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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ARMANDO GARCIA-AVILA, as an individual and on behalf of all others similarly situated,

Plaintiff,

v.

ORANGE COUNTY ERECTORS, INC., a California Corporation; and DOES 1 through 100,

Defendants.

Case No.: 30-2022-01284202-CU-OE-CXC

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

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS, AND ATTORNEYS' FEES AND COSTS

Date: May 1, 2025
Time: 2:00 p.m.
Dept.: CX104

Complaint Filed: October 5, 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 and California Code of Civil Procedure section 382, on May 1, 2025, at 2:00 p.m. in Department CX104 of the above-entitled Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiffs Armando Garcia-Avila and Roberto Rincon Lopez ("Plaintiffs") individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for entry of an Order:

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 Plaintiffs as the Class Representatives for settlement purposes;

3. Confirming the appointment of Paul K. Haines, Sean M. Blakely, and Joel M. Gordon of Haines Law Group, APC as Class Counsel;

4. Granting final approval of the Stipulation of Settlement ("Settlement Agreement");

5. Approving an award of $250,000.00 in attorneys' fees to Class Counsel;

6. Approving an award of $22,123.81 in litigation costs to Class Counsel;

7. Approving an award of $8,000.00 in costs to Phoenix Settlement Administrators for its settlement administration services;

8. Approving an Enhancement Payment of $5,000.00 to each Plaintiff (for a total of $10,000.00), for their service as the Class Representatives;

9. Approving an award of $30,000.00 to the Labor & Workforce Development Agency ("LWDA") for its share of civil penalties under the Private Attorneys General Act ("PAGA"); and

10. Entering final judgment in the form of the [Proposed] Judgment and Order Granting Final Approval of Class Action and PAGA Settlement filed herewith.

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This Motion is made on the following grounds: (l) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Cal. Code of Civil Procedure § 382; (2) Plaintiffs 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 amounts for Class Counsel's attorneys' fees and costs, settlement administration costs, and the Class Representative Enhancement Payments are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order Granting Final Approval of Class Action and PAGA Settlement submitted 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 declaration of Sean M. Blakely and exhibits attached thereto; the declaration of Mayra Gonzalez of Phoenix Settlement Administrators and exhibits attached thereto; the declarations of Plaintiffs; the Settlement Agreement; 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: April 9, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

By: Sean Blakely

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Armando Garcia-Avila and Roberto Rincon Lopez ("Plaintiffs") submit this memorandum of points and authorities in support of their motion for final approval of the class action settlement (the "Settlement") with Defendant Orange County Erectors, Inc. ("Orange County Erectors") (together with Plaintiffs, the "Parties"). Under the Settlement, Orange County Erectors has agreed to pay a non-reversionary Gross Settlement Amount of $750,000.00 to the following Settlement Class:

> All current and former non-exempt employees who are not governed by a collective bargaining agreement and who worked for Defendant Orange County Erectors, Inc. in California from October 5, 2018 until September 10, 2024 ("Class Period").

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 Award of approximately **$2,762.34** to each participating Settlement Class member. This is an excellent result for Settlement Class members, especially in light of the significant litigation risks that Plaintiffs faced. Moreover, after receiving notice of the proposed Settlement and projected estimated Settlement Awards, **not a single Settlement Class member has objected to the Settlement, nor elected to opt-out of the Settlement, resulting in a 100% participation rate**.

As explained further below, the Court should grant Plaintiffs' motion in its entirety because: (1) the Settlement Class continues to meet the requirements for certification for settlement purposes under Cal. Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the requested amounts for attorneys' fees and costs, settlement administration costs, and class representative enhancement payments are all fair, adequate, and reasonable. In light of the foregoing, Plaintiffs respectfully submit that the Court should enter the [Proposed] Judgment and Order Granting Final Approval submitted herewith.

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II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

In operation since 1975, Orange County Erectors is in the business of fabricating and erecting structural and miscellaneous steel buildings. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Orange County Erectors operates out of a three-acre property located in Anaheim, California, where it fabricates steel for various contractors. *Id*. Orange County Erectors employs welders, other fabrication shop employees, and office staff employees at its Anaheim facility, where Plaintiff Garcia-Avila worked as a non-exempt "welder" from approximately January 2021 until approximately July 29, 2022. *See* Declaration of Armando Garcia-Avila in Support of Approval of Class Action Settlement ("Garcia-Avila Decl."), ¶ 2.[1] Plaintiff Rincon Lopez was employed as a "shop helper" and "painter" from approximately June 2014 until approximately April 2023. *See* Declaration of Roberto Rincon Lopez in Support of Approval of Class Action Settlement ("Rincon Lopez Decl."), ¶ 2.

On October 5, 2022, Plaintiff Garcia-Avila filed a Class Action Complaint against Orange County Erectors in Orange County Superior Court, alleging causes of actions for: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement penalties; (6) waiting time penalties; and (7) unfair competition in violation of California Business & Professions Code § 17200 *et seq*. Blakely Decl., ¶ 9. That same day, Plaintiff Garcia-Avila sent his PAGA notice letter to the LWDA. *Id.* Subsequently, on December 12, 2022, Plaintiff Garcia-Avila filed a First Amended Class and Representative Action Complaint ("FAC") adding a cause of action for civil penalties under the Private Attorneys' General Act of 2004, Labor Code Section 2698, *et seq*. *Id*. As part of the Settlement, the Parties stipulated to the filing of Plaintiffs' Second Amended Class and Representative Action Complaint ("SAC"), which added Plaintiff Rincon Lopez as named representative and certain factual allegations reflecting Plaintiff Rincon Lopez's employment. *Id*. The operative SAC was

[1] Plaintiffs submitted their declarations in connection with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. *See* ROA # 67, 75. For the convenience of the Court, Plaintiffs are re-filing their declarations with this instant final approval motion.

filed on November 29, 2023. *Id*.

B. DISCOVERY, MEDIATION, AND SETTLEMENT

In connection with mediation, Orange County Erectors produced timekeeping and payroll data for forty (40) randomly selected non-exempt employees (approximately 24% of all putative class members), including actual time-punches, which enabled Plaintiffs to conduct an unpaid wage analysis. Blakely Decl., ¶ 10. In addition, Orange County Erectors produced employee handbooks and various written meal and rest policies, as well as relevant data points such as the number of putative class members and the number of aggregate workweeks worked during the Class Period. *Id.* Plaintiffs hired a labor economist with a Ph.D. in economics to assist Plaintiffs in analyzing and extrapolating the data produced to calculate Orange County Erectors' potential exposure for each of Plaintiffs' claims at issue. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims, the chances of certification of Plaintiffs' claims, and Orange County Erectors' potential defenses. *Id.*

On September 5, 2023, the Parties participated in a full-day mediation with Marc J. Feder, Esq., a highly experienced wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. *Id*. The Parties did not reach a settlement at mediation; however, the Parties continued their discussions with Mr. Feder over the following weeks. *Id*. Mr. Feder issued a mediator's proposal for a class-wide settlement, which was ultimately accepted by all Parties. *Id.* During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement. *Id*.

C. PRELIMINARY APPROVAL AND MAILING OF NOTICES

On April 3, 2024, Plaintiffs submitted the proposed Settlement to this Court with their Motion for Preliminary Approval of Class Action Settlement. Blakely Decl., ¶ 12. On August 15, 2024, the Court issued its Tentative Ruling directing the Parties to amend the Settlement Agreement and Class Notice in several respects and provide briefing regarding several issues. *Id*. Plaintiffs submitted their Supplemental Brief in Support of Preliminary Approval on November

27, 2024, addressing the issues raised by the Court in its August 15, 2024 Tentative Ruling. *Id.* On January 2, 2025, the Court issued an Order Granting Preliminary Approval of the Settlement. *Id.*; Exh. C (Order Granting Preliminary Approval of Class Action and PAGA Settlement).

On January 21, 2025, the Court-approved Class Notice was provided to Settlement Class members, and Settlement Class members had until March 24, 2025 to submit objections, requests for exclusion, or workweek disputes. *See* Declaration of Mayra Gonzalez of Phoenix Settlement Administrators ("Gonzalez Decl."), ¶¶ 6, 9-11. As of the date of this filing, Phoenix Settlement Administrators ("Phoenix") has received no objections, no requests for exclusion, and there are no workweek disputes. *Id.,* at ¶¶ 9-11. Now that notice has been provided to the Settlement Class and the Notice process is complete, Plaintiffs respectfully submit the Settlement for this Court's final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

As noted, the Settlement Class is comprised of: "All current and former non-exempt employees who are not governed by a collective bargaining agreement and who worked for Defendant Orange County Erectors, Inc. in California from October 5, 2018 until September 10, 2024 ("Class Period")." *See* Blakely Decl., Exh. C.

B. Monetary Terms

The Settlement provides for Orange County Erectors to pay a non-reversionary Gross Settlement Amount of $750,000.00. *See* Settlement, ¶ 3. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees ($250,000.00) and litigation costs ($22,123.81), proposed Class Representative Enhancement Payments of $5,000.00 to each Plaintiff (for a total of $10,000.00), settlement administration costs ($8,000.00), and the amount set aside as PAGA civil penalties ($40,000.00). *See* Settlement, ¶¶ 3(C)(2)-(5), 4(A); Blakely Decl., ¶ 20, Exh. D; Gonzalez Decl., ¶¶ 13, 17. Based on these requested amounts, the Net Settlement Amount is estimated at $419,876.19. Gonzalez Decl., ¶ 13.

The Net Settlement Amount will be distributed as follows: Ninety percent (90%) of the

Net Settlement Amount shall be distributed to all participating Settlement Class members based on the proportionate number of workweeks they worked for Orange County Erectors during the Class Period. *See* Settlement, ¶ 4(B)(i). Five percent (5%) of the Net Settlement Amount will be divided equally among all participating Settlement Class members whose employment with Orange County Erectors ended at any time from October 5, 2019 through September 10, 2024. *Id.,* at ¶ 4(B)(ii). Five percent (5%) of the Net Settlement Amount will be distributed to all participating Settlement Class members who were employed by Orange County Erectors at any time from October 5, 2021 through September 10, 2024 proportionate to the number of workweeks that he or she worked during that period. *Id.,* at ¶ 4(B)(iii). In addition, the amount designated as the "PAGA Amount" (i.e., $10,000.00) will be distributed to all individuals employed by Orange County Erectors in California and who were non-exempt employees any time from October 5, 2021 through September 10, 2024 (the "PAGA Period") based on the proportionate number of pay periods worked during the PAGA Period. *Id*., at ¶¶ 2(B), 4(B)(iv).

Any payment from the Net Settlement Amount shall be allocated as eighty percent (80%) penalties and interest and twenty percent (20%) as wages. *See* Settlement, ¶ 4(D). Any payment from the PAGA Amount will be classified as 100% penalties. *Id*. Orange County Erectors' share of employer-side payroll taxes shall be paid by Orange County Erectors separately, and in addition to, the Gross Settlement Amount. *Id.*, at ¶ 3(D).

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

On January 6, 2025, Orange County Erectors provided Phoenix, the Settlement Administrator, with the names, social security numbers, last known mailing addresses, and dates of employment for each of the 152 Settlement Class members. Gonzalez Decl., ¶ 3. On January 7, 2025, Phoenix conducted a National Change of Address ("NCOA") search in an attempt to update Settlement Class members' addresses as accurately as possible. *Id*., at ¶ 4. The NCOA contains requested change of addresses filed with the USPS. *Id*. As a result of the NCOA search, Phoenix was able to update five (5) mailing addresses. *Id.*

Following the granting of preliminary approval, it was determined that there were more than 18,965 workweeks worked during the Class Period, and therefore the Escalator Clause was triggered. Gonzalez Decl., ¶ 5. Pursuant to section 3.E of the Parties' Settlement Agreement, Orange County Erectors elected to cut off the Class Period as of the date that there were 18,965 workweeks or less, which was September 10, 2024. *Id*. Accordingly, the Class Period is October 5, 2018 through September 10, 2024, and the Notice was updated accordingly prior to mailing. *Id*.

On January 21, 2025, the Class Notice was mailed, in both English and Spanish, via U.S First Class Mail, to all 152 Settlement Class members. Gonzalez Decl., ¶ 6, Exh. A. Following the initial mailing, eight (8) Notices were returned to Phoenix. *Id*., at ¶ 7. For the eight (8) Notices returned from the Post Office without a forwarding address, Phoenix attempted to locate a current mailing address using TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing. *Id*. Of the eight (8) Notices that were skip traced, one (1) updated address was obtained and the Notice was promptly re-mailed to the Settlement Class member via U.S. first class mail. *Id*. Ultimately, seven (7) Notices remain undeliverable since an updated address could not be obtained through a skip trace. *Id*., at ¶ 8.

Settlement Class members had until March 24, 2025 to submit objections, disputes, and/or requests for exclusion. Gonzalez Decl., ¶¶ 9-11. As of the date of this filing, Phoenix received no objections, no requests for exclusions, and no workweek disputes. *Id*. Accordingly, the participation rate is 100%, and the average estimated payment is approximately $2,762.34, with the highest estimated payment being $6,729.31 *Id*., at ¶¶ 12, 14. Additionally, the 104 Aggrieved Employees who were employed during the PAGA Period will receive a portion of the $10,000.00 PAGA Amount. *Id*., at ¶ 15. The highest individual PAGA Payment is approximately $151.38 and the average individual PAGA Payment is approximately $96.15. *Id.*

D. <u>Funding of the Settlement and Uncashed Settlement Funds</u>

Orange County Erectors shall deposit the Gross Settlement Amount with the Settlement Administrator within fifteen (15) calendar days of the Final Effective Date. *See* Settlement, ¶ 3(B). Within ten (10) calendar days following Orange County Erectors' deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to the Parties' counsel for review and approval. *Id.*, ¶ 4(C). Within seven (7) calendar days of approval by the Parties' counsel, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members and Aggrieved Employees. *Id*. After disbursement, Settlement Class members will have 180 days to cash their checks. *Id*., ¶ 4(E). Funds remaining unclaimed after 180 days shall be distributed to the California Controller's Unclaimed Property Fund, in the name of the Settlement Class member to whom the check was issued, until such time that they claim their property. *Id.*

IV. ARGUMENT

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

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's claims; and (4) the representative will fairly and adequately represent the class's interests. *See Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 470 (1981).

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 January 2, 2025. *See generally* Blakely Decl., Exh. C. 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 has been overwhelmingly supportive of the Settlement, with no objections or requests for exclusion submitted, resulting in a 100% participation rate. *See* Gonzalez Decl., ¶¶ 9-10, 12. This Court should therefore confirm its conditional certification of the Settlement Class.

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

California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*

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

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 Plaintiff 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 Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and information received through it to aid them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the parties and the court to form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Clark v. Am. Residential Svcs. LLC*, 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the parties can provide the Court with "a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated." *Kullar*, 168 Cal.App.4th at 132-33.

2. The Settlement is Fair, Adequate and Reasonable in Light of the Risks Faced by Plaintiff

The Settlement resulted from extensive arm's-length negotiations between qualified counsel, a full-day mediation before an experienced wage and hour mediator, along with additional months of negotiating the long-form settlement agreement, and is fair, adequate, and reasonable for all Settlement Class members. While Plaintiffs steadfastly maintain their claims are meritorious, Plaintiffs acknowledge their position included substantial risks and uncertainty, which justifies a downward departure from the maximum exposure each claim potentially carried.

As detailed in Plaintiffs' Motion for Preliminary Approval, there is a significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiffs' claims. Blakely Decl., ¶ 13. As an initial matter, Orange County Erectors argues that approximately 86 Settlement Class members signed valid and enforceable arbitration agreements with class action waivers. *Id*. Setting aside any arguments as to the merits of Plaintiffs' claims, Orange County

Erectors contends that absent settlement, Plaintiffs' proposed classes could be potentially narrowed due to the existence of arbitration agreements with class action waivers. *Id*.

With respect to Plaintiffs' meal period claims, Orange County Erectors argues that it maintained compliant written meal period policies throughout the Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 14. Orange County Erectors further contends that under *Brinker*, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. *Id*.; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). Orange County Erectors also maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Blakely Decl., ¶ 14. With respect to second meal periods, Orange County Erectors argues that employees may waive second meal periods on shifts of more than 10.0 hours but less than 12.0 hours, under Labor Code § 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes, and that employees regularly did so. *Id*. Lastly, Orange County Erectors argues that individualized inquiries will be required to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, thereby making class certification of this claim unlikely. *Id*.

With respect to Plaintiffs' rest period claims, Orange County Erectors argues that it has always maintained and enforced lawful rest period policies/practices during the Class Period, and has, in fact, authorized and permitted all required rest periods to Settlement Class members. Blakely Decl., ¶ 15. Additionally, Orange County Erectors maintains that any failure to take a rest period was the result of employee choice, rather than any policy or practice of Orange County Erectors. *Id*. With respect to the Friday shifts, Orange County Erectors argues that its departure from the preferred rest period schedule was lawful because Settlement Class members overwhelmingly preferred to take one 20-minute rest period in the morning to be able to eat breakfast. *Id*

With respect to Plaintiffs' allegations of unpaid wages due to unlawful timekeeping policies and/or practices, Orange County Erectors counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 16. Orange County Erectors contends that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. *Id*. Moreover, Orange County Erectors contends that although Settlement Class members may have clocked-in prior to their scheduled start time, it was not possible for Settlement Class members to perform any compensable work prior to the scheduled start of shift. *Id*. Finally, Orange County Erectors asserts that Plaintiffs would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid, or potentially overpaid, for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id*.

As for Plaintiffs' wage statement claims, Orange County Erectors argues that any alleged wage statement violations were not "knowing and intentional," and Plaintiffs cannot show that they or other employees "suffer[ed] injury" due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. Blakely Decl., ¶ 17. Further, Orange County Erectors contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer's "commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received…The purpose of section 226 is to *document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.") (Italics in original). Blakely Decl., ¶ 17.

In response to Plaintiffs' claim for waiting time penalties, Orange County Erectors argues that it possesses strong, good-faith defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. Blakely Decl., ¶ 18; *see also* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203 . . . 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 recovery on the part of the employee."). Orange County Erectors further asserts that Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Blakely Decl., ¶ 18.

Finally, Orange County Erectors asserts that the PAGA claim fails because Plaintiffs' underlying claims fail. Blakely Decl., ¶ 19; *see also Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Additionally, Orange County Erectors maintains that given its good-faith defenses, the Court would substantially reduce any PAGA civil penalties if it were to find Orange County Erectors liable for any of Plaintiffs' claims. Blakely Decl., ¶ 19; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties) (*disapproved on other grounds* in *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, FN8 (2019)); *Fleming v. Covidien, Inc.*, No. ED-CV-10-01487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

These considerations not only bore heavily on the Parties' negotiations leading up to the Settlement, but also confirm that the Settlement is a fair and reasonable compromise in view of the risk of further litigation. As detailed in Plaintiffs' Motion for Preliminary Approval, Plaintiffs 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 the Settlement is fair, adequate, and reasonable in view of them.

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

As noted, Settlement Awards will be calculated based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period, the proportionate number of workweeks and/or pay periods worked from October 5, 2021 to September 10, 2024, and whether the Settlement Class member ended his or her employment during the time period of October 5, 2019 to September 10, 2024. *See* Settlement, ¶¶ 4(B)(i)-(iv). This method of distribution compensates Settlement Class members based on the estimated extent of their injuries, as Settlement Class members who worked more workweeks would have been subject to more of the alleged wage and hour violations than those who worked fewer workweeks, and Settlement Class members who are eligible for wage statement and waiting time penalties would be entitled to additional penalties. 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.

4. *The Absence of Any Objections or Opt-Outs 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 small number of objections (3) and the absence of requests for exclusion support a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1152-53 (2000) (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, there are no objections to the Settlement and no Settlement Class member elected to opt-out of the Settlement, resulting in a 100% participation rate. Gonzalez Decl., ¶¶ 9-12. This extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

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

Plaintiffs and the Settlement Class, as the prevailing parties in settlement, are entitled to recover their attorney's fees and costs for their wage claims. *See* Lab. Code §§ 226(e), 1194, and 2699(g). An attorneys' 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 Cmmty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *see also* Cal. Code Civ. Proc. § 1021.5. Here, Plaintiffs submit that they are entitled to recover their attorneys' fees under the common fund theory, as confirmed by a lodestar "cross-check."

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. *Wershba*, 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.* that "[t]he percentage of fund method survives in California class action cases." 1 Cal.5th 480, 506 (2016). Our Supreme 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; *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) (percentage of fund method more accurately reflects the results achieved for the putative class 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. Sec. Litig.*, 396 F.3d 294, 300 (3d 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.").

Here, Class Counsel's fee request of $250,000.00 (one-third of the Gross Settlement Amount), is fair and reasonable based on a percentage of the recovery. 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,* 162 Cal.App.4th 43, 66, n.11 (2008). This is also consistent with Class Counsel's experience in similar matters. Blakely Decl., ¶ 22. Thus, the percentage sought by Class Counsel (the same percentage approved in *Laffitte*) is reasonable.

The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess the reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court calculates counsel's lodestar and determines whether the "lodestar multiplier" needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte,* 1 Cal.5th 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 the 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.").

Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the contingent nature of the case and the degree of success achieved. *See Serrano v. Priest* 20 Cal.3d 25, 48-49 (1977); *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 about 2.5); *Coalition for L.A. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal. App. 3d 241, 251 (1977) (approving multiplier of about 12.8). 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," the 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).

Here, Class Counsel have a lodestar of approximately $219,795.00 which results in a modest multiplier 1.14 compared to the $250,000.00 fee request. Blakely Decl., ¶ 22; Exh. F. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable in view of the evidence submitted herewith. *Id.,* at ¶¶ 22-24 & Exh. G (*Laffey* Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (19th Year Attorney)	$925	21.1	$19,517.50
Sean M. Blakely (16th Year Attorney)	$825	134.3	$110,797.50
Joel M. Gordon (10th Year Attorney)	$725	102.4	$74,240.00
Alexandra R. McIntosh (7th Year Attorney)	$600	25.4	$15,240.00
Total Lodestar			**$219,795.00**

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk, and the absence of supporting precedents, are proper considerations in awarding attorney's fees). Class Counsel negotiated a substantial recovery for the Settlement Class, **resulting in a 100% participation rate**, and no Settlement Class member objected to the Settlement nor Class Counsel's requested fees. *See* Gonzalez Decl., ¶¶ 9-10, 12.

In addition, the average estimated payment in this case of **$2,762.34** exceeds average payments in similar wage and hour class action settlements. *See, e.g.*, *Sorenson v. PetSmart, Inc.*, 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 (E.D. Cal. June 11, 2012) (finding that average payment to class members of less than $200 was a "good" result); *Williams v. Centerplate, Inc.*, No. 11-CV-2159 HKSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (granting final approval of class action settlement where average recovery for each class member was approximately $108 and describing result as "very favorable"). The fact that Class Counsel achieved these results in the face of serious defense challenges, and in an uncertain legal landscape, confirms the strength of the results achieved.

As noted, this case presented significant risk as to both class certification and prevailing on the merits. 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 Plaintiffs in this litigation, Class Counsel have borne all the costs of litigation for over two (2) years without receiving any compensation to date. *See* Blakely Decl., ¶ 20, Exh. D. During this time, counsel has incurred $22,123.81 in litigation costs, and devoted substantial time to this litigation. *Id*.

Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, conducting extensive informal discovery, analyzing Settlement Class members' timekeeping and payroll records and other data and documents with the help of a retained expert, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing the Motion for Preliminary Approval, preparing the supplemental briefing, the Amendment to Stipulation of Settlement, and amended Notice, overseeing the Notice process and fielding questions from Settlement Class members, preparing this Final Approval Motion and attending the Final Approval hearing, and otherwise litigating the case. Blakely Decl., ¶ 21. 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 counsel in this case was great. *Id.*

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 decades of combined experience litigating claims similar to those raised in this case. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines in support of preliminary approval (ROA # 63), at ¶¶ 3-8. Class Counsel have been certified as class counsel in dozens of other cases. *Id*. Their experience in similar matters was integral in evaluating the claims against Orange County Erectors and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law, as well as the procedural law of class action litigation. Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues regarding both substantive and procedural law, including questions surrounding Orange County Erectors' alleged rounding of timekeeping punches, its obligation to "provide" meal periods and "authorize and permit" rest periods, and the propriety of statutory penalties, to name just a few. Thus, Class Counsel submit the requested fee award is fair, reasonable, and adequate and should be approved.

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

Class Counsel seek $22,123.81 in litigation costs.[2] Blakely Decl., ¶ 20, Exh. D. The cost request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs Plaintiff seeks are 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. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients"); *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 reimbursable); *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation, consultant and expert fees; legal research; copies; postage; filing fees; messenger and overnight delivery costs reimbursable). In addition, no Settlement Class member objected to Class Counsel's request of up to $30,000 in litigation costs. *See* Gonzalez Decl., ¶ 10. Because these costs were reasonably incurred, and no Settlement Class member has objected to them, the Court should grant the request.

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[2] Class Counsel does not seek to recover photocopy and postage costs as Class Counsel is aware the Court considers these costs to be firm overheard and not reimbursable. Blakely Decl., ¶ 20.

E. <u>The Court Should Approve the Requested Settlement Administration Costs</u>

Plaintiffs also request that this Court approve $8,000.00 in settlement administration costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Mayra Gonzalez submitted herewith, Phoenix performed duties that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class member's Settlement Award, updated addresses contained in the class data supplied by Orange County Erectors, formatted Notices for mailing, mailed Notice Packets to all 152 Settlement Class members, kept the parties informed of any objections or requests for exclusion, and otherwise administered the Settlement. *See* Gonzalez Decl., ¶¶ 2-15, Exh. B. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. <u>The Court Should Finally Approve Plaintiffs' Requested Class Representative Enhancement Payments</u>

Courts routinely approve service awards 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). Indeed, "[i]ncentive awards are fairly typical in class action cases." *Rodriguez v. West Publ'g Corp*., 563 F.3d 948, 958 (9th Cir. 2009). The Court may award service awards "to compensate [Plaintiff] for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action. *Id*. at 958-59.

Here, Plaintiffs seek an Enhancement Payment of $5,000 each, and believe these requests are reasonable given his efforts in this case and the risks they undertook on behalf of the Settlement Class. *See* Garcia-Avila Decl., ¶¶ 4-5; Lopez Decl., ¶¶ 4-5. Plaintiffs expended substantial time and effort on behalf of the Settlement Class, including providing factual information and documents to counsel, attending meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of their claims. *Id.*

Plaintiffs also undertook the risk of being liable for Orange County Erectors' costs if this case were lost, as well as the reputational risk of being the named plaintiff in a wage and hour class action against an employer. *See*, *e.g.*, *Deaver v. Compass Bank*, 2015 WL 8526982 at **14-15 (N.D. Cal. Dec. 11, 2015) (approving $7,500 incentive payment in $500,000 wage and hour settlement, finding the award "particularly appropriate in this wage and hour class action, where Plaintiff undertook a significant 'reputational risk' in bringing this action against his former employer").

Finally, after receiving notice of the proposed Class Representative Enhancement Payments for Plaintiffs, no Settlement Class member objected to the amount. *See* Gonzalez Decl., ¶ 10. Given Plaintiffs' significant contributions to this case, the risks they undertook, and the lack of any objection from Settlement Class members, Plaintiffs' requested Class Representative Enhancement Payments are appropriate and justified as part of the Settlement and should be finally approved.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that this Court should grant Plaintiffs' motion in its entirety and adopt the [Proposed] Judgment and Order Granting Final Approval of Class Action and PAGA Settlement submitted herewith.

Dated: April 9, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

By: [signature]
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