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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE**

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

Plaintiff,

vs.

SUNNY DELIGHT BEVERAGES CO., a Florida corporation; and DOES 1 through 100, inclusive,

Defendant.

Case No. 30-2022-01280502-CU-OE-CXC

[*Assigned for all purposes to the Honorable Melissa R. McCormick, Dept. CX104*]

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

Date: April 24, 2025
Time: 2:00 p.m.
Dept.: CX104

[FAC Filed: November 21, 2022]
[Complaint Filed: September 14, 2022]

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 24, 2025 at 2:00 p.m. in Department CX104 of the above-entitled Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiff Rene Lopez ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Rene Lopez as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Class and PAGA Action Settlement and Second Addendum to Stipulation of Class and PAGA Action Settlement ("Settlement");
5. Approving an award of $283,333.33 in attorneys' fees to Class Counsel;
6. Approving an award of $20,123.72 in costs to Class Counsel;
7. Approving an award of $8,500.00 in costs to Phoenix Settlement Administrators ("Phoenix") for its settlement administration services;
8. Approving a representative payment of $7,500.00 to Plaintiff Rene Lopez for his services as Class Representative;
9. Approving an award of $30,000.00 to the Labor & Workforce Development Agency ("LWDA");
10. Approving an award of $10,000.00 to PAGA Employees; and
11. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is based on this notice of motion, the attached memorandum of points and authorities attached hereto, the declarations of Scott M. Lidman, Paul K. Haines, Milan Moore, Plaintiff Rene Lopez[1] and Yami Burns of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: April 2, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman
Attorney for Plaintiff
RENE LOPEZ

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[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.

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiff Rene Lopez ("Plaintiff") submits this memorandum of points and authorities in support of the motion for final approval of the class action settlement (the "Settlement") with Defendant Sunny Delight Beverages Co. (hereinafter "Sunny Delight" or "Defendant") on behalf of the Settlement Class defined as:

> All current and former hourly-paid non-exempt employees who are or previously were employed by Defendant Sunny Delight Beverages Co. who worked at any time in California during the Class Period.
>
> For purposes of this Settlement Agreement, the "Class Period" is defined as of September 14, 2018 through December 31, 2023.

In this non-reversionary Settlement, all participating Class Members will receive **automatic** payments without the need to submit a claim form, resulting in an average settlement payment of approximately **$2,991.12** to each participating Settlement Class member. This is a favorable resolution of the highly disputed wage and hour claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted preliminary approval on December 16, 2024, nothing has changed to impact the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their projected Settlement payments, no Settlement Class members have opted out of the Settlement and not a single Class Member filed a valid objection to any portion of the Settlement.

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

## II. <u>FACTUAL AND PROCEDURAL BACKGROUND</u>

On September 14, 2022, Plaintiff filed a putative class action complaint against Sunny Delight in Orange County Superior Court. Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. On November 21, 2022, Plaintiff filed a First Amended Complaint against Defendant. *Id*. On January 4, 2024 to effectuate the terms of the Settlement, the Parties filed a joint stipulation for Plaintiff to file a Second Amended Class and Representative Action Complaint. With the Court's order, Plaintiff filed the Second Amended Complaint. Therefore, Plaintiff alleges that Sunny Delight: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to reimburse necessary business expenses; (6) failed to provide accurate, itemized wage statements; (7) failed to pay all wages owed upon termination; (8) engaged in unlawful business practices; (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"); and (10) failed to pay sick pay wages at the correct rate of pay. *Id*.

### A. <u>Plaintiff's Claims</u>

As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary theories of liability are related to Sunny Delight's alleged unlawful wage and timekeeping policies and practices. Lidman Decl., ¶¶ 11-28. Plaintiff alleges that Sunny Delight failed to compensate its non-exempt employees for all time worked. Lidman Decl., ¶ 11. Specifically, Plaintiff alleges that Sunny Delight recorded its employees' hours to the quarter hour, which means the employees did not have the actual start and stop times recorded and/or paid for. *Id*.

Plaintiff alleges that throughout the relevant time period, that he and the other non-exempt employees received bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate ("Incentive Pay"). Lidman Decl., ¶ 13. Plaintiff alleges that Sunny Delight failed, however, to include the Incentive Pay when calculating the regular rate of pay for purposes of paying Plaintiff and the other Settlement Class Members' overtime wages. *Id*. Accordingly, Plaintiff contends that Sunny Delight did not properly calculate the regular rate of pay for Plaintiff and the other Settlement Class Members, thereby causing them to be underpaid for all their required overtime wages. *Id*.

Plaintiff alleges that Sunny Delight is also liable for failing to pay sick pay at the regular rate. Lidman Decl., ¶ 15. Specifically, Labor Code section 246(l) states that "… paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Here, Plaintiff alleges that Sunny Delight failed to pay Plaintiff and other former non-exempt employees their sick pay in a manner that fully complies with Labor Code section 246(l) as the bonuses were not included in the rate of pay. *Id*.

Plaintiff alleges that he and the Settlement Class Members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 17. Specifically, Plaintiff alleges that Sunny Delight failed to meet its obligation of recording the start and stop time for meal periods in approximately 65% of meal enabling shifts. Additionally, Plaintiff contends that Sunny Delight failed to provide second meal periods and that the timekeeping records will support Plaintiff's contentions that meal periods were not provided during the relevant time period were over 10.0 hours. *Id*.

Plaintiff alleges that she and Settlement Class Members were also not authorized and permitted to take all required rest periods due to Sunny Delight's rest period policies and practices. Lidman Decl., ¶ 19. Specifically, Plaintiff alleges that he and other non-exempt employees experienced at least one rest period violation on every shift worked in excess of 3.5 hours, which was majority of the shifts worked. *Id*.

Plaintiff alleges that Sunny Delight failed to reimburse him and Settlement Class members for necessary business expenditures, including the use of their personal cellular phones for work activities, as required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Lidman Decl., ¶ 21. Plaintiff contends that Sunny Delight required its non-exempt employees to use their personal cellular phones for work-related purposes but Sunny Delight did not reimburse the putative class members for the cell phones and/or the data usage. *Id*.

Plaintiff further alleges that Sunny Delight issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages described above. Lidman Decl., ¶ 23. Specifically, Plaintiff contends that this conduct violated Labor

Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid. *Id*.

Plaintiff alleges that Sunny Delight is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages. Lidman Decl., ¶ 25. Based on the data provided by Sunny Delight, there were approximately 59 Settlement Class Members who have separated their employment with Sunny Delight during the relevant time period who could be entitled to waiting time penalties. *Id*.

Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 27.

**B. <u>Mediation and Settlement</u>**

After agreeing to participate in early mediation, Sunny Delight informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for a 25% sampling of the putative class. Lidman Decl., ¶ 30. Additionally, Sunny Delight produced information and data points needed for a fruitful mediation, including without limitation, the number of employees, workweeks at issue, pay periods at issue, meal and rest period policies and procedures, and payroll policies. After a review and analysis of the documents and information produced by Sunny Delight, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Sunny Delight's defenses thereto, if a settlement could not be reached. *Id*.

On October 20, 2023, after research and analysis, a mediation was held with Jeffrey Krivis, Esq. a well-respected wage and hour class action mediator. Lidman Decl., ¶ 31. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*. Ultimately, the parties agreed in principle on a class-wide resolution. *Id*. In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Class and PAGA Action Settlement ("Settlement"). *Id*.

/ /

### C. Preliminary Approval of Settlement

Plaintiff submitted the Settlement to the Court with his Motion for Preliminary Approval on January 4, 2024. Lidman Decl., ¶ 32. On July 26, 2024, Plaintiff submitted a supplemental brief in support of his Motion for Preliminary Approval to address the issues identified in the Court's tentative ruling. Then on November 19, 2024, Plaintiff submitted a further supplemental brief in support of his Motion for Preliminary Approval. *Id*. On December 16, 2024, the Court issued an order Granting Preliminary Approval of the Settlement. *Id*.; Exh. A.

Plaintiff submitted copies of the Settlement Agreement, Addendum to the Settlement, Second Addendum to the Settlement and Order Granting Preliminary Approval to the LWDA on January 4, 2024, July 26, 2024, November 19, 2024 and December 16, 2024, respectively. Lidman Decl., ¶ 46, Exhs. F-I.

On January 21, 2025, the Court-approved Notice Packet (consisting of the Notice of Pendency of Class Action and Proposed Settlement; Notice of Individual Settlement Award; and Request for Exclusion Form) was sent to 164 Settlement Class members in Spanish and English, and the Settlement Class members had until March 24, 2025 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Yami Burns of Phoenix Settlement Administrators ("Burns Decl."), ¶ 7. As of the date of this filing, PSA has not received any opt-outs. *Id*., ¶¶ 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

The Settlement Class encompasses:

> All current and former hourly-paid non-exempt employees who are or previously were employed by Defendant Sunny Delight Beverages Co. who worked at any time in California during the Class Period.
>
> The "Class Period" is defined as of September 14, 2018 through December 31, 2023.

Lidman Decl., ¶ 29. The escalator clause was not triggered.

Further, at the time of preliminary approval, Plaintiff estimated the Settlement Class to be 162. After receiving the Class Data from Defendant, the class size only slightly increased by 2 to 164.

Therefore, there was no significant change in the estimations provided at the time of preliminary approval and now at final approval. *Id*.

**B. Monetary Terms of the Settlement**

The Settlement provides for Sunny Delight to pay a Gross Settlement Amount of $850,000.00. Burns Decl., ¶ 16. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees ($283,333.33) and verified costs ($20,123.72), proposed Class Representative Service Award to Plaintiff ($7,500.00), Settlement Administration costs ($8,500.00), and PAGA Civil Penalties to LWDA ($30,000.00). *Id*. Based on these requested amounts, the Net Settlement Amount is calculated to be approximately **$500,542.95.** *Id*.

Payment to Settlement Class members will be distributed as follows:

Each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all Settlement Class Members who worked during the Class Period. Settlement, ¶ 7.B.i.

In addition, Ten Thousand Dollars and Zero Cents ($10,000.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked during the PAGA Period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. Settlement, ¶ 7.B.b.

For purposes of calculating applicable taxes and withholdings, 33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 7. D.

Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. *See* Settlement ¶ 5.E.; Burns Decl., ¶ 17.

### C. **<u>Summary of Notice Process</u>**

#### 1. **<u>Mailing of Notice Packets</u>**

On January 6, 2025, Defendant provided Phoenix with data files with the following information: the names, last known addresses, phone numbers, social security numbers, and the number of workweeks worked by each Settlement Class Member and PAGA Employee while employed during the Class Period and PAGA Period, respectively. Burns Decl., ¶ 6. Phoenix determined that there were 19,956 workweeks during the relevant time period and the escalator clause was not triggered. After performing address updates and verifications, Phoenix mailed the Class Notice of Pendency and Settlement of Class Action, Notice of Individual Settlement Award, and Request for Exclusion Form (collectively, the "Notice Packet") to the 164 Settlement Class members on January 21, 2025. *Id*. at ¶¶ 7-8. Following the initial mailing, 11 Notice Packets were returned to Phoenix by the Post Office. *Id*. at ¶ 9. After Phoenix performed a Skip Trace, 8 Notice Packets were re-mailed. *Id*. at ¶ 11. As of the date of filing this final approval motion, 3 Notice Packets remain undeliverable. *Id*. at ¶ 12.

The deadline for Settlement Class members to submit objections, requests for exclusion, or disputes was March 24, 2025. Burns Decl., ¶ 8. As of the date of this filing, there were no valid objections, no outstanding disputes, and no Settlement Class members have elected to opt-out of the Settlement. *Id*. at ¶¶ 13-15. Accordingly, as of the date of this Motion, the participation rate amongst the Settlement Class members is 100% and the average estimated payment is $2,991.12, with the highest estimated payment to a Settlement Class member being $6,809.00, and the lowest estimated payment to a Settlement Class member being $24.58. *Id*., ¶¶ 13-19.

### D. **<u>Timing of Payments</u>**

Defendant shall deposit the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause if such increase is triggered and elected by

Defendant) and Defendant's share of all payroll taxes on the portion allocated as wages with the Settlement Administrator within (30) days after the Effective Date.[2] *See* Settlement, ¶ 5.C.

After disbursement, Settlement Class Members will have 180 days to cash their checks. *See* Settlement, ¶ 6.E. 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., ¶ 34.

### E. <u>Notice of Judgment</u>

As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class members, the final judgment entered by the Court will be posted on the Settlement Administrator's website at lopez-v-sunny-delight-beverages.phoenixcases.com. *See* Burns Decl., Exh A.; Lidman Decl., ¶ 45.

## IV. <u>ARGUMENT</u>

### A. <u>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</u>

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 December 16, 2024. *See* Lidman Decl., ¶ 32; 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

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[2] This Settlement shall become effective on the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. *See* Settlement, ¶ 5.B.

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 members have elected to opt-out of the Settlement. *See* Burns 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.

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

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

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

As detailed in Plaintiff's Motion for Preliminary Approval, there is significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example, with respect to Plaintiff's claim for failure to pay all wages, Sunny Delight contends that it compensated Class Members for all of their time worked, and any unpaid time was *de minimis* and therefore non-compensable. Lidman Decl., ¶ 12. Sunny Delight further asserts that Plaintiff would be unable to certify this class given the individualized inquiries that would be required. *Id*.

For Plaintiff's miscalculation of regular rate claim, Sunny Delight contends that Settlement Class members received all overtime wages to which they were entitled. Lidman Decl., ¶ 14.

As for Plaintiff's unpaid sick pay claim, Sunny Delight asserts it paid sick pay at the appropriate rate of pay. Lidman Decl., ¶ 16. Sunny Delight also argues that this claim is not suitable for class treatment because it would require individualized determinations. *Id*.

As for Plaintiff's meal period claim, Sunny Delight counters that it has always maintained a lawful meal period policy and provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Sunny Delight. Lidman Decl., ¶ 18. Sunny Delight points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). *Id*.

As for Plaintiff's rest period claim, Sunny Delight contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 20. Sunny Delight also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id*.

As for Plaintiff's claim for unreimbursed business expenses, Sunny Delight argues that any expenses incurred were minimal given the affordability of cellular usage plans. Lidman Decl., ¶ 22. Sunny Delight also argues that this claim is not suitable for class treatment because it would require individualized determinations as to whether each employee used a personal cellular phone and how often. *Id*.

As for Plaintiff's wage statement claim, Sunny Delight argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 24. *Id*.

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

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

These considerations not only bore heavily on the negotiations leading to the Settlement, but also confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further litigation. Lidman Decl., ¶ 29. As detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff carefully vetted the claims at issue and conducted a detailed liability analysis of class-wide data to arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable in view of them.

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

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

#### 3. **<u>The 100% Participation Rate and Absence of Any Objections Further Confirms That the Settlement is Fair, Adequate, and Reasonable</u>**

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk supra*, 48 Cal.App.4th at 1801. The lack of objections and few requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, as of the filing of this Motion, not a single Settlement Class member has validly objected to the Settlement and no Settlement Class member have elected to opt-out of the Settlement. In addition, 3 of the 164 Notice Packets were returned undeliverable. Burns Decl., ¶¶ 8-15. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

### C. **<u>The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check</u>**

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., ¶ 38. The attorneys' fee split is as follows: 40% to Lidman Law, APC and 60% to Haines Law Group, APC. *Id.*

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

*Laffitte* Court held:

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

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

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

Here, Class Counsel's fee request of $283,333.33 (one-third of the Gross Settlement Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First, "regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008); *see also*, *e.g.*, *Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27, 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour class actions…"); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience in similar wage and hour class action matters. *See* Lidman Decl., ¶ 38. Thus, the percentage sought by Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

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 **$204,985.00** which results in a multiplier of 1.38 compared to the $283,333.33 fee request. *See* Lidman Decl., ¶ 40, 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<br>(25th Year Attorney) | SML | $900 | 78.3 | $70,470.00 |
| Elizabeth Nguyen<br>(17th Year Attorney)<br>Former Shareholder | EN | $800 | 40.2 | $32,160.00 |
| Paul K. Haines<br>(16th Year Attorney) | PKH | $800 | 18.1 | $14,480.00 |
| Milan Moore<br>(7th Year Attorney) | MM | $650 | 131.1 | $85,215.00 |
| Paralegals | DJ/MA | $175 | 15.2 | $2,660.00 |
| | **Total Lodestar** | | | **$204,985.00** |

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 validly objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Burns Decl., ¶¶ 13-15. Additionally, the *average* settlement payment in this case of approximately **$2,991.12** 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 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation for over two years of work. Lidman Decl., ¶ 37. During this time, Class Counsel have expended a total of $20,123.72 in actual costs and have devoted substantial time to this litigation.[3] Lidman Decl., ¶ 37, Exhs. B and C. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Sunny Delight's documents and policies, analyzing Plaintiff's and settlement class members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, drafting and executing the addendum, drafting and executing the second addendum, preparing this Motion, and otherwise litigating the case. *See* Lidman Decl., ¶ 36. Moreover, Class Counsel have expended time, effort, and money that they could have expended on less risky cases instead. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great. Lidman Decl., ¶

[3] This includes total costs incurred by both law firms.

33.

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

Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with substantial experience litigating claims for meal and rest period violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; ¶¶ 3-8; Haines Decl., ¶¶ 3-9. They have been certified as class counsel in numerous other cases. *Id*. Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Sunny Delight and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 32. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. *Id*. Because it is reasonable to compensate Class Counsel commensurate with their 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 the propriety of statutory penalties. Lidman Decl., ¶¶ 16-28. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should be approved.

### D. <u>**The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable**</u>

Class Counsel have incurred a total of $20,123.72[4] 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; 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*

[4] This amount includes the costs associated with filing the instant motion.

*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. <u>The Court Should Finally Approve the Requested Administration Costs</u>**

Plaintiff also requests that the Court approve $8,500.00 in administration costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Yami Burns on Behalf of Phoenix submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class member's individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 164 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. <u>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</u>**

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 $7,500.00 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 Sunny Delight's costs if he lost the case and accepted this risk because he wanted Sunny Delight 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. <u>CONCLUSION</u>**

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 **December 31, 2025** and the compliance hearing shall be set for **January 8, 2026** at **2:00 p.m.**

Dated: April 2, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman
Attorney for Plaintiff
RENE LOPEZ