties under PAGA; and (10) failed to pay sick pay wages at the correct rate of pay. *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. Specifically, Plaintiff alleges that she and Settlement Class members were not provided with all legally-compliant first meal periods beginning before the end of the sixth hour of work. *Id.* Specifically, due to the work demands imposed by AvalonBay, Plaintiff alleges that the meal periods were either late, short, or missed. *Id.* Based on Plaintiff’s review of the time data produced in connection with mediation, AvalonBay’s violation rate for first meal periods was approximately 17.6% and 81% for second meal

1 periods. *Id.*

2 Plaintiff alleges that she and Settlement Class members were also not authorized and permitted
3 to take all required rest periods due to AvalonBay's rest period policies and practices that fail to authorize
4 and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 13.
5 Specifically, Plaintiff alleges that due to work demands imposed by AvalonBay, it failed to authorize and
6 permit Plaintiff and other non-exempt employees to take compliant rest periods when they worked shifts
7 in excess of 3.5 hours. *Id.*

8 Plaintiff alleges that AvalonBay failed to reimburse her and Settlement Class members for
9 necessary business expenditures, including the use of their personal cellular phones for work activities,
10 as required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.* (2014) 228
11 Cal.App.4th 1137. Lidman Decl., ¶ 15. Plaintiff contends that AvalonBay required its non-exempt
12 employees to use their personal cellular phones and/or computers with internet access for work-related
13 purposes to complete the daily COVID-19 screening survey but AvalonBay did not reimburse the
14 putative class members for the cell phones and/or the data usage. *Id.* Based on the sample, approximately
15 97% of the putative class members did not receive a cell phone stipend. *Id.*

16 Plaintiff alleges that Defendant failed to compensate its non-exempt employees for all time
17 worked. Lidman Decl., ¶ 17. Specifically, during the most recent portion of Plaintiff's employment with
18 Defendant, starting in March 2020, Defendant required Plaintiff and other non-exempt employees to be
19 subjected to screening questionnaires due to the COVID-19 pandemic using their personal cellular
20 phones before commencing their shift. *Id.* Despite being under Defendant's direction and control,
21 Defendant failed to compensate its non-exempt employees for such time. As a result, Defendant failed
22 to pay Plaintiff and other non-exempt employees for all minimum and overtime wages owed.

23 Plaintiff alleges that at times during her employment with AvalonBay, she and other Settlement
24 Class Members were paid non-discretionary bonuses, (hereinafter the aforementioned forms of pay are
25 collectively referred to as "Incentive Pay"). Lidman Decl., ¶ 19. Plaintiff alleges that AvalonBay failed,
26 however, to include the Incentive Pay when calculating the regular rate of pay for purposes of paying
27 Plaintiff and the other Settlement Class Members' overtime wages. *Id.* Accordingly, Plaintiff contends
28 that AvalonBay did not properly calculate the regular rate of pay for Plaintiff and the other Settlement

1 Class Members, thereby causing them to be underpaid for all their required overtime wages. *Id.*

2 Plaintiff alleges that AvalonBay is also liable for failing to pay sick pay and meal period premiums
3 at the regular rate. Lidman Decl., ¶ 21. From the data produced, it appears AvalonBay paid 3,199 meal
4 period premiums during the relevant time. However, the meal period premiums were paid at the base
5 rate of pay and not at the regular rate of pay. *See Jessica Ferra v. Loews Hollywood Hotel, LLC* (2019)
6 40 Cal.App.5th 1239, 1252 (The Court held that "regular rate of compensation" under Cal. Lab. Code
7 226.7(c), like "regular rate of pay" under Cal. Lab. Code 510(a), encompasses all nondiscretionary
8 payments, such that the calculation of premium pay for a noncompliant meal, rest, or recovery period,
9 like the calculation of overtime pay, must account for not only hourly wages but also for nondiscretionary
10 payments for work performed by the employee.) Therefore, AvalonBay's liability is not extinguished
11 because it failed to meal period premiums at the correct regular rate of pay, which should have included
12 non-discretionary bonuses in the calculation. *Id.* Further, Labor Code section 246(l) states that "... paid
13 sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
14 the workweek in which the employee uses paid sick time, whether or not the employee actually works
15 overtime in that workweek." Here, Plaintiff alleges that AvalonBay failed to pay Plaintiff and other
16 former non-exempt employees their sick pay in a manner that fully complies with Labor Code section
17 246(l) as the bonuses were not included in the rate of pay.

18 As a result of the alleged unpaid wages and unpaid meal period and rest period premium wages
19 described above, Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor
20 Code § 226, failed to pay all wages to Settlement Class Members upon their separation of employment,
21 and is thus liable for civil penalties under the Labor Code Private Attorney General Act ("PAGA"). *See*
22 Lidman Decl., ¶¶ 23-27.

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

26 **B. Mediation and Settlement**

27 The Parties exchanged Initial Disclosures and Defendant served discovery responses the Plaintiff's
28 Interrogatories and Requests for Production of Documents as well a document production in the Federal

1 Action. Shortly thereafter, the Parties agreed to participate in early mediation and AvalonBay produced
2 additional documents relating to its policies, practices, and procedures regarding its wage and hour
3 practices, paying non-exempt employees for all hours worked, meal and rest period policies, meal
4 premiums paid, and other operational policies. As part of AvalonBay's production, Class Counsel represent
5 they also reviewed time records, pay records, and information relating to the size and scope of the Class,
6 as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the
7 Class Period and the PAGA Period. Lidman Decl., ¶ 30. Specifically, in connection with private
8 mediation, AvalonBay produced a 13% sampling of timekeeping and payroll data for the putative class.
9 *Id.* Plaintiff received a list of 1,945 unique Employee ID numbers. The Parties agreed that Plaintiff's
10 sample shall represent 13% of the total Employee ID numbers – 253 employees. *Id.* Using Excel's
11 "RAND" function which randomly generates a value between 0 and 1, each of the 1,945 Employee ID
12 numbers was randomly assigned such a value. After the random assignment, the list of Employee ID
13 numbers was sorted in ascending order according to the values randomly assigned. After the list was
14 sorted, Plaintiff selected the first 253 Employee ID numbers to represent the agreed upon 13% sampling.
15 *Id.*

16 In addition to the representative sampling, AvalonBay produced key data points and all relevant
17 written wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff was
18 provided with the following:

- 19 • Plaintiff's personnel files and timekeeping and payroll documents;
- 20 • Key data points, including total number of employees, workweeks, and pay periods during
21 the relevant time period;
- 22 • Exemplars of the wage statements provided during the relevant time period; and
- 23 • Job descriptions of the positions held by the putative class members.

24 This information coupled with the representative data sampling, enabled Plaintiff to extrapolate to
25 the entire class and aided in Plaintiff's creation of a class-wide exposure model for all the claims at issue,
26 including unpaid wages and penalties potentially owed. Therefore, after the detailed review of the payroll
27 and time records and other documents and policies produced by AvalonBay, Class Counsel drew on their
28 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 AvalonBay's defenses thereto, if a settlement could not be reached.

On January 12, 2023, after research and analysis, a mediation was held with Philip E. Cook, Esq., a well-respected wage and hour class action mediator. Lidman Decl., ¶ 31. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement"). *Id.*

C. Preliminary Approval of Settlement

Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary Approval on September 1, 2023. Lidman Decl., ¶ 32. On December 12, 2023, the Court granted 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 September 1, 2023 and December 12, 2023 respectively. *See* Lidman Decl., ¶ 46; 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 will file a supplemental proof of service prior to the hearing. *See* Lidman Decl., ¶ 47.

On January 16, 2024, Phoenix mailed the Notice via U.S. first class mail, in English and Spanish, to all 2,092 Settlement Class members on the Class List who had until March 18, 2024 to request for exclusion, objections, and/or submit disputes. *See* Declaration of Taylor Mitzner of Phoenix Class Action Administration Solutions. ("Mitzner Decl."), ¶¶ 5 and 8-11. As of the date of this filing, there have 0 requests for exclusion, no objections, and only 1 workweek dispute received. *Id.* at ¶¶ 8-11. Plaintiff now respectfully submits the Settlement for this Court's final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class encompasses: all current and former non-exempt, hourly employees of AvalonBay who worked in California at any time during the Class Period. Class Period means the period between May 2, 2018 and July 22, 2023. Lidman Decl., ¶ 33.

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

2 The Settlement provides for Defendant to pay a Gross Settlement Amount of 1,085,000.00. *See*
3 Mitzner Decl., ¶ 12. The Net Settlement Amount is the amount remaining from the Gross Settlement
4 Amount after deducting requested Class Counsel attorneys' fees (\$361,666.66), and Class Counsel costs
5 (\$8,174.16), requested Service Award to Plaintiff Christina Williams (\$5,000.00), the PAGA civil
6 penalties (\$108,500.00), and the requested Settlement Administration Costs (\$21,000.00). *Id.* Based on
7 these requested amounts, the Net Settlement Amount is calculated to be approximately **\$580,659.18**. *Id.*

8 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
9 number of Workweeks worked by all Participating Class Members during the Class Period, and (b)
10 multiplying the result by the total Workweeks worked by each Participating Class Member during the
11 Class Period. Settlement, ¶ 3.2.4.

12 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
13 the Aggrieved Employees' 25% share of PAGA Penalties (\$27,125) by the total number of PAGA Pay
14 Periods worked by all Aggrieved Employees, and (b) multiplying the result by the total PAGA Pay Periods
15 worked by each Aggrieved Employee. Each Aggrieved Employee assumes full responsibility and liability
16 for any taxes owed on his or her Individual PAGA Payment. Settlement, ¶ 3.2.5.1.

17 For purposes of calculating applicable taxes and withholdings, 30% of each Participating Class
18 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion").
19 The Wage Portions are subject to tax withholding and will be reported on IRS Form W-2. The remaining
20 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of
21 claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to
22 wage withholdings and will be reported on IRS Forms 1099. Each Participating Class Member assumes
23 full responsibility and liability for any employee taxes owed on his or her Individual Class Payment.
24 Settlement, ¶ 3.2.4.1.

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

27 //

28 //

1 **C. Summary of Notice Process**

2 **1. Mailing of Notice Packets**

3 On December 29, 2023, Defendant provided Phoenix with data files containing the names, last
4 known mailing addresses, Social Security numbers, and workweeks for each Class Member during the
5 Class Period. Mitzner Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the
6 Notice Packet to 2,092 Settlement Class Members on January 16, 2024 in English and Spanish. *Id.* at ¶
7 5. Following the initial mailing, 23 Class Notices were returned to Phoenix by the Post Office, and 2 were
8 re-mailed. *Id.* at ¶ 7. As of the date of filing this final approval motion, 21 Class Notices remain
9 undeliverable because no forwarding address was provided and/or no new address could be located
10 through Skip Trace. *Id.* at ¶ 8.

11 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
12 disputes was March 18, 2024. Mitzner Decl., ¶¶ 9-11. As of the date of this filing, there were no requests
13 for exclusion, no objections, and there was only 1 workweek dispute. *Id.* at ¶¶ 9-11. Accordingly, as of
14 the date of this Motion, the participation rate amongst the Settlement Class Members is 100% and the
15 average estimated payment is \$277.56, with the highest estimated payment to a Settlement Class Member
16 being \$826.57, the lowest estimated payment to a Settlement Class Member being \$6.03. *Id.* at ¶ 14.

17 **D. Timing of Payments**

18 AvalonBay shall fully fund the Gross Settlement Amount, including all amounts necessary to fully
19 pay AvalonBay's share of payroll taxes, by transmitting such funds to the Administrator within 30 days
20 after the Effective Date.²

21 After disbursement, Settlement Class Members will have at least 180 days to cash their checks.
22 *See* Lidman Decl., ¶ 34; Settlement ¶ 4.4.1. Funds remaining unclaimed will be distributed to the

23 _____
24 ² **“Effective Date”** means the earliest date by which both of the following have occurred: (a) the Court
25 enters a Judgment based on its Final Approval of the Settlement; and (b) the Judgment becomes “Final.”
26 “Final,” as used in the definition of Effective Date shall mean the latest of: (i) if there is an appeal of the
27 Court's judgment, the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the
28 expiration of the time to file a petition for certiorari in the United States Supreme Court petition or a
petition for review in the California Supreme Court, as applicable; or (ii) if such a petition is filed, the
date of denial of the petition, or the date the judgment is affirmed pursuant to such petition; or (iii) if no
appeal is filed, the expiration date of the time for filing or noticing any appeal from the judgment.
Settlement 1.19.

1 California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class
2 Member. *See* Lidman Decl., ¶ 29; Settlement ¶ 4.4.3.

3 **E. Notice of Judgment**

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

8 **IV. ARGUMENT**

9 **A. This Court Should Confirm its Conditional Certification of the Class for Settlement**
10 **Purposes Because It Meets All of the Requirements for Class Certification Under**
11 **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 December 12, 2023. *See*
20 Lidman Decl., ¶ 32; 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. Zero (0)
23 Settlement Class Members have requested for exclusion from the Settlement, no Settlement Class
24 Member has objected to any portion of the Settlement, and no Settlement Class Member has disputed the
25 Settlement. *See* Mitzner Decl., ¶¶ 9-11. This Court should therefore confirm its conditional certification
26 of the Settlement Class.

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

California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*

1 Court, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a
2 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*
3 *Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval
4 process consists of preliminary settlement approval, notice being given to class members, and a final
5 fairness and approval hearing being held, at which class members have the opportunity to be heard with
6 respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff
7 respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

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

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

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

26 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
27 to each case. *Id.* "In the context of a settlement agreement, the test is not the maximum amount plaintiffs
28 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of
the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because
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

1 of avoiding litigation.” *Id.* (quoting *Air Line Stewards, etc., Local 550 v. American Airlines, Inc.*, 455
2 F.2d 101, 109 (7th Cir. 1972)).

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

8 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
9 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, AvalonBay
10 counters that it has always provided non-exempt employees with an opportunity to take legally compliant
11 meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely
12 the result of employee choice, rather than any policy or practice of AvalonBay. Lidman Decl., ¶ 12.
13 AvalonBay also points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,
14 it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken,
15 and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard).
16 AvalonBay also contends it paid meal period premiums—a total of 3,199—when employees were unable
17 to take a compliant meal period. Finally, AvalonBay contends Plaintiff’s meal period claim is not suited
18 for class certification because it paid meal period premiums, a 17.6% violation rate for first meal periods
19 supports its defenses and individual inquiries would be required to assess which employees took non-
20 compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a
21 particular employee took a non-compliant meal period or missed a meal period during a particular shift.
22 *Id.*

23 As for Plaintiff’s rest period claims, AvalonBay 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. Lidman Decl., ¶ 14. Further,
26 AvalonBay argues that the maximum exposure incorrectly assumes a 100% rest period violation rate,
27 Plaintiff’s rest period claim is inherently unsuited for class treatment as it requires an individualized
28

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

As for Plaintiff's reimbursement claims, AvalonBay contends that it provided employees with alternatives to complete the daily COVID-19 screening that did not require the use of a cellular phone or internet access. AvalonBay further contends that if the employees completed their COVID-19 screening by using their personal cell phone or a home computer, they did so on a voluntary basis. Lidman Decl., ¶ 16. Further, AvalonBay argues that any expenses incurred were minimal given the affordability of cellular usage plans. *Id.* AvalonBay also argues that this claim is not suitable for class treatment because it would require individualized determinations as to whether each employee used a personal cellular phone and how often. *Id.*

As for Plaintiff's unpaid wages claim, AvalonBay contends that it compensated Class Members for all of their time worked, and any unpaid time was *de minimis* and therefore non-compensable. Lidman Decl., ¶ 18. AvalonBay further asserts that Plaintiff would be unable to certify this class given the individualized inquiries that would be required. *Id.*

As for Plaintiff's regular rate claim, AvalonBay contends that Class Members received all overtime wages to which they were entitled. Lidman Decl., ¶ 20. AvalonBay further counters that any bonuses paid to Class Members during the relevant time period were discretionary and did not to be included in the regular rate of pay for overtime purposes. *See* 29 C.F.R. §§778.208, 778.211 (excluding "discretionary" bonuses from the regular rate); *see also* DLSE Manual § 49.1.2.4(3) (bonuses are discretionary, and therefore excludable, if "both the fact that payment is to be made and the amount of the payment" are discretionary). *Id.*

As for Plaintiff's unpaid sick pay and underpaid meal period premiums claim, AvalonBay asserts it paid meal period premiums and sick pay at the appropriate rate of pay. Lidman Decl., ¶ 22. AvalonBay also argues that this claim is not suitable for class treatment because it would require individualized determinations.

As for Plaintiff's claim for wage statement violations, AvalonBay denies that there were any wage statement violations and further argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed]

injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 24.

As for Plaintiff’s claim for waiting time penalties, AvalonBay asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 26. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). *Id.*

Lastly, since Plaintiff’s PAGA claim is a derivative claim based on the underlying claims, AvalonBay argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 28; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). AvalonBay also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find AvalonBay liable for any of Plaintiff’s claims. See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.*

These considerations, not only bore heavily on the negotiations leading to the Settlement, but also confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further litigation. Lidman Decl., ¶ 29. 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. *Id.*

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

An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b)

1 multiplying the result by each Participating Class Member's Workweeks. *See* Settlement, ¶ 3.2.4. This
2 method of distribution compensates Settlement Class Members based on the estimated extent of their
3 injuries, as Settlement Class Members who worked more workweeks, would have been subject to more
4 of the alleged wage and hour violations than those who worked fewer weeks. Thus, the formula for
5 compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages
6 and penalties that could be recovered by them.

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

9 Class members' response to a settlement is relevant in evaluating whether it merits final approval.
10 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and very minimal 3 requests for exclusion
11 supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000)
12 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
13 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion,
14 not a single Settlement Class Member has objected to the Settlement and no Settlement Class Members
15 have elected to opt-out of the Settlement. In addition, only 21 of the 2,092 Class Notices were returned
16 undeliverable. Mitzner Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further
17 confirms that the Settlement is fair, adequate, and reasonable.

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

20 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
21 their attorneys' fees and costs for their wage claims. *See* Lab. Code § 218.5, 226(e) and 2699(g). A fee
22 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
23 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
24 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
25 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,
26 91 Cal.App.4th at 254 (recognizing the "percentage of recovery" method).

27 Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl.,
28 ¶ 39.

The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506

(2016), that “[t]he percentage of fund method survives in California class action cases.” Specifically, the *Laffitte* Court held:

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

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

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

Here, Class Counsel’s fee request of \$361,666.66 (one-third of the Gross Settlement Amount) is

1 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
2 “regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
3 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
4 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
5 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
6 small” and that in California, “courts usually award attorneys' fees in the 30-40% range in wage and hour
7 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
8 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
9 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
10 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 35. Thus, the percentage sought by
11 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

20 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
21 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
22 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
23 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
24 class actions such as this one, where the value of the benefit conferred to the class “can be monetized
25 with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of
26 the common fund to ensure that the fee awarded is reasonable and within the range of fees freely
27 negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th
28 545, 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 \$248,707.50 which results in an approximate 1.45 multiplier compared to the \$361,666.66 fee request. *See* Lidman Decl., ¶ 40. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. *Id.*

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (25th Year Attorney)	\$900	76.9	\$69,210
Elizabeth Nguyen (17th Year Attorney)	\$800	112.1	\$89,680
Paul K. Haines (16th Year Attorney)	\$800	22.5	\$18,000
Milan Moore (7th Year Attorney)	\$650	104.7	\$68,055
Paralegals	\$175	21.5	\$3,762.50
Total Lodestar			\$248,707.50

The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. Lidman Decl., ¶ 41, Exh. C. Based on the *Laffey* Matrix, the hourly rate for a 24rd year attorney is \$997, the hourly rate for a 16th year attorney is \$829, and the hourly rate for a 6th year attorney is \$508. *Id.* The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees).

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class Member has objected to the Settlement or to Class Counsel’s requested fees as of the date of this filing. *See* Islas Decl., ¶¶ 9-11. Additionally, the *average* settlement payment in this case of approximately \$277.56 is in line with, and above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action

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

9 As discussed above, this case presented significant risk as to both class certification and merits
10 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
11 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
12 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
13 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
14 compensation for over two years. Lidman Decl., ¶ 36. During this time, Class Counsel have expended a
15 total of \$7,724.16 in actual costs and have devoted substantial time to this litigation and expect to incur
16 approximately \$450.00 in future costs for filing the final declaration regarding distribution of settlement,
17 Case Anywhere fees, service and messenger fees, postage fees, and/or online fees to retrieve conformed
18 copies of documents.³ Lidman Decl., ¶ 37; Exh. B. Class Counsel’s efforts have included conducting
19 pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, reviewing Defendant’s
20 documents and policies, analyzing Settlement Class Members’ timekeeping data and payroll records,
21 preparing for and attending mediation, negotiating and revising the long-form Settlement Agreement,
22 preparing the Motions for Preliminary and Final Approval, overseeing the settlement administration
23 process, communicating with Settlement Class Members, and otherwise litigating this case. *See* Lidman
24 Decl., ¶ 36. Moreover, Class Counsel have expended time, effort, and money that they could have
25 expended on less risky cases instead. Given the considerable potential for adverse outcomes in this case,
26 including, but not limited to losing on class certification and/or merits issues, the contingent risk borne
27

28

³ This includes total costs incurred by both law firms.

1 by Class Counsel was great. Lidman Decl., ¶¶ 31-34.

2 Class Counsel’s previous experience in litigating wage and hour class actions also supports the
3 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
4 hour class action litigation, with substantial experience litigating claims for meal and rest period
5 violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration of Paul K. Haines (“Haines
6 Decl.”), ¶¶ 3-8. They have been certified as class counsel in numerous other cases. *Id.* Their experience
7 in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendants
8 and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 33. Practice in the narrow field of wage
9 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and
10 federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to
11 compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-
12 third of the Gross Settlement Amount is reasonable.

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

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

20 Class Counsel seek to be reimbursed a total of \$8,174.16⁴ in litigation costs. Class Counsel’s
21 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
22 *See* Lidman Decl., ¶ 37; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
23 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
24 “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*,
25 No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)(“costs of reproducing pleadings, motions
26 and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees*

27 ⁴ Class Counsel have expended a total of \$7,724.16 in actual costs and anticipates incurring costs in the amount of
28 \$450.00 for filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and
messenger fees, postage fees, and/or online fees to retrieve conformed copies of documents.

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

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

9 Plaintiff also requests that the Court approve \$21,000.00 in administration costs to the Settlement
10 Administrator, Phoenix. As detailed in the declaration of Taylor Mitzner on Behalf of Phoenix Class
11 Action Administration Solutions submitted herewith, Phoenix performed duties in connection with this
12 Settlement that were integral in effectuating the Settlement and the Notice process. Among other things,
13 Phoenix calculated each Settlement Class Member's individual settlement payment, updated addresses
14 contained in the class data supplied by Defendant, formatted Class Notices for mailing, mailed Class
15 Notices to all 2,092 Settlement Class Members in English and Spanish, kept the parties informed of any
16 objections or requests for exclusion, and have otherwise administered the Settlement. *See* Mitzner Decl.,
17 ¶¶ 2-17. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be
18 finally approved.

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

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

1 and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's*
2 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
3 Cal.App.4th 785, 804.

4 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
5 \$5,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook
6 on behalf of Settlement Class Members. *See* Lidman Decl., ¶ 45; Declaration of Christina Williams
7 ("Williams Decl."), ¶¶ 6-12. Plaintiff gathered documents for use in the lawsuit, and worked with Class
8 Counsel on the case, including preparing for mediation and discussing the case, the merits, the defenses,
9 and settlement. *See* Lidman Decl., ¶ 40; Williams Decl., ¶¶ 6 and 8. The class has benefited from
10 Plaintiff's actions as the average settlement amount is \$277.56.

11 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
12 lawsuit could stigmatize her and/or affect future employment. *See* Lidman Decl., ¶ 45; Williams Decl., ¶
13 7. Plaintiff also understood the risk that she could be liable for Defendant's costs if she lost the case. *See*
14 Lidman Decl., ¶ 45; Williams Decl., ¶ 7. Plaintiff accepted these risks and burdens because she wanted
15 Defendants to compensate their current and former employees for unpaid wages. Williams Decl., ¶¶ 7.
16 Plaintiff estimates she spent approximately 12-15 hours on activities related to this case. *Id.* at ¶ 8.

17 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
18 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendants
19 and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving
20 all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Lidman Decl., ¶ 45;
21 Settlement ¶ 5.1.1.

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

26 **V. CONCLUSION**

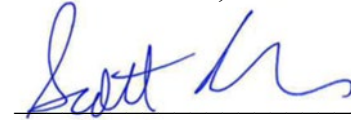
27 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant Plaintiff's
28 motion in its entirety and adopt the [Proposed] Order of Final Approval of Class Action Settlement and

1 Final Judgment submitted herewith.

2 Dated: April 16, 2024

Respectfully submitted,
LIDMAN LAW, APC

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4 By:



5 Scott M. Lidman
6 Attorney for Plaintiff
7 CHRISTINA WILLIAMS
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