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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RAFAEL SOTO, as an individual and on behalf of all others similarly situated, Plaintiff, vs. UNITED SCAFFOLD, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No.: 37-2022-00042002-CU-OE-CTL [*Assigned for All Purposes to Hon. Michael T. Smyth, Dept. C-67*] **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: December 5, 2025 Time: 9:00 a.m. Dept.: C-67 Action Filed: October 19, 2022 Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on December 5, 2025 at 9:00 a.m. in Department C-67 of the above-entitled Court, located at 330 West Broadway, San Diego, CA 92101, Plaintiff Rafael Soto ("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 Rafael Soto as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy 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 Settlement (hereinafter the "Settlement");
5. Approving an award of $56,666.67 in attorneys' fees to Class Counsel;
6. Approving an award of $7,885.81 in costs to Class Counsel;
7. Approving an award of $7,750.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving an enhancement payment of $7,500.00 to Plaintiff Rafael Soto for his services as Class Representative;
9. Approving an award of $7,500.00 to the Labor & Workforce Development Agency ("LWDA");
10. Approving an award of $2,500.00 to PAGA Employees; and
11. Entering final judgment in the form of the [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is made on the following grounds: (l) the Settlement Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested awards of attorneys' fees and costs, service award LWDA payment, and settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith should be entered so as to give finality to, and allow for disbursements from, the Settlement.

This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the supporting declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Rafael Soto[1], Kevin Lee of Phoenix Settlement Administrators, and the exhibits attached thereto; the Settlement; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: November 5, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman
Attorney for Plaintiff
RAFAEL SOTO

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

TABLE OF CONTENTS

I. INTRODUCTION 1
II. FACTUAL AND PROCEDURAL BACKGROUND 2
A. Plaintiff's Claims 2
B. Mediation and Settlement 3
C. Preliminary Approval of Settlement 4
III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS 5
A. Settlement Class Definition 5
B. Monetary Terms of the Settlement 5
C. Summary of Notice Process 6
1. Mailing of Class Notices 6
D. Timing of Payments 6
E. Uncashed Funds 7
IV. ARGUMENT 7
A. This Court Should Confirm its Conditional Certification of the Settlement Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382 7
B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims 8
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 8
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 11
3. The 100% Participation Rate and Absence of Any Objections Further Confirms that the Settlement is Fair, Adequate, and Reasonable 11
C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check 12
D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable 17
E. The Court Should Finally Approve the Requested Administration Costs 17
F. This Court Should Finally Approve Plaintiff's Requested Service Award Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that He Assumed on Behalf of the Class 18
V. CONCLUSION 19

TABLE OF AUTHORITIES

Federal Cases

Air Line Stewards, etc., Local 550 v. American Airlines, Inc.
455 F.2d 101 (7th Cir. 1972) 9

Ashker v. Sayre
2011 WL 825713 (N.D. Cal. 2011) 17

Cicero v. DirectTV, Inc.
No. EDCV 07-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010) 13

Harris v. Marhoefer
24 F.3d 16 (9th Cir. 1994) 17

In re Immune Response Securities Litigation
497 F. Supp. 2d 1166 (S.D. Cal. 2007) 17

In re Rite Aid Corp. Securities Litigation
396 F.3d 294 (3d Cir. 2005) 13

Rawlings v. Prudential-Bache Properties, Inc.
9 F.3d 513 (6th Cir. 1993) 13

Schiller v. David's Bridal, Inc.,
2012 WL 2117001 (E.D. Cal. 2012) 15

Sorenson v. PetSmart, Inc.
Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) 15

Trustees of Const. Indust. & Laborers Health & Welfare Trust v. Redland Ins. Co.
460 F.3d 1253 (9th Cir. 2006) 17

Van Vranken v. Atlantic Richfield Co.
901 F. Supp. 294 (N.D. Cal. 1995) 18

Vizcaino v. Microsoft Corp.
290 F.3d 1043 (9th Cir. 2002) 15

Williams v. Centerplate, Inc.
2013 WL 4525428 (S.D. Cal. 2013) 15

Williams v. Costco Wholesale Corp.
No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 at * 6 (S.D. Cal. July 7, 2010) 13

State Cases

7-Eleven Owners for Fair Franchising v. Southland Corp.
85 Cal.App.4th 1135 (2000) 11

Bell v. Farmers Ins. Exchange
115 Cal.App.4th 715 (2004) 18

Brinker Restaurant Corp. v. Superior Court
53 Cal. 4th 1004 (2012) 10

Chavez v. Netflix, Inc.
162 Cal.App.4th 43 (2008) 13, 14

City of Oakland v. Oakland Raiders
203 Cal.App.3d 78 (1988) 14

Clark v. Am. Residential Servs. LLC
175 Cal.App.4th 785, 804 (2009) 18

Coalition for L. County Planning etc. Interest v. Bd. of Supervisors
76 Cal.App.3d 241 (1977) 14

Consumer Privacy Cases
175 Cal.App.4th 545 (2009) 14

Dunk v. Ford Motor Co.
48 Cal.App.4th 1794 (1996) 8, 9, 11

Golba v. Dick's Sporting Goods, Inc.
238 Cal.App.4th 1251 (2015) 18

Kao v. Joy Holiday
12 Cal.App.5th 947 (2017) 11

Ketchum v. Moses
24 Cal.4th 1122 (2001) 14

Laffitte v. Robert Half Int'l, Inc.
1 Cal.5th 480 (2016) 12, 13, 14

Malibu Outrigger Bd. of Governors v. Superior Court
103 Cal.App.3d 573 (1980) 8

Mallick v. Superior Court
89 Cal.App.3d 434 (1979) 9
Maria P. v. Riles
43 Cal.3d 1281 (1987) 12
Richmond v. Dart Industries, Inc.
29 Cal.3d 462 (1981) 8
Serrano v. Priest
20 Cal.3d 25 (1977) 12, 14
Serrano v. Unruh
32 Cal.3d 621 (1982) 12
Stambaugh v. Superior Court
62 Cal.App.3d 231 (1976) 8
Thayer v. Wells Fargo Bank
92 Cal.App.4th 819 (2001) 14
Wershba v. Apple Computer, Inc.
91 Cal.App.4th 224 (2001) 9, 12
Westside Community for Independent Living, Inc. v. Obledo
33 Cal.3d 348 (1983) 12

State Statutes and Rules

Cal. Civ. Code §1542 19
Cal. Civ. Proc. § 382 .... 1, 7
Cal. Lab. Code § 218.5 12
Cal. Lab. Code § 226 3
Cal. Lab. Code § 226(e) 10, 12
Cal. Lab. Code § 2699(g) 12

Regulations

8 Cal. Code Regs. § 13520 11

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Rafael Soto ("Plaintiff") submits this memorandum of points and authorities in support of his motion for final approval of the class action settlement (the "Settlement") with Defendant United Scaffold, Inc. (hereinafter "United Scaffold" or "Defendant") on behalf of the Settlement Class defined as: "all current and former non-exempt, hourly employees of Defendant United Scaffold, Inc. who worked at any time in California during the Class Period. The Class Period means the period from October 19, 2018 through December 1, 2023." In this non-reversionary Settlement, all participating Settlement Class members will receive **automatic** payments without the need to submit a claim form, resulting in an average settlement payment of approximately $463.92 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 Plaintiffs faced.

Since this Court granted preliminary approval on July 31, 2025, 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 Settlement Class member filed an objection to any portion of the Settlement.

As explained below, the Court should grant Plaintiff's motion in its entirety because: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure § 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 Granting Plaintiff's Motion for Final Approval of Class Action Settlement and enter the Final Judgment submitted concurrently herewith.

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II. FACTUAL AND PROCEDURAL BACKGROUND

On October 19, 2022, Plaintiff filed a putative class action complaint against United Scaffold in San Diego County Superior Court. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. On October 19, 2022, Plaintiff submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendant advising of his intention of filing a PAGA claim based on the Labor Code violations alleged in his operative complaint. *Id*. On December 27, 2022, Plaintiff filed a First Amended Class Action and Representative Action Complaint. *Id*. The primary allegations are that Defendant: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) made unlawful deductions from earned wages; (4) failed to provide all legally required meal periods; (5) failed to authorize and permit all legally required rest periods; (6) failed to provide accurate, itemized wage statements; (7) failed to pay all wages upon termination; (8) engaged in unlawful business practices; and (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"). *Id*.

A. Plaintiff's Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary theories of liability are related to Defendant's alleged failure to pay Settlement Class members for all time worked and its alleged failure provide Settlement Class members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶¶ 11-22. Specifically, Plaintiff alleges that he and Settlement Class members were not fully compensated for all of their time worked. *Id*. Plaintiff alleges United Scaffold would keep track of his hours and the hours of the other non-exempt employees, and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. *Id*. Plaintiff also alleges that this time shaving and/or rounding practice utilized by United Scaffold was not-even handed over time and would almost exclusively round and shave in United Scaffold's favor such that the employees were routinely underpaid for their time worked. *Id*. Further, Plaintiff alleges that he and other non-exempt employees were not paid for compensable time worked traveling from job worksites to and/or from United Scaffold's yard. *Id*. Plaintiff also alleges that United Scaffold unlawfully deducted for not cleaning trucks. *Id.*

Plaintiff alleges that he and Settlement Class members were not provided with all legally-required off-duty first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 13. Specifically, Plaintiff alleges United Scaffold had a policy and practice of not keeping track of Plaintiff's actual time worked. *Id*. Further, due to his job duties, Plaintiff alleges he was often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. *Id*. Moreover, from the records produced by United Scaffold, United Scaffold maintained a policy and practice of automatically deducted thirty minutes from Plaintiff and other non-exempt employees' work time for purported meal periods, regardless of whether a meal period was actually taken. *Id*.

Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to United Scaffold's rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 15. Specifically, Plaintiff alleges that as a result of the work demands imposed by United Scaffold, he was prevented from taking his rest periods. *Id*.

As a result of the alleged unpaid wages and unpaid meal and rest period premium wages described above, Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226, failed to pay all wages to Settlement Class members upon their separation of employment, and is thus liable for civil penalties under the Labor Code Private Attorney General Act ("PAGA"). Lidman Decl., ¶¶ 17-22.

As explained *infra* and in Plaintiff's Motion for Preliminary Approval, Defendant denies all of Plaintiff's claims, denies all allegations of wrongdoing and liability, and asserts several affirmative defenses, both on the merits and with respect to class certification in a non-settlement context.

B. Mediation and Settlement

After agreeing to participate in an early mediation, United Scaffold informally produced a sampling of timekeeping and payroll data for the putative class, as well as a putative class list with hire and termination dates and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 24. After a detailed review of the payroll and time records for the putative class and other documents and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id*. This informal discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached.

On January 23. 2024, after extensive research and analysis, a full-day mediation was held with Phillip K. Cha, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 25. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses.

After the Parties' unsuccessful mediation, Plaintiff propounded and United Scaffold responded to written discovery. Additionally, United Scaffold propounded and Plaintiff responded to written discovery. *Id*. While participating in formal discovery, the Parties with the assistance of the mediator, continued their settlement negotiations. *Id*. Ultimately, the parties agreed in principle on a class-wide resolution. *Id*.

C. Preliminary Approval of Settlement

Plaintiff submitted the Settlement to the Court with his Motion for Preliminary Approval on February 13, 2025. Lidman Decl., ¶ 26. Plaintiff also submitted the Settlement to the Cal. Labor Workforce Development Agency ("LWDA") as required under the PAGA. Lidman Decl., ¶ 40, Exh. D.

On July 31, 2025, the Court granted preliminary approval of the class action settlement. Lidman Decl., ¶ 26, Exh. A (Order Granting Preliminary Approval). Plaintiff submitted the Order Granting Preliminary Approval to the LWDA. Lidman Decl., ¶ 41, Exh. E.

On August 29, 2025, the Court-approved Class Notice was sent to 164 Settlement Class members. The Settlement Class members had until October 28, 2025 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Kevin Lee of Phoenix Settlement Administrators ("Lee Decl."), ¶ 5. As of the date of this filing, there have been **no objections, no disputes** and **no opt-outs.** *Id*., ¶¶ 7-11. Plaintiff now respectfully submits the Settlement for this Court's final approval.

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III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class encompasses "all current and former non-exempt, hourly employees of Defendant United Scaffold, Inc. who worked at any time in California during the Class Period. The Class Period means the period from October 19, 2018 through December 1, 2023." Lidman Decl., ¶ 27.

B. Monetary Terms of the Settlement

The Settlement requires Defendant to pay a Gross Settlement Amount ("GSA") of $170,000.00. Lee Decl., ¶ 12. The Net Settlement Amount ("NDF") is the amount remaining from the GSA after deducting requested attorneys' fees ($56,666.67) and verified costs ($7,885.81), proposed Class Representative Service Award to Plaintiff ($7,500.00), Settlement Administration costs ($7,750.00), and PAGA payment to the LWDA and PAGA Employees ($10,000.00). Based on these requested amounts, the NSA is calculated to be approximately $80,197.52. Lee Decl., ¶ 19; Lidman Decl., ¶ 37, Exh. B.

The Net Settlement Amount shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of Workweeks worked during the Class Period, the numerator of which is the Settlement Class member's total Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all Settlement Class Members who worked during the Class Period. Settlement, ¶ 5.B.i. Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) 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 any 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 this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees during the PAGA Period. Settlement, ¶ 5.C.

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Sixty Seven percent (67%) as penalties and interest; and Thirty-Three percent (33%) as wages. Settlement ¶ 5.D.

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

1. Mailing of Class Notices

On August 14, 2025 and August 27, 2025, Defendant provided Phoenix Settlement Administrators ("PSA") with data files containing the names, last known addresses, phone numbers, social security numbers, the dates of employment and the number of workweeks worked by each Settlement Class member while employed during the Class Period. Lee Decl., ¶ 3. Phoenix determined that there were 6,549.55 workweeks worked during the relevant time period. Accordingly, the escalator clause was triggered and Defendant elected to shorten the Class and PAGA periods to December 1, 2023. Thus, no employee that did not work during the relevant time period received any notice of this settlement.

After performing address updates and verifications, PSA mailed the Class Notice to the 164 Settlement Class members on August 29, 2025. *Id.*, ¶¶ 7-8. Following the initial mailing, 47 Class Notices were returned to PSA as undeliverable. *Id.*, ¶ 6. As a result of a skip trace, forwarding address provided by the Post Office, or re-mail requests from Counsel or Class Members, 33 Class Notices were re-mailed. *Id.*, ¶ 6. As of the date of filing this final approval motion, 22 Class Notices remain undeliverable with no forwarding address, and where no new address could be located through skip trace. *Id.*, ¶ 7.

All Settlement Class Members had 60 days to submit objections, requests for exclusion, or disputes – until October 28, 2025. Lee Decl., ¶ 8.

As of the date of this filing, there were no objections, no disputes, and no Settlement Class Member elected to opt-out of the Settlement. *Id.*, ¶¶ 8-10. Accordingly, as of the date of this Motion, the participation rate amongst the Settlement Class members is 100% and the highest Individual Settlement Share to be paid is approximately $3,101.63, the lowest Individual Settlement Share to be paid is approximately $1.63, while the average Individual Settlement Share to be paid is approximately $463.92. *Id.*, ¶¶ 13-14.

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

The Gross Settlement Amount (and employer-side taxes separate from the Gross Settlement Amount) shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class Members. Defendant shall fund the Gross

Settlement Amount in two equal installment payments of eighty-five thousand dollars and zero cents ($85,000.00). The first installment of $85,000 is due six (6) months after the Effective Date. The second and final installment of $85,000.00, along with the employer's side of taxes shall be paid six (6) months after the first installment payment." *See* Settlement, ¶ 4.B.[2]

Within seven (7) calendar days following Defendant's deposit of the Gross Settlement Amount and required employer-side payroll taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class Members.

E. <u>Uncashed Funds</u>

The Settlement provides that Settlement Class members with 180 days from the date the Settlement Administrator mails the checks and any funds remaining after 180 days will be delivered to the California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class member. Settlement ¶ 5.E. As all settlement funds will be distributed to the Settlement Class members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

IV. <u>ARGUMENT</u>

A. <u>This Court Should Confirm its Conditional Certification of the Settlement 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 § 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'

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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, ¶ 4.C.

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 Settlement Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on July 31, 2025. *See* Lidman Decl., ¶ 28; Exh. A. Subsequent to the Court's order granting preliminary approval, no events have cast doubt on the propriety of this determination, and in fact, the reaction of the Settlement Class members thus far to the Settlement has been strongly in support of the Settlement, with no Settlement Class member objecting to any portion of the Settlement and no Settlement Class member electing to opt-out of the Settlement. *See* Lee Decl., ¶¶ 10-12. This Court should therefore confirm its conditional certification of the Settlement Class.

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

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, 438 (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 to:

> [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 unpaid wages claim, United Scaffold contends that it compensated Settlement

Class members for all of their time worked. Lidman Decl., ¶ 12. As such, Defendant alleges it properly compensated Class Members for all of their time worked. *Id*. United Scaffold also contends that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-compensable. *Id*. United Scaffold further asserts that Plaintiff would be unable to certify this class given the individualized inquiries that would be required, and also that United Scaffold's rounding mechanism was, according to it, allegedly facially neutral. *Id*.

As for Plaintiff's meal period claim, United Scaffold counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records, if any, were solely the result of employee choice, rather than any policy or practice of Defendant. Lidman Decl., ¶ 14. United Scaffold 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). Finally, United Scaffold contends that Plaintiff's meal period claim is not suited for class certification since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id*.

As for Plaintiff's rest period claim, United Scaffold 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., ¶ 16. Further, United Scaffold argues that Plaintiff's rest period claim is inherently unsuited for class treatment because there are class action waivers and because the claim 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 wage statement claim, Defendant argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he 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., ¶ 18.

As for Plaintiff's waiting time penalties, Defendant 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., ¶ 20. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). *Id*.

Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims, Defendant asserts the PAGA claim would fail with those claims. Lidman Decl., ¶ 22. Defendant 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 Signtech liable for any of Plaintiff's claims. *Id*.

These considerations confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further litigation. Lidman Decl., ¶ 23. As detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff carefully vetted the claims at issue and conducted a detailed statistical 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. *Id*.

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

Individual settlement payments will be calculated based on the number of workweeks worked by each Settlement Class Member. *See* Settlement ¶ 5. This method of distribution compensates Settlement Class members based on the estimated extent of their injuries, as Settlement Class Members who worked more shifts, would have been subject to more of the alleged wage and hour violations than those who worked fewer shifts. 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. The 100% Participation Rate and Absence of Any Objections Further Confirms that the Settlement is Fair, Adequate, and Reasonable

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 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 objected to the Settlement, no Settlement Class member has elected to opt-out, and 22 of the 164 Class Notices were returned undeliverable. Lee Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further supports the conclusion 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). 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 $56,666.67 (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., ¶ 29. 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 $165,265.00, which is 2.83 times more than the $56,666.67 fee request. Lidman Decl., ¶ 34. A 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. *Id.,* at ¶ 35, Exh. C.

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Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (27th Year Attorney)	$900	69.1	$62,190.00
Paul K. Haines (18th Year Attorney)	$800	20.4	$16,320.00
Milan Moore (9th Year Attorney)	$650	98.7	$64,155.00
Tiara Gose-Hardy (6th Year Attorney)	$525	27.3	$14,332.50
Paralegals	$175	19.5	$3,412.50
Total Lodestar			**$160,410.00**

The fee award requested here is justified. Class Counsel achieved a fair 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 fair 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* Lee Decl., ¶¶ 11-16. Additionally, the *average* settlement payment in this case of approximately $463.92 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 *17 (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).

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 three years of work. Lidman Decl., ¶ 30. During this time, Class Counsel have expended $7,585.81, in actual costs, have devoted substantial time to this litigation and expect to incur approximately $300.00 in future costs for filing the instant motion, filing the final declaration regarding distribution of settlement, service and messenger fees, postage fees, copying costs and/or online fees to retrieve conformed copies of documents. Lidman Decl., ¶ 31, Exh. B. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's documents and policies, analyzing Settlement Class members' timekeeping data and payroll records, propounding and responding to formal written discovery, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing the Preliminary Approval Motion and this Motion, and otherwise litigating the case. *See* Lidman Decl., ¶ 31. 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., ¶ 35.

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; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. 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 Signtech and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 30. 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 Class 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 Signtech's obligation 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 seek reimbursement of costs in the amount of $7,885.81 (including anticipatory fees and expenses related to the instant motion and other future activity in this case) 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., ¶ 31; 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 should grant the request for actual costs incurred.

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

Plaintiff also requests that the Court approve $7,750.00 in administration costs to the Settlement Administrator, Phoenix Settlement Administrators ("PSA"). As detailed in the declaration of Kevin Lee on Behalf of PSA submitted herewith, PSA performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, PSA calculated each Settlement Class member's individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted and translated the Class Notice for mailing in English and Spanish, mailed Class Notices to all 164 Settlement Class members, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Lee Decl., ¶¶ 2-17. For these reasons, PSA's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. **This Court Should Finally Approve Plaintiff's Requested Service Award Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that He Assumed on Behalf of the Class**

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

Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of $7,500.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Settlement Class Members. *See* Lidman Decl., ¶ 39; Declaration of Rafael Soto ("Soto Decl."), ¶¶ 6-12. 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, responding to formal written discovery, and settlement. *See* Lidman Decl., ¶ 39; Soto Decl., ¶¶ 6 and 8. The class has benefited from Plaintiff's actions as the average settlement amount is $463.92.

Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize him and/or affect future employment. *See* Lidman Decl., ¶ 39; Soto Decl., ¶ 7. Plaintiff also understood the risk that he could be liable for Defendant's costs if he lost the case. *See* Lidman Decl., ¶ 39; Soto Decl., ¶ 7. Plaintiff accepted these risks and burdens because he wanted Defendant to compensate its current and former employees for unpaid wages. Jimenez Decl., ¶¶ 7. Plaintiff estimates he spent 25-30 hours on activities related to this case. *Id*. at ¶ 8.

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

Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff, no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See* Lee Decl., ¶ 10. 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 Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment submitted herewith.

Dated: November 5, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman
Attorney for Plaintiff
RAFAEL SOTO