

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
JEFFERSON LOPEZ

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
JEFFERSON LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JEFFERSON LOPEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MISSION POOLS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 30-2022-01283102-CU-OE-CXC

*[Assigned for all purposes to the Hon. William D.
Claster, Dept. CX101]*

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

Date: July 12, 2024
Time: 9:00 a.m.
Dept.: CX101

Action Filed: December 5, 2022
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July
3 12, 2024 at 9:00 a.m. in Department CX101 of the above-entitled Court, located at 751 West Santa Ana
4 Blvd., Santa Ana, California 92701, Plaintiff Jefferson Lopez (“Plaintiff”), individually and on behalf of
5 a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Confirming the certification of the Settlement Class for settlement purposes under Section
7 382 of the California Code of Civil Procedure;
- 8 2. Confirming the appointment of Plaintiff Jefferson Lopez as Class Representative for
9 settlement purposes;
- 10 3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC, and
11 Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
- 12 4. Granting final approval of the Stipulation of Class and PAGA Action Settlement and
13 Addendum to Stipulation of Class and PAGA Action Settlement (“Settlement”);
- 14 5. Approving an award of \$135,000.00 in attorneys’ fees to Class Counsel;
- 15 6. Approving an award of \$11,394.56 in costs to Class Counsel;
- 16 7. Approving an award of \$9,950.00 in costs to Phoenix Settlement Administrators (“Phoenix”)
17 for its settlement administration services;
- 18 8. Approving a representative payment of \$5,000.00 to Plaintiff Jefferson Lopez for her services
19 as Class Representative;
- 20 9. Approving an award of \$22,500.00 to the Labor & Workforce Development Agency
21 (“LWDA”); and
- 22 10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action
23 Settlement and Final Judgment filed concurrently herewith.

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

1 Lopez¹ and Yami Burns of Phoenix Settlement Administrators, 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: June 18, 2024

Respectfully submitted,
LIDMAN LAW, APC

6
7 By:



8 Scott M. Lidman
9 Attorney for Plaintiff
JEFFERSON LOPEZ

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 ¹ The declaration of Plaintiff was originally filed with this Court on in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant Motion.

TABLE OF CONTENTS

I.	INTRODUCTION	8
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	9
A.	Plaintiff's Claims	9
B.	Mediation and Settlement	11
C.	Preliminary Approval of Settlement	12
III.	SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS	12
A.	Settlement Class Definition	12
B.	Monetary Terms of the Settlement	13
C.	Summary of Notice Process.....	14
1.	Mailing of Notice Packets.....	14
D.	Timing of Payments.....	14
E.	Notice of Judgment	15
IV.	ARGUMENT.....	15
A.	This Court Should Confirm its Conditional Certification of the Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382	15
B.	This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims	16
1.	The Settlement was Reached at Arm's Length, Through Experienced Counsel and An Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation.....	16
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	20
3.	The 100% Participation Rate and Absence of Any Objections Further Confirms That the Settlement is Fair, Adequate, and Reasonable.....	20
C.	The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check.....	20
D.	The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable.	25
E.	The Court Should Finally Approve the Requested Administration Costs.....	26
F.	Plaintiff's Requested Enhancement Payment Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that He Assumed on Behalf of the Class.....	26
V.	CONCLUSION.....	27

TABLE OF AUTHORITIES

Federal Cases

<i>Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.,</i> 455 F.2d 101 (7th Cir. 1972)	17
<i>Ashker v. Sayre,</i> 2011 WL 825713 (N.D. Cal. 2011)	26
<i>Cicero v. DirectTV, Inc.,</i> No. EDCV 07-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010).....	23
<i>Fleming v. Covidien Inc.,</i> Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	19
<i>Harris v. Marhoefer,</i> 24 F.3d 16 (9th Cir. 1994)	26
<i>In re Immune Response Securities Litigation,</i> 497 F. Supp. 2d 1166 (S.D. Cal. 2007).....	26
<i>In re Rite Aid Corp. Securities Litigation,</i> 396 F.3d 294 (3d Cir. 2005).....	21
<i>Rawlings v. Prudential-Bache Properties, Inc.,</i> 9 F.3d 513 (6th Cir. 1993)	21
<i>Schiller v. David's Bridal, Inc.,</i> 2012 WL 2117001 (E.D. Cal. 2012).....	24
<i>Sorenson v. PetSmart, Inc.,</i> Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)	24
<i>Trustees of Const. Indust. & Laborers Health & Welfare Trust v. Redland Ins. Co.,</i> 460 F.3d 1253 (9th Cir. 2006)	26
<i>Van Vranken v. Atlantic Richfield Co.,</i> 901 F. Supp. 294 (N.D. Cal. 1995)	27
<i>Vizcaino v. Microsoft Corp.,</i> 290 F.3d 1043 (9th Cir. 2002)	23
<i>Williams v. Centerplate, Inc.,</i> 2013 WL 4525428 (S.D. Cal. 2013)	24
<i>Williams v. Costco Wholesale Corp.,</i> No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 (S.D. Cal. July 7, 2010).....	22

State Cases

1	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> ,	
2	85 Cal.App.4th 1135 (2000)	20
3	<i>Bell v. Farmers Ins. Exchange</i> ,	
4	115 Cal.App.4th 715 (2004)	26
5	<i>Brinker Restaurant Corp. v. Superior Court</i> ,	
6	53 Cal. 4th 1004 (2012)	18
7	<i>Chavez v. Netflix, Inc.</i>	
8	162 Cal.App.4th 43 (2008)	22
9	<i>City of Oakland v. Oakland Raiders</i> ,	
10	203 Cal.App.3d 78 (1988)	23
11	<i>Coalition for L. County Planning etc. Interest v. Bd. of Supervisors</i> ,	
12	76 Cal.App.3d 241 (1977)	23
13	<i>Consumer Privacy Cases</i> ,	
14	175 Cal.App.4th 545 (2009)	23
15	<i>Dunk v. Ford Motor Co.</i> ,	
16	48 Cal.App.4th 1794 (1996)	16, 20
17	<i>Kao v. Joy Holiday</i> ,	
18	12 Cal.App.5th 947 (2017)	19
19	<i>Ketchum v. Moses</i> ,	
20	24 Cal.4th 1122 (2001)	22
21	<i>Laffitte v. Robert Half Int'l, Inc.</i> ,	
22	1 Cal.5th 480 (2016)	21, 22, 23
23	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> ,	
24	103 Cal.App.3d 573 (1980)	16
25	<i>Mallick v. Superior Court</i> ,	
26	89 Cal.App.3d 434 (1979)	16
27	<i>Maria P. v. Riles</i> ,	
28	43 Cal.3d 1281 (1987)	20
	<i>Price v. Starbucks Corp.</i> ,	
	192 Cal.App.4th 1136 (2011)	19
	<i>Richmond v. Dart Industries, Inc.</i> ,	
	29 Cal.3d 462 (1981)	15

1	<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	21, 22
2	<i>Serrano v. Unruh</i> , 32 Cal.3d 621 (1982)	21
4	<i>Stambaugh v. Superior Court</i> , 62 Cal.App.3d 231 (1976)	16
6	<i>Thayer v. Wells Fargo Bank</i> , 92 Cal.App.4th 819 (2001)	22
8	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> , 203 Cal.App.4th 1112 (2012)	19
10	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001)	17, 21
12	<i>Westside Community for Independent Living, Inc. v. Obledo</i> , 33 Cal.3d 348 (1983)	20
14	Statutes	
15	Civ. Proc. § 382	15
16	Lab. Code §203	15
17	Lab. Code § 218.5	20
18	Lab. Code § 226(e)	19, 20
19	Lab. Code § 2699(e)(2)	19
20	Lab. Code § 2699(g)	20
21	Lab. Code §203	
22	Regulations	
23	8 Cal. Code Regs. § 13520.....	19

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jefferson Lopez (“Plaintiff”) submits this memorandum of points and authorities in
4 support of the motion for final approval of the class action settlement (the “Settlement”) with Defendants
5 Mission Pools, Inc. and Mission Pools of Escondido, Inc. (hereinafter collectively “Mission Pools” or
6 “Defendants”) on behalf of the Settlement Class defined as:

7 All current and former non-exempt, hourly employees of Defendant Mission Pools
8 of Escondido, Inc. who worked at any time in California between September 28,
9 2018 and September 9, 2023.

10 The “Class Period” is defined as September 3, 2017 through September 9, 2023.

11 In this non-reversionary Settlement, all participating Class Members will receive **automatic**
12 payments without the need to submit a claim form, resulting in an average settlement payment of
13 approximately **\$932.99** to each participating Settlement Class member. This is a favorable resolution of
14 the highly disputed wage and hour claims in this case and the significant litigation risks that Plaintiff
15 faced. Since this Court granted preliminary approval on February 22, 2024, nothing has changed to
16 impact the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving
17 notice of the Settlement and of their projected Settlement payments, no Settlement Class members have
18 opted out of the Settlement and not a single Class Member filed a valid objection to any portion of the
19 Settlement.

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

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 On September 28, 2022, Plaintiff filed the instant putative class action complaint. Declaration
3 of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On September 29, 2022, Plaintiff submitted a letter to the
4 California Labor & Workforce Development Agency (“LWDA”) and Mission Pools regarding his
5 intention of filing a PAGA claim based on the labor code violations alleged in his complaint. *Id.* On
6 December 5, 2022, after exhausting his administrative remedies, Plaintiff filed a First Amended Class
7 and Representative Action Complaint adding a cause of action for civil penalties under the PAGA. *Id.*
8 On April 13, 2023, Plaintiff submitted a supplemental letter to the LWDA and Mission Pools of
9 Escondido, Inc. regarding his intention of filing a PAGA claim based on the labor code violations alleged
10 in his complaint. *Id.* On July 12, 2023, Plaintiff filed an Amendment to Complaint identifying Mission
11 Pools of Escondido, Inc. as DOE 1. *Id.* Mission Pools, Inc. is a separate and distinct entity from Mission
12 Pools of Escondido, Inc. Mission Pools, Inc. is not a parent or a subsidiary of Mission Pools of
13 Escondido, Inc. The actual employing entity is Mission Pools of Escondido, Inc. *Id.*

14 Plaintiff’s primary claims are that Mission Pools: (1) failed to pay all minimum wages owed; (2)
15 failed to pay all overtime wages owed; (3) failed to provide meal periods; (4) failed to authorize and
16 permit rest periods; (5) failed to reimburse necessary business expenses; (6) failed to provide accurate,
17 itemized wage statements; (7) failed to timely pay all wages upon termination; (8) engaged in unlawful
18 business practices; and (9) is liable for civil penalties under the Private Attorneys General Act
19 (“PAGA”).

20 **A. Plaintiff’s Claims**

21 As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of
22 liability are related to Mission Pools’ alleged unlawful wage and timekeeping policies and practices.
23 Lidman Decl., ¶¶ 11-22. Plaintiff alleges that he and the Class Members were not fully compensated for
24 all of their time worked because Mission Pools would unlawfully shave their work time and/or round
25 their work time such that they would not be fully paid for all time worked. Lidman Decl., ¶ 11.
26 Specifically, This time-shaving and/or rounding practice utilized by Defendants was not even-handed
27 over time and would almost exclusively round and shave in Defendants’ favor such that employees were
28 routinely unpaid for his time worked. *Id.*

1 Plaintiff alleges that he and the Class Members were not provided all required meal periods due
2 to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free 30-minute
3 meal periods prior to the start of the fifth hour of work. Lidman Decl., ¶ 13. Specifically, Plaintiff alleges
4 that due to the work demands imposed by Defendants, Defendants provided late or otherwise unlawful
5 meal periods to Plaintiff and their non-exempt employees because they would begin their shift around
6 6:30 a.m. but could not take a meal period until typically around 12:30 p.m. or later. *Id.* Moreover,
7 Plaintiff alleges that there were shifts where Defendants failed to provide a meal period altogether.
8 Further, based on the timekeeping data produced by Mission Pools in connection with mediation, it
9 appears Mission Pools did not require Plaintiff and the other non-exempt employees to clock in and out
10 for meal periods. Therefore, despite Defendants' failure to keep any records of meal periods, at least
11 during a portion of the relevant Class Period, Plaintiff alleges that Defendants unlawfully and
12 automatically deducted thirty minutes from Plaintiff's work time each shift for a purported meal period
13 regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken,
14 was less than 30 minutes in length. *Id.*

15 Plaintiff alleges that he and Settlement Class Members were also not authorized and permitted to
16 take all required rest periods due to Mission Pools rest period policies and practices. Lidman Decl., ¶ 15.
17 Specifically, Plaintiff alleges that Mission Pools rest period policies and practices did not authorize and
18 permit Plaintiff and the other non-exempt employees a net ten-minute rest period for every four hours
19 worked, or major fraction thereof. Moreover, Plaintiff alleges on those occasions when Plaintiff was not
20 authorized and permitted to take all legally compliant rest periods to which he was entitled, Defendants
21 failed to compensate Plaintiff with the required rest period premium for each workday in which he
22 experienced a rest period violation as mandated by Labor Code § 226.7. Thus, Plaintiff alleges that he
23 and other non-exempt employees experienced at least one rest period violation on every shift worked in
24 excess of 6.0 hours. *Id.*

25 Plaintiff alleges throughout Plaintiff's employment with Defendants, Defendants failed to
26 reimburse Plaintiff for expenses he incurred in direct consequence of the discharge of his duties including,
27 without limitation, costs incurred for using his personal cellular phone. Lidman Decl., ¶ 17. Despite the
28 necessity of incurring expenses in the discharge of his duties, Plaintiff alleges he was never reimbursed

1 for all necessary expenditures he incurred as a direct consequence of the discharge of his duties. *Id.*
2 Specifically, Plaintiff contends that this conduct violated Labor Code section 2802 and *Cochran v.*
3 *Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. *Id.*

4 Plaintiff further alleges that Mission Pools issued inaccurate wage statements in violation of
5 Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages
6 described above. Lidman Decl., ¶ 19. Specifically, Plaintiff contends that this conduct violated Labor
7 Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours
8 worked and the rate at which they were being paid. *Id.*

9 Plaintiff alleges that Mission Pools is also liable for waiting time penalties under Labor Code
10 section 203 as a result of its failure to pay all wages. Lidman Decl., ¶ 21. Based on the data provided by
11 Mission Pools, there were approximately 131 Settlement Class Members who have separated their
12 employment with Mission Pools during the relevant time period who could be entitled to waiting time
13 penalties. *Id.*

14 Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code
15 violations. Lidman Decl., ¶ 23.

16 **B. Mediation and Settlement**

17 In advance of mediation, Mission Pools produced a 20% sampling timekeeping and payroll data
18 for the putative class, as well as its wage and hour policies and other relevant documents and information
19 relevant to the claims alleged. Lidman Decl., ¶ 26. After the detailed review of the documents and data
20 produced by Mission Pools, Class Counsel drew on their extensive experience in similar cases to assess
21 the strengths and weaknesses of Plaintiff's case. This discovery allowed the parties to assess the merits
22 and value of Plaintiff's claims and Mission Pools defenses. *Id.*

23 On June 1, 2022, a mediation was held with Jill Sperber, Esq., a well-respected wage and hour
24 class action mediator. Lidman Decl., ¶ 27. During mediation, the Parties vigorously debated their
25 opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the
26 claims and defenses. *Id.* Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In
27 the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Class
28 and PAGA Action Settlement ("Settlement"). *Id.*

1 **C. Preliminary Approval of Settlement**

2 Plaintiff submitted the Settlement to the Court with his Motion for Preliminary Approval on
3 September 18, 2023. Lidman Decl., ¶ 28. On February 22, 2024, the Court issued an order Granting
4 Preliminary Approval of the Settlement. *Id.*; Exh. A.

5 Plaintiff submitted copies of the Settlement Agreement, Addendum to the Settlement, and Order
6 Granting Preliminary Approval to the LWDA on September 18, 2023, February 23, 2024, and February
7 23, 2024, respectively. Lidman Decl., ¶ 46, Exhs. F-H.

8 On March 21, 2024, the Court-approved Notice Packet (consisting of the Notice of Pendency of
9 Class Action and Proposed Settlement; Notice of Individual Settlement Award; and Request for
10 Exclusion Form) was sent to 229 Settlement Class members in Spanish and English, and the Settlement
11 Class members had until May 20, 2024 to submit disputes, objections, and/or requests for exclusion. *See*
12 Declaration of Yami Burns of Phoenix Settlement Administrators (“Burns Decl.”), ¶ 7. As of the date
13 of this filing, PSA has not received any opt-outs. *Id.*, ¶¶ 13-15. Plaintiff now respectfully submits the
14 Settlement for this Court’s final approval.

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

16 **A. Settlement Class Definition**

17 The Settlement Class encompasses:

18 All current and former non-exempt, hourly employees of Defendant Mission Pools
19 of Escondido, Inc. who worked at any time in California between September 28,
20 2018 and September 9, 2023.

21 The “Class Period” is defined as September 28, 2018 and September 9, 2023.

22 Lidman Decl., ¶ 29. The escalator clause was triggered and Defendants elected to exercise their option
23 of shortening the Class and PAGA Periods to September 9, 2023.

24 Further, at the time of preliminary approval, Plaintiff estimated the Settlement Class to be 227.
25 After receiving the Class Data from Defendants, and Defendants’ election to shorten the end of the Class
26 and PAGA Period, the class size only slightly increased by 2 to 229. Therefore, there was no significant
27 change in the estimations provided at the time of preliminary approval and now at final approval. *Id.*

28 //

 //

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

2 The Settlement provides for Mission Pools to pay a Gross Settlement Amount of \$405,000.00.
3 Mitzner Decl., ¶ 16. The Net Settlement Amount is the amount remaining from the Gross Settlement
4 Amount after deducting requested attorneys' fees (\$135,000.00) and verified costs (\$11,394.56),
5 proposed Class Representative Service Award to Plaintiff (\$5,000.00), Settlement Administration costs
6 (\$9,950.00), and PAGA Civil Penalties to LWDA (\$22,500.00). *Id.* Based on these requested amounts,
7 the Net Settlement Amount is calculated to be approximately **\$221,155.44**. *Id.*

8 Payment to Settlement Class members will be distributed as follows:

9 Each participating Settlement Class member shall receive a proportionate settlement share based
10 upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement
11 Class member's total workweeks worked during the Class Period, and the denominator of which is the
12 total workweeks worked by all Settlement Class Members who worked during the Class Period.
13 Settlement, ¶ 5.B.i.

14 In addition, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross
15 Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA
16 Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that
17 he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA
18 Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked
19 during the PAGA Period, and the denominator of which is the total number of pay periods worked by all
20 PAGA Employees. Settlement, ¶ 5.B.b.

21 purposes of calculating applicable taxes and withholdings, 33% of each Participating Class
22 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion").
23 The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 67% of
24 each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for
25 interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage
26 withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 5. D.

27 Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the
28 Gross Settlement Amount. *See* Settlement ¶ 4.D.; Burns Decl., ¶ 17.

1 **C. Summary of Notice Process**

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

3 On March 6, 2024, Defendants provided Phoenix with data files with the following information:
4 the names, last known addresses, phone numbers, social security numbers, and the number of workweeks
5 worked by each Settlement Class Member and PAGA Employee while employed during the Class Period
6 and PAGA Period, respectively. Burns Decl., ¶ 6. Phoenix determined that there were 23,361
7 workweeks during the relevant time period and Mission Pools elected their option to shorten the Class
8 and PAGA Periods to September 9, 2023. After performing address updates and verifications, Phoenix
9 mailed the Class Notice of Pendency and Settlement of Class Action, Notice of Individual Settlement
10 Award, and Request for Exclusion Form (collectively, the “Notice Packet”) to the 229 Settlement Class
11 members on November 14, 2023. *Id.* at ¶¶ 7-8. Following the initial mailing, 15 Notice Packets were
12 returned to Phoenix by the Post Office. *Id.* at ¶ 9. After Phoenix performed a Skip Trace, 13 Notice
13 Packets were re-mailed. *Id.* at ¶ 11. As of the date of filing this final approval motion, 2 Notice Packets
14 remain undeliverable. *Id.* at ¶ 12.

15 The deadline for Settlement Class members to submit objections, requests for exclusion, or
16 disputes was May 20, 2024. Burns Decl., ¶ 8. As of the date of this filing, there were no valid objections,
17 no disputes, and no Settlement Class members have elected to opt-out of the Settlement. *Id.* at ¶¶ 13-
18 15. Accordingly, as of the date of this Motion, the participation rate amongst the Settlement Class
19 members is 100% and the average estimated payment is \$932.99, with the highest estimated payment to
20 a Settlement Class member being \$2,359.62, and the lowest estimated payment to a Settlement Class
21 member being \$9.15, and the median amount is \$932.99. *Id.*, ¶¶ 13-19.

22 **D. Timing of Payments**

23 Defendant shall deposit the Gross Settlement Amount and employer’s share of payroll taxes on
24 the portion allocated as wages with a mutually-selected third party administrator within (30) days of the
25 Effective Date. *See* Settlement, ¶ 4.B.

26 Within ten (10) calendar days following Mission Pools fully funding the Gross Settlement Amount
27 and required employer-side payroll taxes with the Settlement Administrator, the Settlement Administrator
28 will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and

1 approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement
2 Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to
3 participating Settlement Class Members. The Settlement Administrator shall simultaneously pay the
4 withholdings to the applicable authorities with the necessary reports, submitting copies to Mission Pools'
5 counsel. Settlement, ¶ 5.C.

6 After disbursement, Settlement Class Members will have 180 days to cash their checks. *See*
7 Settlement, ¶ 6.E. Funds remaining unclaimed will be distributed to the California State Controller's
8 Office – Unclaimed Property Fund in the name of the Settlement Class member. *Id.*; Lidman Decl., ¶
9 30.

10 **E. Notice of Judgment**

11 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class
12 members, the final judgment entered by the Court will be posted on the Settlement Administrator's website
13 at lopez-v-mission-pools.phoenixcases.com. *See* Burns Decl., Exh A.; Lidman Decl., ¶ 44.

14 **IV. ARGUMENT**

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

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

24 Here, this Court found that the Class meets all the requirements for class certification for
25 settlement purposes when it granted preliminary approval of the Settlement on February 22, 2024. *See*
26 Lidman Decl., ¶ 32; Exh. A. After the Court entered an order granting preliminary approval, no events
27 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
28 Class members thus far to the Settlement has been strongly in support of the Settlement. No Settlement

1 Class members have objected to any portion of the Settlement and no Settlement Class members have
2 elected to opt-out of the Settlement. *See Burns Decl.*, ¶¶ 13-15. This Court should therefore confirm its
3 conditional certification of the Settlement Class.

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

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

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

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

27 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
28 further litigation, the risk of maintaining class action status through trial, the amount

1 offered in settlement, the extent of discovery completed and the stage of the
2 proceedings, the experience and views of counsel, the presence of a governmental
3 participant, and the reaction of the class members to the proposed settlement.

4 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
5 to each case and give due regard to “what is otherwise a private consensual agreement between the
6 parties.” *Id.*

7 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs might
8 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
9 circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements
10 inherently involve compromise, even settlements providing for substantially narrower relief than likely
11 would be obtained if the suit were successfully litigated can be reasonable because, “the public interest
12 may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding
13 litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109
14 (7th Cir. 1972)).

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

20 As detailed in Plaintiff’s Motion for Preliminary Approval, there is significant risk of non-
21 certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example,
22 with respect to Plaintiff’s claim for failure to pay all wages, Mission Pools contends that it compensated
23 Class Members for all of their time worked. Lidman Decl., ¶ 12. Mission Pools also contends that its
24 rounding practices were lawful, and any unpaid time, if any, was *de minimis* and therefore non-
25 compensable. *Id.* Mission Pools further asserts that Plaintiff would be unable to certify a rounding class
26 given the individualized inquiries that would be required, and also that Mission Pools’ rounding
27 policy/mechanism was, according to it, neutral on its face and in its application. *Id.*

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

13 As for Plaintiff's rest period claim, Mission Pools contends it has always maintained and enforced
14 lawful rest period policies and practices, and that Settlement Class Members were authorized and
15 permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 16. Mission
16 Pools also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as a number
17 of Class Members signed arbitration agreements and it requires an individualized inquiry into whether
18 each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which
19 would devolve into an unmanageable series of mini-trials. *Id.*

20 As for Plaintiff's unreimbursed expenses claim, Mission Pools contends it has an expense
21 reimbursement policy in effect during the relevant time period and that any expenses incurred in direct
22 consequence of the discharge of job duties would have been reimbursed. Lidman Decl., ¶ 18. Mission
23 Pools contends that the use of cellular phones was not required by Plaintiff or the class members to perform
24 their job duties and that to the extent they used their cellular phones, they did so purely because it was
25 their personal preference, not because it was necessary to perform their job duties. Mission Pools further
26 contends it provided company issued cellular phones to crew leads. Mission Pools therefore argues that
27 this claim is not suitable for class treatment because it would require individualized determinations as to
28

1 whether employees used their phone, whether the use was in direct discharge of their job duties, and the
2 reasoning behind using a personal cellular phone. *Id.*

3 As for Plaintiff's wage statement claim, Mission Pools argues that its alleged wage statement
4 violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or
5 any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by
6 Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 20.

7 As for Plaintiff's claim for waiting time penalties, Mission Pools asserts it has strong defenses to
8 the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims,
9 precluding imposition of penalties. Lidman Decl., ¶ 22. *See also* 8 Cal. Code Regs. § 13520 (a "good
10 faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy*
11 *Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was
12 exempt precluded imposition of waiting time penalties over contested wages owed). *Id.*

13 As for Plaintiff's claim for PAGA penalties, Mission Pools argues that Plaintiff's PAGA claim
14 will fail for the same reasons that her underlying claims will fail. Lidman Decl., ¶ 24; *see Price v.*
15 *Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the
16 derivative UCL and PAGA claims also fail."). Mission Pools also maintains that, given its good faith
17 defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to
18 find Mission Pools liable for any of Plaintiff's claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore*
19 *Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming*
20 *v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4
21 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.*

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

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 days worked by each
5 Settlement Class member during the Class Period. *See* Settlement, ¶ 6.B. This method of distribution
6 compensates Settlement Class members based on the estimated extent of their injuries, as Settlement
7 Class members who worked more workdays, would have been subject to more of the alleged wage and
8 hour violations than those who worked fewer weeks. Thus, the formula for compensating Settlement
9 Class members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could
10 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 few 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 validly objected to the Settlement and no Settlement Class
19 member have elected to opt-out of the Settlement. In addition, 2 of the 229 Notice Packets were returned
20 undeliverable. Burns Decl., ¶¶ 8-15. 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**
23 **Common 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, Inc.*
28 *v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit of

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

3 Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman Decl.,
4 ¶ 38. The attorneys’ fee split is as follows: 40% to Lidman Law, APC and 60% to Haines Law Group,
5 APC. *Id.*

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

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

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

28 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools

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

8 Here, Class Counsel’s fee request of \$135,000.00 (one-third of the Gross Settlement Amount) is
9 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
10 “regardless whether the percentage method or the lodestar method is used, fee awards in class actions
11 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
12 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
13 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
14 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
15 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
16 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
17 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
18 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 38. Thus, the percentage sought by
19 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

28 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,

supra, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In class actions such as this one, where the value of the benefit conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of **\$197,727.50** which is 1.46 times more than the \$135,000 fee request. *See* Lidman Decl., ¶ 36, Exh. D. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. Lidman Decl., at ¶ 33, Exh. E.

Name	Billing Initials	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (25th Year Attorney)	SML	\$900	38.2	\$34,380.00
Elizabeth Nguyen (17th Year Attorney)	EN	\$800	93.4	\$74,720.00
Paul K. Haines (16th Year Attorney)	PKH	\$800	16.2	\$12,960.00
Milan Moore (7th Year Attorney)	MM	\$650	113.1	\$73,515.00
Paralegals	DJ/MA	\$175	12.3	\$2,152.50
Total Lodestar				\$197,727.50

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency

1 case, significant risk and the absence of supporting precedents, are proper considerations in awarding
2 attorneys' fees). First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting
3 in a current participation rate of 100%, and not a single Settlement Class member has validly objected to
4 the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Burns Decl., ¶¶ 13-
5 15. Additionally, the *average* settlement payment in this case of approximately **\$932.99** is in line with,
6 and above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v.*
7 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action
8 settlement approved where average class member recovery was approximately \$60); *Schiller v. David's*
9 *Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that
10 average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*,
11 Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting
12 final approval of class action settlement where average recovery for each class member was
13 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted
14 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the
15 strength of the results achieved.

16 As discussed above, this case presented significant risk as to both class certification and merits
17 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
18 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
19 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
20 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
21 compensation for over two years of work. Lidman Decl., ¶ 37. During this time, Class Counsel have
22 expended a total of \$11,394.56 in actual costs and have devoted substantial time to this litigation.²
23 Lidman Decl., ¶ 33, Exhs. B and C. Class Counsel's efforts have included conducting pre-filing
24 investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Missions' documents and
25 policies, analyzing Plaintiff's and settlement class members' timekeeping data and payroll records,

26
27
28 ² This includes total costs incurred by both law firms.

1 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
2 Motion, and otherwise litigating the case. *See* Lidman Decl., ¶ 32. Moreover, Class Counsel have
3 expended time, effort, and money that they could have expended on less risky cases instead. Given the
4 considerable potential for adverse outcomes in this case, including, but not limited to losing on class
5 certification and/or merits issues, the contingent risk borne by Class Counsel was great. Lidman Decl., ¶
6 33.

7 Class Counsel's previous experience in litigating wage and hour class actions also supports the
8 reasonableness of the fee request.

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

18 Other factors also show that the fee amount requested in this case is reasonable under the
19 circumstances. This case involved nuanced legal issues including questions surrounding the propriety of
20 statutory penalties. Lidman Decl., ¶¶ 16-26. Thus, Class Counsel's requested fee award is fair,
21 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 have incurred a total of \$11,394.56³ in litigation costs. Class Counsel's request is
25 fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Lidman
26

27 _____
28 ³ This amount includes the costs associated with filing the instant motion.

Decl., ¶ 33; Exhs. B and C. Moreover, the costs Plaintiff seeks are the types of costs routinely 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 \$9,950.00 in administration costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Yami Burns on Behalf of Phoenix submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class member’s individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 229 Class Members in English and Spanish, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See Burns Decl.*, ¶¶ 2-19. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be finally approved.

F. Plaintiff’s Requested Enhancement Payment 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).

Here, Plaintiff seeks a service award of \$5,000.00 and believes this request is reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf of Class Members. Lidman Decl., ¶ 39; Lopez Decl., ¶¶ 3-12. Plaintiff gathered documents for use in the lawsuit, and worked with Class Counsel on the case, including preparing for mediation and discussing the case, the merits, the defenses, and settlement. *See* Lidman Decl., ¶ 39; Lopez Decl., ¶¶ 3-12. Further, Plaintiff understood the risk that she could be liable for Mission Pools' costs if he lost the case and accepted this risk because he wanted Mission Pools to compensate its current and former employees for unpaid wages. In addition, Plaintiff understood that the lawsuit is a matter of public record and being part of the could stigmatize his and/or affect future employment. Lopez Decl., ¶¶ 3-12. Plaintiff estimates she spent approximately 8-10 hours on activities related to this case. *Id.* Additionally, Plaintiff has agreed to a general release and 1542 waiver. *Id.*

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

V. CONCLUSION

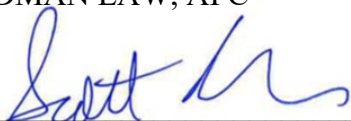
For the reasons stated herein, Plaintiff respectfully submits that this Court should grant Plaintiff's motion in its entirety and adopt the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment submitted herewith.

Based on the terms of the agreement, Plaintiff proposes the deadline to file the Settlement Administrator declaration regarding the disbursement of Settlement be set for **March 28, 2025** and the compliance hearing shall be set for **April 4, 2025 at 9:00 a.m.**

Dated: June 18, 2024

Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman
Attorney for Plaintiff JEFFERSON LOPEZ