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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LAKE

WILLIAM COLEMAN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PROENERGY CRAFTS, INC., a Missouri
corporation; EVAPTECH, INC., a Maryland
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. CV423136

[Assigned for all purposes to the Hon. Michael S.
Lunas, Dept. 1]

**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: February 24, 2025
Time: 9:00 a.m.
Dept.: 1

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
3 February 24, 2025 at 9:00 a.m. in Department 1 of the above-entitled Court, located at 255 N. Forbes
4 Street, 4th Floor, Lakeport, California 95453, Plaintiff William Coleman (“Plaintiff”), individually and
5 on behalf of 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 382
7 of the California Code of Civil Procedure;
- 8 2. Confirming the appointment of Plaintiff William Coleman 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 K. Haines of Haines Law Group as Class Counsel for settlement purposes;
- 12 4. Granting final approval of the Stipulation of Class Action and PAGA Settlement (herein
13 “Settlement”);
- 14 5. Approving an award of \$126,666.66 in attorneys’ fees to Class Counsel;
- 15 6. Approving an award of \$22,907.79 in costs to Class Counsel;
- 16 7. Approving an award of \$10,000.00 in costs to Phoenix Settlement Administrators for its
17 settlement administration services;
- 18 8. Approving an incentive payment of \$7,500.00 to Plaintiff William Coleman for his services as
19 Class Representative;
- 20 9. Approving an award of \$15,000.00 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.

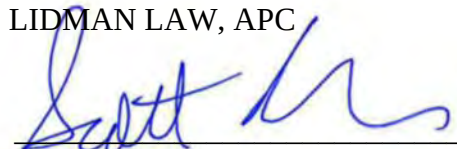
24 This Motion is based on this notice of motion, the attached memorandum of points and authorities
25 attached hereto, the declarations of Scott M. Lidman, Milan Moore, Plaintiff William Coleman,¹ and
26

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

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

4
5 Dated: January 27, 2025

Respectfully submitted,
LIDMAN LAW, APC

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7 By: 

8 Scott M. Lidman
9 Attorney for Plaintiff
10 WILLIAM COLEMAN
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TABLE OF CONTENTS

I.	INTRODUCTION	9
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	10
	A. Plaintiff's Claims.....	10
	B. Mediation and Settlement.....	12
	C. Preliminary Approval of Settlement.....	12
III.	SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS.....	13
	A. Settlement Class Definition.....	13
	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	19
	3. The 100% Participation Rate and Absence of Any Objections Further Confirms That the Settlement is Fair, Adequate, and Reasonable	19
	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.....	25
	F. Plaintiff's Requested Service Award Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that She Assumed on Behalf of the Class.....	26
V.	CONCLUSION.....	27

TABLE OF AUTHORITIES

Federal Cases

Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.,

455 F.2d 101 (7th Cir. 1972) 17

Ashker v. Sayre,

2011 WL 825713 (N.D. Cal. 2011) 25

Cicero v. DirectTV, Inc.,

No. EDCV 07-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010)..... 21

Harris v. Marhoefer,

24 F.3d 16 (9th Cir. 1994) 25

In re Immune Response Securities Litigation,

497 F. Supp. 2d 1166 (S.D. Cal. 2007)..... 25

In re Rite Aid Corp. Securities Litigation,

396 F.3d 294 (3d Cir. 2005)..... 20

Rawlings v. Prudential-Bache Properties, Inc.,

9 F.3d 513 (6th Cir. 1993) 20

Schiller v. David's Bridal, Inc.,

2012 WL 2117001 (E.D. Cal. 2012)..... 23

Sorenson v. PetSmart, Inc.,

Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) 23

Trustees of Const. Indust. & Laborers Health & Welfare Trust v. Redland Ins. Co.,

460 F.3d 1253 (9th Cir. 2006) 25

Van Vranken v. Atlantic Richfield Co.,

901 F. Supp. 294 (N.D. Cal. 1995) 26

Vizcaino v. Microsoft Corp.,

290 F.3d 1043 (9th Cir. 2002) 23

1	<i>Williams v. Centerplate, Inc.,</i>	
2	2013 WL 4525428 (S.D. Cal. 2013)	23
3	<i>Williams v. Costco Wholesale Corp.,</i>	
4	No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 (S.D. Cal. July 7, 2010).....	21
5	State Cases	
6	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.,</i>	
7	85 Cal.App.4th 1135 (2000)	19
8	<i>Bell v. Farmers Ins. Exchange,</i>	
9	115 Cal.App.4th 715 (2004)	26
10	<i>Brinker Restaurant Corp. v. Superior Court,</i>	
11	53 Cal. 4th 1004 (2012)	18
12	<i>Chavez v. Netflix, Inc.,</i>	
13	162 Cal.App.4th 43 (2008)	21, 22
14	<i>City of Oakland v. Oakland Raiders,</i>	
15	203 Cal.App.3d 78 (1988)	22
16	<i>Clark v. Am. Residential Servs. LLC,</i>	
17	175 Cal.App.4th 785 (2009)	26
18	<i>Coalition for L. County Planning etc. Interest v. Bd. of Supervisors,</i>	
19	76 Cal.App.3d 241 (1977)	22
20	<i>Consumer Privacy Cases,</i>	
21	175 Cal.App.4th 545 (2009)	22
22	<i>Dunk v. Ford Motor Co.,</i>	
23	48 Cal.App.4th 1794 (1996)	16, 19
24	<i>Golba v. Dick’s Sporting Goods, Inc.,</i>	
25	238 Cal.App.4th 1251 (2015)	26
26	<i>Kao v. Joy Holiday,</i>	
27	12 Cal.App.5th 947 (2017)	18
28		

1	<i>Ketchum v. Moses,</i>	
2	24 Cal.4th 1122 (2001)	22
3	<i>Laffitte v. Robert Half Int’l, Inc.,</i>	
4	1 Cal.5th 480, 506 (2016)	20, 21, 22
5	<i>Malibu Outrigger Bd. of Governors v. Superior Court,</i>	
6	103 Cal.App.3d 573 (1980)	16
7	<i>Mallick v. Superior Court,</i>	
8	89 Cal.App.3d 434 (1979)	16
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10	43 Cal.3d 1281 (1987)	20
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12	29 Cal.3d 462 (1981)	15
13	<i>Serrano v. Priest,</i>	
14	20 Cal.3d 25 (1977)	20, 22
15	<i>Serrano v. Unruh,</i>	
16	32 Cal.3d 621 (1982)	20
17	<i>Stambaugh v. Superior Court,</i>	
18	62 Cal.App.3d 231 (1976)	16
19	<i>Thayer v. Wells Fargo Bank,</i>	
20	92 Cal.App.4th 819 (2001)	22
21	<i>Wershba v. Apple Computer, Inc.,</i>	
22	91 Cal.App.4th 224 (2001)	17, 20
23	<i>Westside Community for Independent Living, Inc. v. Obledo,</i>	
24	33 Cal.3d 348 (1983)	20

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Statutes

Cal. Civ. Proc. § 382.....	9, 15
Lab. Code § 203.....	11
Lab. Code § 218.5.....	20
Lab. Code § 226(a)	11
Lab. Code § 226(e)	18, 20
Lab. Code § 2699(g)	20

Federal Regulations

29 C.F.R. § 778.208.....	17
29 C.F.R. § 778.211	17

State Regulations

8 Cal. Code Regs. § 13520.....	18
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Other

DLSE Manual § 49.1.2.4(3).....	17
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff William Coleman (“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 ProEnergy
5 Crafts, Inc. and EvapTech, Inc. (hereinafter referred to as “Defendants”). The Settlement Class is defined
6 as: all persons who worked for EvapTech through ProEnergy and/or American Professional Staffing
7 Solutions, LLC as non-exempt, hourly paid employees in California at any time during the Class Period.
8 For purposes of this Settlement Agreement, the “Class Period” shall be the period from September 16,
9 2018 through September 26, 2024.

10 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
11 Member is approximately \$429.68. This is a favorable resolution of the highly disputed wage and hour
12 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
13 preliminary approval on September 26, 2024, nothing has changed to impact the propriety, fairness,
14 adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and
15 of their projected Settlement payments, and as of the date of this filing, no one has opted-out or submitted
16 a written objection to the Settlement.

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

25 //

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 On September 16, 2022, Plaintiff filed a putative class action complaint against Defendants in
3 Lake County Superior Court. See Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On
4 September 16, 2022, Plaintiff sent a letter to the California Labor Workforce Development Agency
5 (“LWDA”) regarding Defendants’ alleged Labor Code violations and Plaintiff’s intent to bring a claim
6 for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). On March 5, 2024,
7 Plaintiff sent a supplemental PAGA letter to the LWDA. Lidman Decl., ¶ 10. After exhausting his
8 administrative requirements under the PAGA, Plaintiff filed a First Amended Class and Representative
9 Action Complaint on May 9, 2024 adding causes of action for: (i) failure to provide accurate wage
10 statements; (ii) failure to timely pay all wages upon separation of employment; and (iii) civil penalties
11 under the PAGA. As such, Plaintiff’s operative complaint alleges that Defendants: (1) failed to pay all
12 minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally
13 required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to
14 provide accurate, itemized wage statements; (6) failed to timely pay all wages upon separation of
15 employment; (7) engaged in unlawful business practices; and (8) are liable for civil penalties under the
16 PAGA. *Id.*

17 **A. Plaintiff’s Claims**

18 As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of
19 liability are related to Defendants’ alleged failure to pay for all time worked and failure to provide
20 Settlement Class Members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶¶ 11-
21 24. Plaintiff alleges that Defendants, as joint employers, failed to compensate non-exempt employees
22 for all time worked because Defendants would keep track of Plaintiff’s time worked and would
23 unlawfully round/shave time worked such that Plaintiff would not be fully paid for all time worked. *Id.*
24 at ¶ 11. Plaintiff alleges this time-shaving and/or rounding practice utilized by Defendants was not even-
25 handed over time and would almost exclusively round and shave in Defendants’ favor such that Plaintiff
26 was routinely underpaid for all his time worked. *Id.* Additionally, Plaintiff alleges that during the relevant
27 time period, Defendants paid non-exempt employees bonuses and per diems but failed to include these
28

1 payments in the regular rate, which resulted in a systematic underpayment of overtime wages to Plaintiff
2 and the other non-exempt employees. *Id.*

3 Plaintiff alleges that he and Settlement Class Members were not provided with all legally-required
4 meal periods in compliance with California law due to Defendants' unlawful meal period
5 policies/practices. Lidman Decl., ¶ 13. Due to Plaintiff's job duties, Plaintiff alleges he was often
6 prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which
7 were at least 30 minutes in length. *Id.*

8 Plaintiff alleges that he and other Settlement Class Members were not authorized and permitted
9 to take all required rest periods due to Defendants' rest period policies/practices which fail to authorize
10 and permit all rest periods for every four hours worked, or *major fraction thereof*. Lidman Decl., ¶ 15.
11 Specifically, Plaintiff worked shifts in excess of 3.5 hours, but alleges he was not authorized or permitted
12 to take a ten-minute paid rest period for every four (4) hour period worked, or *major fraction thereof* as
13 a result of the work demands imposed by Defendants. *Id.*

14 Plaintiff further alleges that Defendants issued inaccurate wage statements in violation of Labor
15 Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages described
16 above. Lidman Decl., ¶ 17. Specifically, Plaintiff contends that this conduct violated Labor Code §
17 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked
18 and the rate at which they were being paid. *Id.*

19 Plaintiff alleges that Defendants are also liable for waiting time penalties under Labor Code
20 section 203 as a result of the failure to pay all wages upon separation of employment. Lidman Decl., ¶
21 19.

22 Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code
23 violations. Lidman Decl., ¶ 21.

24 As explained *infra* and in Plaintiff's Motion for Preliminary Approval, Defendants deny
25 Plaintiff's claims and assert several affirmative defenses, both on the merits and with respect to class
26 certification.

27 //

1 **B. Mediation and Settlement**

2 After agreeing to participate in early mediation, Defendants informally produced time records
3 and payroll data for a 20% sampling of the putative class as well as wage and hour policies and other
4 relevant documents and information relevant to the claims alleged in advance of mediation. Lidman
5 Decl., ¶ 24. Plaintiff conducted an analysis of the payroll data and time records produced by Defendants.
6 After the detailed review of the payroll and time records and other documents and policies produced by
7 Defendants, Class Counsel drew on their extensive experience in similar cases to assess the strengths
8 and weaknesses of Plaintiff’s case. *Id.*

9 On February 28, 2024, after extensive research and analysis, including a detailed analysis of
10 Defendants’ potential exposure by Plaintiff, a mediation was held with Tripper Ortman, a well-respected
11 wage and hour class action mediator. Lidman Decl., ¶ 25. During mediation, the Parties vigorously
12 debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal
13 basis for the claims and defenses. *Id.* Ultimately, the Parties agreed in principle on a class-wide resolution.
14 *Id.* Thereafter, in the weeks that followed, the Parties signed the Stipulation of Class Action and PAGA
15 Settlement (“Settlement”). *Id.*

16 **C. Preliminary Approval of Settlement**

17 Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary
18 Approval on July 31, 2024. Lidman Decl., ¶ 26. On September 26, 2024, the Court signed an Order
19 Granting Preliminary Approval of the Settlement. *Id.*; Exh. A.

20 Plaintiff submitted the Settlement and the Court’s Order Granting Preliminary Approval of the
21 Settlement to the LWDA via the LWDA’s website on July 31, 2024 and September 26, 2024,
22 respectively. *See* Lidman Decl., ¶ 42; Exhs. D and E. Plaintiff will also provide the LWDA with a copy
23 of the instant motion for final approval and supporting documents after the instant motion is filed and
24 will file a supplemental proof of service prior to the hearing. Lidman Decl., ¶ 42.

25 On November 7, 2024, the Settlement Administrator mailed the Court-approved Notice Packet
26 (which consists of the Court Approved Notice of Class Action Settlement and Hearing Date for Final
27 Court Approval) in English to the 449 Settlement Class Members, who had until December 23, 2024 to
28

submit disputes, objections, and/or requests for exclusion. See Declaration of Mayra Gonzalez of Phoenix Settlement Administrators (“Gonzalez Decl.”), ¶ 8. As of the date of this filing, there have been **no objections** and **no opt-outs** received. *Id.* at ¶¶ 13-15.

Plaintiff now respectfully submits the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

After the preliminary approval was granted, the Settlement Administrator advised the total number of workweeks worked is 5,094 confirming the escalator clause was not triggered. Gonzalez Decl., ¶ 3. As a result, the Settlement Class is defined as: all persons who worked for EvapTech through ProEnergy and/or American Professional Staffing Solutions, LLC as non-exempt, hourly paid employees in California at any time during the Class Period. For purposes of this Settlement Agreement, the “Class Period” shall be the period from September 16, 2018 through September 26, 2024. Lidman Decl., ¶29.

B. Monetary Terms of the Settlement

The Settlement provides for Defendants to pay a Gross Settlement Amount of \$380,000.00. Gonzalez Decl., ¶ 12. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys’ fees (\$126,666.66) and verified costs (\$22,907.79), the proposed Class Representative Service Award to Plaintiff (\$7,500.00), Settlement Administration costs (\$10,000.00), and the PAGA payment to the LWDA and to PAGA Employees (\$20,000.00). *Id.* Based on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$192,925.55**. *Id.*

The Individual Settlement Awards shall be determined as follows:

- i. An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Class Workweeks. See Settlement, ¶ 3.2.4.
- ii. **PAGA Amount**: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. See Settlement, ¶ 3.2.8.

1 For purposes of calculating applicable taxes and withholdings, each class Settlement Award shall
2 be allocated as follows: 80% as penalties and interest; and 20% as wages. Settlement, ¶ 3.2.5.

3 Defendants will pay the employer's share of payroll taxes separately from, and in addition to, the
4 Gross Settlement Amount. See Gonzalez Decl., ¶ 15. Defendants agree to deposit the employer's share
5 of payroll taxes with Phoenix Settlement Administrators by the date on which they pay the Gross
6 Settlement Amount.

7 **C. Summary of Notice Process**

8 **1. Mailing of Notice Packets**

9 On October 18, 2024, Defendants provided Phoenix with data files containing the names, last
10 known addresses, social security numbers, and workweeks for each Class Member. Gonzalez Decl., ¶ 4.
11 After performing address updates and verifications, Phoenix mailed the Notice Packet to the 449
12 Settlement Class Members on November 7, 2024 in English. *Id.* at ¶ 8. Following the initial mailing, 76
13 Notice Packets were returned to Phoenix by the Post Office. *Id.* at ¶ 9. After Phoenix performed a Skip
14 Trace, 67 Notice Packets were re-mailed. *Id.* As of the date of filing this final approval motion, 9 Notice
15 Packets remain undeliverable because no forwarding address was provided and/or no new address could
16 be located through Skip Trace. *Id.*

17 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
18 disputes was December 23, 2024. Gonzalez Decl., ¶ 8.

19 As of the date of this filing, there were no objections and no opt-outs. *Id.* at ¶¶ 7-9. There was
20 one dispute, which was resolved and increased the work week count from 5,093 to 5,094. Accordingly,
21 as of the date of this Motion, the participation rate amongst the 449 Settlement Class Members is 100%
22 and the average estimated payment is \$429.68 with the highest estimated payment to a Settlement Class
23 Member being \$2,727.40 and the lowest estimated payment to a Settlement Class Member being \$37.88.
24 *Id.* at ¶¶ 7-13.

25 **D. Timing of Payments**

26 Defendants shall fund the Gross Settlement Amount and the corresponding amounts necessary to
27 pay the payroll taxes on the Wage Portion of the Individual Class Payments as determined by the
28 Administrator within 30 calendar days of the Effective Date. Lidman Decl., ¶ 13, Exh. 2 Settlement ¶

4.1.3. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Members object to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members object to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or, (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. Settlement, ¶ 1.19.

After disbursement, Settlement Class Members will have 180 days to cash their checks. See Settlement ¶ 4.1.5. Funds remaining unclaimed will be distributed to the California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class Member. *Id.*; Lidman Decl., ¶30.

E. Notice of Judgment

As stated on the Court Approved Notice of Class Action Settlement mailed to class members, the final judgment entered by the Court and any changes to the Final Approval hearing date or location will be posted on the Settlement Administrator's website at www.coleman-v-proenergy-crafts.phoenixcases.com. See Gonzalez Decl., ¶6, Exh A.

IV. ARGUMENT

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

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

Here, this Court found that the Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on September 26, 2024. See Lidman Decl., ¶ 28; Exh. A. After the Court entered an order granting preliminary approval, no events have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement

Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement Class Members have objected to any portion of the Settlement and no Settlement Class Member has elected to opt-out of the Settlement. *See* Gonzalez Decl., ¶¶ 13-15. This Court should therefore confirm its conditional certification of the Settlement Class.

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

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

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

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

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

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

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

15 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
16 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect
17 to Plaintiff’s unpaid wages claim, Defendant ProEnergy Crafts, Inc. asserts it only provided payroll
18 processing services and did not legally employ Plaintiff or any of the putative class members. To the extent
19 Defendants can be proven to have employed Plaintiff and the putative class, Defendants contend that they
20 compensated Settlement Class members for all of their time worked, and any unpaid time was *de minimis*
21 and therefore non-compensable. Lidman Decl., ¶ 12. Defendants further contend that they did not have a
22 rounding policy or practice during the relevant time period. Further, Defendants contend any bonuses
23 paid during the relevant time period were discretionary and did not need to be included in the regular rate
24 of pay for overtime purposes. *See* 29 C.F.R. §§778.208, 778.211 (excluding “discretionary” bonuses from
25 the regular rate); *see also* DLSE Manual § 49.1.2.4(3) (bonuses are discretionary, and therefore
26 excludable, if “both the fact that payment is to be made and the amount of the payment” are discretionary).

27 *Id.*

1 As for Plaintiff's meal period claims, to the extent they legally employed Plaintiff and the putative
2 class members, Defendants counter that they have always provided non-exempt employees with an
3 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
4 employee timekeeping records were solely the result of employee choice, rather than any policy or practice
5 of Defendants. Lidman Decl., ¶ 14. Defendants also point out that under *Brinker Restaurant Corp. v.*
6 *Superior Court* (2012) 53 Cal. 4th 1004, they are only required to "provide" the opportunity to take meal
7 periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53
8 Cal.4th at 1038 (rejecting "ensure" standard). Defendants contend Plaintiff's meal period claim is not
9 suited for class certification and individual inquiries would be required to assess which employees took
10 non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why
11 a particular employee took a non-compliant meal period or missed a meal period during a particular shift.
12 *Id.*

13 As for Plaintiff's rest period claims, to the extent they employed Plaintiff and the putative class,
14 Defendants contend they have always maintained and enforced lawful rest period policies and practices,
15 and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in
16 compliance with California law. Lidman Decl., ¶ 16. Defendants argue that Plaintiff's rest period claims
17 are inherently unsuited for class treatment as they require an individualized inquiry into whether each
18 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 claim for wage statement penalties, Defendants argue that their alleged wage
21 statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show
22 that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as
23 required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 18.

24 As for Plaintiff's claim for waiting time penalties, Defendants assert they have strong defenses to
25 the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims,
26 precluding imposition of penalties. Lidman Decl., ¶ 20. *See also* 8 Cal. Code Regs. § 13520 (a "good
27 faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy*
28

1 *Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was
2 exempt precluded imposition of waiting time penalties over contested wages owed). *Id.*

3 Lastly, since Plaintiff’s PAGA claim is a derivative claim based on the underlying claims,
4 Defendants argue that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims
5 will fail. Lidman Decl., ¶ 22. Defendants also maintain that, given their good faith defenses, this Court
6 would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants
7 liable for any of Plaintiff’s claims. *Id.*

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

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

17 Individual settlement payments will be calculated based on the Class Workweeks worked by each
18 Settlement Class Member during the Class Period. See Settlement, ¶ 3.2.4. This method of distribution
19 compensates Settlement Class Members based on the estimated extent of their injuries, as Settlement
20 Class Members who worked more, would have been subject to more of the alleged wage and hour
21 violations than those who worked fewer weeks. Thus, the formula for compensating Settlement Class
22 Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be
23 recovered by them.

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

26 Class members’ response to a settlement is relevant in evaluating whether it merits final approval.
27 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
28 fairness presumption. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
“particularly impressive” favorable response from class members). Here, as of the filing of this Motion,

not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member has elected to opt-out of the Settlement. In addition, only 9 of the 449 Notice Packets were returned undeliverable. Gonzalez Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

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

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

Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman Decl., ¶ 40.

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

1 attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method
2 and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery;
3 and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities*
4 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored
5 in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
6 counsel for success and penalizes it for failure.") (citation omitted).

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

15 Here, Class Counsel's fee request of \$126,666.66 (one-third of the Gross Settlement Amount) is
16 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
17 "regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
18 average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
19 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
20 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively
21 small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour
22 class actions..."); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
23 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
24 attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience
25 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 32. Thus, the percentage sought by
26 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

27 Next, as stated, under the lodestar method the court computes the "lodestar" amount by
28

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

8 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
9 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
10 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
11 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
12 class actions such as this one, where the value of the benefit conferred to the class “can be monetized
13 with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of
14 the common fund to ensure that the fee awarded is reasonable and within the range of fees freely
15 negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th
16 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
17 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in
18 order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte*, 1 Cal.5th at 503-05.

19 In this case, Class Counsel have a lodestar of **\$162,297.50** which is 1.28 times more than the
20 \$126,666.66 fee request. *See* Lidman Decl., ¶ 36. A general summary showing the number of hours of
21 work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable
22 especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix,
23 submitted concurrently herewith. Lidman Decl., ¶ 37, Exh. C. Based on the *Laffey* Matrix, the hourly
24 rate for a 25th year attorney is \$997, the hourly rate for a 17th year attorney is \$829, and the hourly rate
25 for a 7th year attorney is \$508. *Id.*

26 //

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (25th Year Attorney)	\$900	77.1	\$69,390
Paul K. Haines (17th Year Attorney)	\$800	22.8	\$18,240
Milan Moore (7th Year Attorney)	\$650	110.7	\$71,955
Paralegals	\$175	15.5	\$2,712.50
Total Lodestar			\$162,297.50

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

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a 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 Gonzalez Decl., ¶¶ 13-15. Additionally, the *average* settlement payment in this case of approximately \$429.68 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 settlement approved where average class member recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits

1 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
2 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
3 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
4 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
5 compensation for over two years. Lidman Decl., ¶ 30. During this time, Class Counsel have expended a
6 total of \$22,362.79 in actual costs and have devoted substantial time to this litigation and expect to incur
7 approximately \$545.00 in future costs for filing the instant motion, filing the final declaration regarding
8 distribution of settlement, service and messenger fees, postage fees, and/or court costs for future court
9 appearances for a total of \$22,907.79. Lidman Decl., ¶ 33; Exh. B. Class Counsel's efforts have included
10 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
11 Defendants' documents and policies, analyzing Settlement Class Members' timekeeping data and payroll
12 records, preparing for and attending mediation, negotiating and revising the long-form Settlement,
13 preparing this Motion, and otherwise litigating the case. See Lidman Decl., ¶ 32. Moreover, Class
14 Counsel have expended time, effort, and money that they could have expended on less risky cases instead.
15 Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on
16 class certification and/or merits issues, the contingent risk borne by Class Counsel was great. Lidman
17 Decl., ¶¶ 30-33.

18 Class Counsel's previous experience in litigating wage and hour class actions also supports the
19 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
20 hour class action litigation, with substantial experience litigating claims for meal and rest period
21 violations, and related penalties. See Lidman Decl., ¶¶ 3-8. They have been certified as class counsel in
22 numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the strengths
23 and weaknesses of the case against Defendants and the reasonableness of the Settlement. See Lidman
24 Decl., ¶ 34. Practice in the narrow field of wage and hour litigation requires skill and knowledge
25 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class
26 action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their
27 skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding Defendant's requirement to "provide" meal periods and "authorize and permit" rest periods, and the propriety of statutory penalties, to name just a few. Lidman Decl., ¶¶ 11-24. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should be approved.

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

Class Counsel seeks to be reimbursed a total of \$22,907.79² in litigation costs. Class Counsel's request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. See Lidman Decl., ¶ 33; Exh. B. 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 grant the request for actual costs incurred.

E. The Court Should Finally Approve the Requested Administration Costs

Plaintiff also requests that the Court approve \$10,000.00 in administration costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Mayra Gonzalez 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

² Class Counsel have expended a total of \$22,362.79 in actual costs and anticipates incurring costs in the amount of \$545.00 for filing fees, service and messenger fees, and/or postage fees.

1 Settlement Class Member's individual settlement payment, updated addresses contained in the class data
2 supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 449 Settlement
3 Class Members in English, kept the parties informed of any objections or requests for exclusion, and have
4 otherwise administered the Settlement. See Gonzalez Decl., ¶¶ 2-16. For these reasons, Phoenix's
5 requested costs are fair, reasonable, and adequate, and should be finally approved.

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

8 Courts routinely approve service payments to compensate named plaintiffs for the services they
9 provide and the risks they incur during class action litigation. See, e.g., *Bell v. Farmers Ins. Exchange*,
10 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in
11 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
12 \$50,000 service payment). In analyzing the requested service payment, courts consider the following
13 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the
14 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has
15 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,
16 and the amount of time and effort the plaintiff expended in pursuing the litigation. See *Golba v. Dick's*
17 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
18 Cal.App.4th 785, 804.

19 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
20 \$7,500.00 because the request is reasonable given Plaintiff's efforts in this case and the risks he undertook
21 on behalf of Settlement Class Members. Lidman Decl., ¶ 41; Declaration of William Coleman ("Coleman
22 Decl."), ¶¶ 6-11. Plaintiff provided substantial factual information and documents to Class Counsel,
23 attended multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation,
24 and was available during the mediation. See Lidman Decl., ¶ 41; Coleman Decl., ¶¶ 6-10. The class has
25 benefited from Plaintiff's actions as the average settlement amount is \$429.68.

26 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
27 lawsuit could stigmatize him and/or affect future employment. Coleman Decl., ¶ 8. Plaintiff also
28 understood the risk that he could be liable for Defendants' costs if he lost the case. *Id.* at ¶ 7. Plaintiff

1 accepted these risks and burdens because he wanted Defendants to compensate their current and former
2 employees for unpaid wages. *Id.* at ¶¶ 7-8. Plaintiff estimates he spent between 8-10 hours on activities
3 related to this case. *Id.* at ¶ 10.

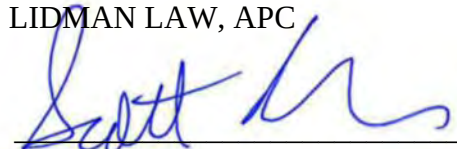
4 Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff,
5 no Settlement Class Member has objected to the proposed award, as of the date of this filing. See
6 Gonzalez Decl., ¶ 15. Thus, the service award to Plaintiff is appropriate and justified as part of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

8 **V. CONCLUSION**

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

12
13 Dated: January 27, 2025

Respectfully submitted,
LIDMAN LAW, APC

14
15 By: 

16 Scott M. Lidman
17 Attorney for Plaintiff
18 WILLIAM COLEMAN
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