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Attorneys for Plaintiff PHILLIP TING and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PHILLIP TING, an individual; on behalf of himself and all others similarly situated and the general public,

Plaintiffs,

v.

INPRODUCTION, INC., a Delaware corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 22STCV34682

[Assigned for All Purposes to:
The Hon. Elihu M. Berle, Dept. 6]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: April 3, 2025
Time: 10:00 a.m.
Dept: 6

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

PLEASE TAKE NOTICE that on April 3, 2025, at 10:00 a.m., or as soon thereafter as the matter may be heard in Department 6 of the above-entitled court, located at the Los Angeles Superior Court, 312 North Spring Street, Los Angeles, California 90012, Plaintiff Phillip Ting ("Plaintiff") will hereby move the Court for final approval of a class action settlement, entry of a final Order and Judgment, approval of Plaintiff's enhancement award, approval of Plaintiff's attorneys' fees and costs, and approval of the settlement administration expenses.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Aaron Bartz, Walter Haines, and Phillip Ting, all documents and records on file in this action, and on such other further oral and documentary evidence as may be given at the hearing on this Motion.

Dated: February 3, 2025 BARTZ LAW GROUP, APC

//Aaron Bartz//
Aaron A. Bartz
Attorneys for Plaintiff PHILLIP TING and all others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This class action and PAGA settlement is sought on behalf of 285[1] current and former non-exempt employees who worked in California for Defendant InProduction, Inc. ("Defendant") beginning October 31, 2018 through September 9, 2023 for the Class Period and October 13, 2021 to December 16, 2023 for the PAGA Period.

Pursuant to the preliminary approval order, the notice of class settlement and related settlement documents were mailed to the class on January 3, 2025. To class counsel's knowledge to-date, not one class member has opted out of the settlement or objected to the settlement. The settlement administration process is currently underway and the claims administrator, Phoenix Class Action Administration Solutions, pursuant to the Court's instructions upon approval of preliminary settlement, will be submitting a declaration to attest to the status of the administrative process by no later than March 24, 2025.

This case arises out of Plaintiff's allegations that Defendant violated California's wage and hour laws, including failing to pay all wages owed and overtime, failing to authorize and permit meal and rest periods, failing to reimburse class members for necessary business expenses, failing to properly maintain and submit wage statements, and waiting time penalties. Defendant disputes these claims.

There is no claim form requirement, and each member of the settlement class is entitled to receive compensation, with no reversion to the Defendant. The gross settlement is $297,500. The net amount to be paid to class members (after payment of class counsel fees and expenses, settlement administration costs, Private Attorneys General Act ("PAGA") penalties, and

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[1] As the Court may recall, the initial estimate of 327 class members was reduced to 285 because the class period was shortened so that the end date was September 9, 2023. This was reflected in the parties' amended settlement agreement, and supplemental papers filed with the Court on June 14, 2024.

Plaintiffs' enhancement awards), is approximately **$148,645.72**.[2] Each class member's share of the settlement is based on workweeks, and each shall receive, on average, approximately **$522**.

II. THE SETTLEMENT

The class members entitled to the settlement fund are all current and former non-exempt employees who have performed work in the state of California for Defendant at any time during the period beginning from October 31, 2018 through September 9, 2023 for the Class Period and October 13, 2021 to December 16, 2023 for the PAGA Period. There are 285 class members.

The settlement fund is all in (except for the employer's share of payroll taxes, which Defendant shall pay in addition to the $297,500 settlement), there is no claim form requirement, and no residual will revert to Defendant. No class members have opted out or objected to the settlement, so settlement checks will be distributed to all class members. In the event a class member does not negotiate (cash) his or her settlement check, the claims administrator shall distribute the unclaimed funds to the California State Controller's Unclaimed Property Fund. The payment to the Settlement Class Members will be characterized eighty percent interest and penalties, and twenty percent wages. The administrator will issue W-2 statements for the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and interest. Based upon Class Counsel's independent analysis and investigation in this matter, the Settlement Class will be compensated based on each member's respective number of workweeks worked in California during the Class Period. The total number of workweeks is 3,206.

Based on the settlement terms, there will be an approximate net settlement fund of **$148,645.72.** In exchange for their payment, the class will release Defendant from any and all claims rights, demands, liabilities, and causes of action, whether statutory, in tort, contract, or otherwise, alleged in the Operative Complaint and/or LWDA Letter, or that could have been

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[2] This number is higher than estimated in the Motion for Preliminary Approval because Plaintiff's attorneys' costs are less than the "not to exceed" amount of $20,000.

alleged based on the facts pleaded in the Operative Complaint and/or LWDA Letter, arising during the Class Period as set forth in the Amended to the Settlement Agreement at Paragraph 6.2.2. The named Plaintiff will, in addition to releasing claims alleged in the lawsuit, give a general release of all claims pursuant to Civil Code section 1542 as set forth in Section 6.1, 6.2, and 6.2.1. The State of California and all Aggrieved Employees, including Non-Participating Class Members who are Aggrieved Employees, are deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from the claims for civil penalties for the violations of the California Private Attorneys General Act of 2004 that were alleged, or could have been alleged, based on the facts alleged in the Operative Complaint and/or the LWDA Letter during the PAGA Period.

The all-in settlement fund will also include all of the attorneys' fees and costs allowed by this Court. The attorneys' fees shall not exceed one-third of the $297,500 settlement fund, or $99,166.66. Defendant will also pay class counsel's costs, which are $14,687.62, as well as settlement administration costs of $15,000, out of the common fund.

The PAGA allocation of the settlement is $10,000, of which $7,500 (75%) will be distributed to the Labor Workforce and Development Agency (LWDA), with the remaining portion - $2,500 (25%) - going to PAGA Members (all allegedly aggrieved persons who worked for Defendant at any time from October 13, 2021 through December 16, 2023).

The settlement also includes Plaintiff's class representative enhancement. Based on Plaintiff's work in connection with this case, including connecting Class Counsel with other witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting with developing the claims and theories in this case, and attending Mediation, Plaintiff seeks $10,000.

In summary, the settlement fund is allocated as follows:

(1) Net settlement fund: $148,645.72;

(2) Attorney's fees and costs: $99,166.66 in attorneys' fees and $14,687.62 in costs;

(3) Settlement administrator expenses of $15,000;

(4) PAGA payment: $10,000 ($7,500 to the LWDA, and $2,500 to aggrieved employees);

(5) Class representative enhancement: $10,000 for the named Plaintiff.

III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE IN THIS CASE

Pursuant to both state and federal rules of civil procedure, "a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs . . .." (Cal. Civ. Code § 1781(f); *see also* Fed. R. Civ. P. 23(e).)

To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. (*See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal. App. 3d 573, 578-579.) The purpose of the requirement is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. (*See Officers for Justice v. Civil Service Comm.* (9th Cir. 1982) 688 F.2d 615, 625, cert. denied 459 U.S. 1217.) To determine whether to grant final approval to a proposed class action under Civil Code section 382, the Court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1801 (quoting *Officers of Justice, supra*, 688 F.2d at 623-624).)

The settlement of a class action follows in three stages: (1) preliminary approval of the proposed settlement; (2) notice to class members; and (3) final approval or fairness hearing at which evidence and argument may be heard on the fairness of the settlement. Here, this Court already preliminarily approved the settlement, notice was provided to all class members, no class members have objected, and no class members have opted out.

A. The Settlement is Presumed Fair

A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of objectors is small. (*See Dunk, supra*, 48 Cal. App. 4th at 1802.) A court may also consider relevant factors such as the strength of the 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. (*See Officers of Justice, supra*, 688 F.2d at 624.) "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." (*Dunk, supra*, 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a proposed class action settlement is fair. (*See Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.)

B. **<u>The Settlement Was Reached Through Arm's Length Negotiations</u>**

This settlement is the result of arms-length and hard-fought negotiations. Defendant has denied and continues to deny all of the claims and contentions alleged in this case. Nonetheless, Defendant has agreed to settle this case in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and the uncertainties of trial and appeals.

Plaintiff and Class Counsel recognize the expense of continuing to litigate and trying this case against Defendant through possible appeals which could take several years. Class Counsel are also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the case. Based upon their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the Settlement Agreement is in the best interest of the Class Members.

Here the litigation has been hard fought and displayed capable and experienced advocacy on both sides. "There is likewise every reason to conclude that settlement negotiations were vigorously conducted at arm's length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. AZ 1989).

C. Plaintiff Conducted Sufficient Investigation and Discovery To Warrant Settlement

The stage of the proceedings and the amount of discovery completed are important factors for courts to consider in determining whether a settlement is fair, adequate and reasonable. (*See In re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741, affd., 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, affd., 661 F.2d 939 (9th Cir. 1981).)

The agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Class Counsel obtained substantial informal discovery from Defendant, including personnel records, and pay data for Plaintiff, and Excel spreadsheets and payroll records for a sampling of the class.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous issues raised on appeal and potential appeals down the road. Defendant and its counsel also agree that the settlement is fair and in the best interest of the Settlement Class Members. There can be no doubt that counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

D. Class Counsel Is Experienced In Similar Litigation And Endorse The Settlement

The view of attorneys advocating for the class is "entitled to significant weight." (*Fisher Bros. v. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *see also Ellis, supra*, 87 F.R.D. at 18.) Class counsel has significant experience in class actions and employment litigation, including wage and hour class actions. As such, they are experienced and qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement reached herein. The recovery for the class is fair, reasonable and adequate, and Class Counsel supports the settlement.

E. <u>There Are No Objectors To The Settlement</u>

Significantly, to Class Counsel's knowledge, there has not been a single objection to the settlement, and no class members have asked to be excluded from the settlement. This alone is a testament to the fairness and adequacy of the settlement. The deadline to object is March 3, 2025 and counsel will update the court by March 24, 2025 regarding the status of any objections.

F. <u>The Strength of Plaintiff's Case, The Amount Offered In Settlement, and The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement</u>

Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 458.)

Plaintiff Phillip Ting is a former employee who worked for Defendant in 2022. Defendant is in the business of constructing facilities for live public events in California. The operative Complaint alleges claims for 1) Failure to Pay All Wages; 2) Waiting Time Penalties; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Proper Rest Periods; 5) Failure to Properly Maintain and Submit Itemized Wage Statements; 6) Failure to Reimburse Expenses; 7) Unfair Business Practices; and 8) Violation of Labor Code § 2699 (PAGA). Plaintiff further allege that he and the Class are entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies.

Pursuant to *Kullar v. Footlocker Retail Inc.*, 168 Cal. App 4th 116, 118 and *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, the following describes the settlement's reasonableness. Plaintiff recognizes the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals.

Plaintiff has also taken into account the uncertainty and risk of denial of motion for class certification and the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation.

Based on the foregoing, Plaintiff has determined that the settlement is a fair, adequate and reasonable settlement and is in the best interests of the Class Members. The reasonable exposure and the reasonable settlement value for each of the alleged claims are as follows:

CLAIM	**TOTAL EXPOSURE**	**SETTLEMENT VALUE**
Failure to Pay Wages	$219,433	$153,603
Meal	$55,897	$39,128
Rest	$61,234	$30,662
Paystub	$51,600	$25,800
Waiting time	$649,728	$64,973
Reimbursement	$173,138	$17,314
PAGA	$628,164	$62,816
TOTAL	**$1,839,194**	**$394,296**

1. <u>Overtime/Off-the-Clock Wage Violations</u>

Labor Code § 510 provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

Labor Code § 1194 states any employee receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit.

Plaintiff contends that Defendant failed to pay all wages due in numerous respects. ***First***, Plaintiff contends that Defendant pays class members overtime after 40 hours worked during a given week, not over 8 in a given day, and does not pay double time when warranted. While complying with federal overtime requirements, Plaintiff believes that Defendant was also required to comply with California's more expansive overtime laws.

Second, Plaintiff contends that Defendant did not maintain accurate and complete time records. Where an employer fails to keep accurate records of an employee's work hours, even "imprecise evidence" by the employee can provide a sufficient basis for damages in an unpaid wages or overtime claim. *See Furry v. East Bay Publishing, LLC*, 30 Cal.App.5th 1072, 1079 (2018).

Defendant contends that its payment policies were lawful, and that it paid for all time worked and also kept accurate records of employee's work hours.

Plaintiff and his expert analyzed payroll and time records for the class members and calculated that the total verdict value for this claim is approximately $219,433. Plaintiff and his expert assumed 2 hours per week of unpaid hours per shift, and applied an overtime violation value based on payroll records for the class, including pay period counts per year, and a weighted average rate of pay. Based on the defenses alleged, as well as fact that the failure to pay wage claims will rest on both whether California's overtime laws apply in this specific situation, and for the off-the-clock claims, testimony from Plaintiff and class members, and documented evidence of such violations is scant, the Plaintiff placed a reasonable settlement value of the overtime/off-the-clock wage claim at seventy percent of the total verdict value, or **$153,603**. This valuation takes into consideration Plaintiff's counsels' analysis of the law, and evidence produced by the Defendant.

2. <u>Meal and Rest Period Claims</u>

a. <u>Meal period liability and damages</u>

Plaintiff contends that Defendant failed to provide Plaintiff and class members with a duty-free 30-minute meal period for every five hours of work as is required by <u>Labor Code</u> § 512 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with the applicable Wage Order(s) results in payment by the employer of one additional hour of pay at the employee's regular rate of pay for each workday that the rest or meal period is not provided. (Labor Code § 226.7.)

In *Brinker*, *supra*, the California Supreme Court held that "under ... Labor Code § 512, subdivision (a), an employer must relieve the employee of all duty for the designated period, but need not ensure that the employee does no work" during the meal period. *Id.* at 1034. However, "...an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 962–63 (2005) *see also Jaimez v. DAIOHS USA, Inc*., 181 Cal.App.4th 1286, 1304–05 (2010) [proof of common scheduling policy that made taking breaks extremely difficult would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638 (S.D.Cal.2010) [indicating informal anti-meal-break policy "enforced through 'ridicule' or 'reprimand'" would be illegal].) Defendant also cannot create "incentives to forego, or otherwise encourage[] the skipping of legally protected breaks." *Brinker*, *supra*, 53 Cal.4th at 1040.

Moreover, when time records show short, missed, and late meal periods, there is a presumption that an employer violated California's meal period requirements. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78 (2021) ("If time records show noncompliant meal periods, then a rebuttable presumption of liability arises.")

Plaintiff asserts that Defendant has no California-compliant meal period policies. Plaintiff contends that Defendant also fails to maintain accurate and complete documentation regarding Plaintiff's and other class members' meal periods, resulting in a prima facie violation of the Wage Orders. As such, it is presumed that Plaintiff and the class members were not relieved of duty and no meal periods were provided. *See Brinker, supra*, 53 Cal.4th at 1053 (conc. opn. of Werdegar, J.) Notwithstanding the above, Defendant contends that there was a lot of downtime on the installation projects, and Plaintiff and other class members were afforded time to take ample meal breaks. Defendant further contends that Plaintiff and class members had the ability and in fact did take meal periods, and that if they did not, it was their own choice, and therefore not actionable. Defendant further contends that it has time records showing such meal periods.

Class Counsel and their expert calculated the maximum verdict value of the meal break claim to be approximately $55,897. This calculation is based on a 100% violation rate, and the fact that 89% of shifts were in excess of 6 hours. Accordingly, Class Counsel and their expert determined a total violation rate for the class members, and average rate of pay based on the payroll data for the class. Based on discussions with Plaintiff, reviewing the various payroll records and policies, and the defenses raised, Plaintiff believes he had a seventy percent probability of recovering all of these damages. Accordingly, Plaintiff contends the reasonable exposure of the meal break claim is approximately **$39,128**.

b. Rest period liability and damages

Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." Moreover, during rest periods, "employees must not only be relieved of work duties, but also be freed from employer control over how they spend their time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016). Further, when an employer adopts common policies that prevent employees from taking their rest breaks, it presents a common factual issue by which liability may follow. *See Jaimez v. Daiohs USA, Inc.*, 181 Cal.App.4th 1286, 1304 (2010). Indeed, "[t]he wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks." *Brinker, supra*, 53 Cal.4th at 1040.

Here, Plaintiff contends that Defendant has no California-compliant rest period policies, and did not authorize or permit Plaintiff or the class members duty-free rest periods. Defendant, on the other hand, contends that it was not required to provide rest periods under California law, and even if it was required to do so, Plaintiff and the class members were provided numerous breaks throughout the day to more than comply with California's rest period requirements.

Defendant contends that its rest period policies were lawful and appropriate, and that all class members were afforded ample time to take duty-free rest periods throughout their work day.

Class Counsel and their expert assumed a 100% violation rate for all shifts by class members of 3.5 hours or more. Based on that assumption, Plaintiff's expert calculated total violations across the class, multiplied by an average rate of pay for the class members. As such, Class Counsel and their expert calculated the maximum verdict value of the rest period claims to be approximately $61,234. Based on the difficulty of proving rest period violations on a classwide basis, and the lack of objective evidence proving such violations, Plaintiff believes he had a fifty percent chance of recovering all of the rest period damages. As such, Plaintiff believes the reasonable exposure of the rest break claim is approximately **$30,662**.

3. Waiting Time Penalty

The waiting time penalty claim is purely derivative. Plaintiff and his expert analyzed the data to find that there are approximately 180 former employees included in the putative class that would be eligible for the Labor Code §203 penalties. Plaintiff and his expert calculated the reasonable exposure of this claim at approximately $649,728. This amount was calculated by multiplying the average daily rate of pay during the statutory period by 30, which is the maximum number of days allowable as waiting time penalties under section 203, and then multiplying that by the total number of former employees. Plaintiff further discounted the waiting time penalty claim based on risk and the fact that waiting time penalties are not awarded if a good faith dispute exists as to whether the wages were owing, including whether in fact non-California based employees would be entitled to waiting time penalties. Further, the class would have the burden of proving a “willful” withholding of wages. Plaintiff considered that under Labor Code §203 there is only a penalty if "an employer willfully fails to pay" all wages due to an employee upon separation. Willfulness does not exist if there is a "good faith dispute," in fact or law that wages were due, even if the employer's reasoning ultimately proves incorrect. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1204; 8 Cal. Code Regs. § 13520 ("A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recover on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.")

Once Plaintiff determined the maximum reasonable exposure of the claim, Plaintiff placed a settlement value of **$64,973** or approximately ten percent of the reasonable exposure value, based upon the above discounts applied to the reasonable value of the claim.

4. <u>Paystub</u>

As to the paystub penalty, which is derivative of the other claims identified above, Plaintiff and his expert arrived at a maximum reasonable exposure of this claim of approximately $51,600. This figure was arrived at by assuming that each wage statement that was provided to the class members violated <u>LC</u> §226, and multiplying the number of pay periods during the statutory period by $50 for initial violations, and $100 for subsequent violations.

Defendant argues that, even assuming there are any violations, which they deny, the fact that derivative violations were minor and that the Defendant had presented evidence of a good faith dispute as to any violation. *Hurst v. Buczek Enters., LLC* (N.D. Cal. 2012) 870 F.Supp.2d 810, 829 (no section 226 violation where the employer "makes a good faith claim" in its defense); *Harris v. Vector Mktg. Corp.* (2009) 656 F.Supp.2d 1128, 1146 (N.D. Cal. 2009) (the "employer did not knowingly and intentionally fail to provide itemized wage statements" where there was a "good faith dispute").

Based on the raised defenses, as well as the risk of certification and related risks of proving all violations, Plaintiff has placed a reasonable settlement value of **$25,800** or ten percent of the reasonable exposure of the pay stub claim.

5. **Reimbursement Claim**

California Labor Code section 2802(a) provides:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Plaintiff contends that Defendant failed to comply with California's reimbursement requirements by failing to adequately reimburse Plaintiff and the class members for using their personal cell phones while working for Defendant, along with incurring other expenses and purchasing other tools for business purposes. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137 (2014).

Defendant contends that it paid for all reasonable and necessary expenses incurred by Plaintiff and class members, and that the reimbursement claim has little to no value. Plaintiff contends that this claim is valued at $173,138 based upon average cell phone usage and failure to reimburse class members for their monthly usage while at work, along with an analysis of other expenses incurred by Plaintiff. Defendant disputes that cell phones were used for business purposes. Given the fact that there are individualized issues in proving reimbursement violations and damages, Plaintiff believes this claim's reasonable value is **$17,314**, or ten percent of the total value.

6. **PAGA**

Plaintiff contends that PAGA penalties are owed based on the numerous alleged Labor Code violations identified above. Once a PAGA violation is found, a court must award civil penalties. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1211-1213. Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

Significantly, moreover, because the law is unsettled in many areas of the law alleged by Plaintiff herein, there is a very real possibility that a court would substantially reduce the penalties, even if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4 (C.D. Cal. 2011) (reducing penalties from $2.8 million to $500,000 based on wage statement violations because to assess full penalties would be unjust and arbitrary); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30% affirmed on appeal).

Plaintiff and his expert calculated the reasonable PAGA penalties to be valued at $628,164, which includes the stacking of penalties for numerous violations, as set forth above. Based on the uncertainty of recovery on Plaintiff's claims, Plaintiff believes the PAGA claim's reasonable value is ten percent of the total value, or approximately **$62,816**.

7. Total Damage Exposure[3]

Plaintiff believes that the $297,500 settlement achieved in this case is very good for the class members. Based upon a reasonable exposure value of $394,296, the settlement represents approximately 75% of that total value. Given the many defenses raised, the uncertainty of the certifiability of any class, the possibility of summary judgment granted in favor of Defendant, and the risks of going to trial, Class Counsel believe this settlement is an excellent result for all of the class members.

G. All Class Members Have Received Proper Notice of the Settlement

Pursuant to the Court's Preliminary Approval Order dated December 9, 2024, the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, Objection Form, and Exclusion Form, were sent out to all 285 Class Members via first-class mail by Claims Administrator Phoenix Class Action Administration Solutions ("Phoenix") on January

[3] The Unfair Competition claim is subsumed into the *Kullar* analysis above. The Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of damages, and is included within the above analysis.

3, 2025. Prior to this date, the name, last known address, and social security number of each Class Member were provided by Defendant through a review of its personnel files. Upon its receipt of the Class Member contact information, Phoenix accessed the National Change of Address ("NCOA") database and updated the addresses provided by Defendant. As indicated above, pursuant to the Court's instructions upon preliminary approval of settlement, Phoenix will be submitting a declaration no later than March 24, 2025 to attest to the administrative process of the settlement.

To class counsel's knowledge, as of the date of the filing of this motion, all of the Class Notice Packets have been delivered successfully and not a single Class Member has objected to the settlement and no Class Members have requested exclusion from the settlement. Phoenix will attest to the status of class counsel's averments here through declaration per the Court's order no later than March 24, 2025.

IV. PLAINTIFFS' REQUESTED ATTORNEYS' FEES ARE APPROPRIATE AND JUSTIFIED

A. Fees Can Be Awarded As A Percentage of the Common Fund

When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (*See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 ["the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 ["percentage fees have traditionally been allowed in . . . common fund cases"]). Plaintiffs' request for one-third of the common fund is reasonable, falls within the Ninth Circuit's historical benchmark for attorneys fees of 25% to 50% of a common fund, and is fair compensation for undertaking complex litigation on a contingent basis. (*See, e.g.*, Rubinstein, Conte and Newberg, Newberg on Class Actions at § 14:6 [surveying cases, and finding that 30-50% of fees awarded in cases in which the common fund is relatively small]; see also *In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [court approved attorney fee award equal to 45% of the settlement fund].)

Under the common fund doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *(Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 [100 S.Ct. 745, 750, 62 L.Ed.2d 676].) The Supreme Court explained:

> The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit. (Citations omitted.)

(*Id.*; *see also Laffitte, supra,* 1 Cal.5th at 503 ["the percentage method is a valuable tool that should not be denied our trial courts"]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ["one who expends attorneys' fees in winning a suit which creates a fund from which other derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs"].)

Class counsel seeks an award of attorneys' fees of $99,166.66, or one-third of the settlement. Class counsel's fee is eminently reasonable here. Class counsel achieved a very good result for all class members, who will all be entitled to receive their share of the settlement according to their workweeks during the class period.

B. Plaintiff's Attorneys' Fees Are Also Recoverable Under The Lodestar Approach

Class Counsel's fee request is also reasonable when calculated using the lodestar method. The lodestar is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. *See Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 164 (2006). The court then engages in a multiplier analysis and determines whether the lodestar figure should be augmented. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001). Under the lodestar method, "there is 'no mathematical rule requiring proportionality between compensatory damages and attorneys' fees award." *Harman v. City and County of San Francisco*, 158 Cal. App. 4th 407, 421 (2007). While "the attorney who takes [a fee-shifting] case can anticipate receiving full compensation or every hour spent litigating a claim[,]" *Weeks v. Baker &*

McKenzie, 63 Cal. App. 4th 1128, 1175 (1998), courts should not be "enmeshed in a meticulous analysis of every detailed facet of the professional representation." *Serrano v. Unruh*, 32 Cal. 3d 621, 642 (1982); s*ee also*, *Fox v. Vice*, 131 S. Ct. 2205, 2216 (2001) (The essential goal in shifting fees … is to do rough justice, not to achieve auditing perfection").

The starting point in determining the appropriate hourly fee is to discern the prevailing rate for similar work in the pertinent geographic area. *PLCM Group v. Perez*, 22 Cal. 4th 1084, 1096-1097 (2000) (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel). Class Counsel's hourly rates are comparable to, or less than, those charged by other class action plaintiffs' counsel and are commensurate with the rates awarded to Class Counsel in similar actions. *See* Declaration of Aaron A. Bartz ("Bartz Decl."), at ¶22 and Declaration of Walter Haines ("Haines Decl."), at ¶ 7.

Furthermore, the total attorney hours expended on this action are reasonable. Class Counsel has spent more than 134 hours thus far, and expects to spend at least another 10 hours in reviewing the administrator's weekly reports and communicating with the administrator, responding to potential objections, and preparing for and attending the final approval hearing. *See* Bartz Decl. at ¶ 22, Ex. 5 thereto (detailed breakdown of attorney time); Haines Decl. at ¶ 10. Multiplying the total hours billed by Class Counsel by their reasonable hourly rates yields a lodestar of more than $125,000, which exceeds the amount of attorney's fees requested. Bartz Decl. at ¶ 25. Class Counsel therefore believes that pursuant to *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19 (2000), that the fee request in this case is fair and reasonable in view of the typical common fund attorneys' fees awards and similar California class action settlements and warranted under the pertinent legal authority.

1. **The Requested Award of Attorneys' Fees is Supported by Class Counsel's Prosecution of this Case on a Contingency Basis**

Recognizing that attorneys who represent clients under contingency-fee agreements shoulder considerable risk of the possibility of minimal or low recovery, courts recognize that contingent-fee attorneys should obtain a larger fee than the market-value of their services in order to help assure skilled representation of class interests. *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th at 580 ("[A] lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions."); *Ketchum v. Moses*, 24 Cal. 4th at 1132 (2001) ("[A] contingent fee contract, since it involves a gamble on the result, may properly provide for larger compensation than would otherwise be recoverable.').

The risks faced by attorneys working on contingency are substantial. This is particularly true in the context of class action litigation where there can be numerous hotly contested procedural and substantive issues, considerable outlay of costs without guarantee of recovery, and the possibility that intervening factors, such as the financial condition of the defendant, may limit the scope of potential recovery. California courts thus recognize that "the experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk." *Ketchum*, 24 Cal. 4th at 1136. "Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions … [attorneys] must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior." *Lealao*, 82 Cal. App. 4th at 47. These policies support Plaintiffs' fee request, as Class Counsel undertook substantial risk in prosecuting this case.

2. The Requested Award of Attorneys' Fees is Supported by the Results Achieved on Behalf of the Class

Courts assess the reasonableness of a request for attorneys' fees by examining the results achieved on behalf of the Class. *See Serrano*, 20 Cal. 3d at 49. This settlement represents a substantial recovery for the Settlement Class in light of the compelling defenses to liability.

As set forth above and in the supporting Declaration of Aaron A. Bartz, Class Counsel undertook a thorough analysis of the claims in this action including spending over a hundred hours of legal research and data analysis to develop the novel core theories of liability in this case. Using this data, Class Counsel was able to determine that the maximum settlement amount of $297,500 was well within the range of the "Risk Adjusted" valuation of the potential recovery. Class Counsel also expended substantial efforts and resources communicating with Plaintiff and other settlement class members, in order to maximize the total amount claimed by class members under the settlement. The result is that participating Class Members will receive $148,645.72 in total settlement payments at an average recovery of $522. Accordingly, the cumulative benefits achieved by the Settlement favor approval of the requested fees.

3. The Requested Award of Attorneys' Fees is Supported by Class Counsel's Experience, Reputation, and Skill

The "skill and experience of the attorneys and nature of work performed" are also evaluated under California law in connection with a fee motion. *Northwest Energetic Services, LLC v. Cal. Franchise Tax Bd*., 159 Cap. App. 4th 841, 880 (2008). Class Counsel regularly litigate wage and hour claims and have considerable experience settling wage and hour class actions. *See* Bartz Decl. at ¶¶13-17; Haines Decl. at ¶ 3.

V. PLAINTIFF'S REQUESTED COSTS ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel has incurred a total of **$14,687.62** in costs and expenses that would normally be billed to a fee-paying client. Defendant has agreed to pay out these costs out of the settlement amount. The majority of costs incurred in this action relate to filing fees, expert fees, and mediator fees, which are costs that are reasonable and necessary to the litigation of this case. *See* Bartz Decl. at ¶24, Ex. 6 thereto; Haines Decl. at ¶ 12.

In accordance with the Settlement Agreement, Class Counsel requests an award of $14,687.62 which is less than the $20,000 amount of costs Preliminarily Approved by the Court in this Action. Accordingly, the requested costs should also be awarded.

VI. THE REQUESTED PAYMENT TO THE CLAIMS ADMINISTRATOR IS REASONABLE AND SHOULD BE APPROVED

Plaintiff requests final approval of claims administration costs in the amount of $15,000.00 to be paid to Phoenix, which, per the Court's preliminary approval Order, will attest through declaration that it has promptly and properly distributed the Class Notice, Objection Form, and Exclusion Form to all Class Members and has otherwise completed all of its duties in administering and facilitating the settlement terms in this action.

VII. THE ENHANCEMENT AWARD FOR THE CLASS REPRESENTATIVE IS FAIR AND REASONABLE

The proposed enhancement award for the class representative is intended to recognize his initiative, risks, and efforts on behalf of the Settlement Class. Courts routinely approve class representative service payments, also known as incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see also Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for efforts in bringing the case); Manual for Complex Litigation, § 21.62, fn. 971 (noting that such awards "may sometimes be warranted for time spent meeting with Class Members, monitoring cases, or responding to discovery"). "An incentive award may be appropriate to induce someone to serve as a class representative. In determining whether to make an incentive award, the court may consider (1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit received by the class representative as a result of the litigation." *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal.App.4th 1251, 1272 (2015).

In this litigation, class representative Phillip Ting testifies to his risks, his time and effort incurred, the adverse consequences suffered, and the benefits received in this case. (*See generally*, the Declaration of Phillip Ting). In addition, class representatives are required to execute a general release of all claims against Defendant, which includes a waiver of unknown claims and their rights under California Civil Code § 1542. For all of these reasons, the requested service payments of $10,000 for Plaintiff Phillip Ting is appropriate and justified.

VIII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court issue an Order and Judgment approving the Settlement, and grant Plaintiff's attorneys' fees and costs, Phoenix's administrative expenses, and Plaintiff's enhancement award.

Dated: February 3, 2025

BARTZ LAW GROUP, APC

//Aaron Bartz//

Aaron A. Bartz
Attorneys for Plaintiff PHILLIP TING and all others similarly situated