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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MIRIAM MORENO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BEACON DAY SCHOOL, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO. 30-2022-01296662-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Lon F. Hurwitz, Dept. CX-103]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA ACTION SETTLEMENT,
ATTORNEYS' FEES AND COSTS, AND
CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT**

Date: February 7, 2025

Time: 1:30 p.m.

Dept.: CX103

Action Filed: December 14, 2022

Trial Date: None Set

PLEASE TAKE NOTICE that on February 7, 2025, at 1:30 p.m., or as soon thereafter as the matter may be heard in Department CX103 of the Orange County Superior Court, located at 751 W Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Miriam Moreno, as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for entry of an Order pursuant to California Code of Civil Procedure § 382 and Rule 3.769 of the California Rules of Court:

1. Confirming the certification of the Settlement Class for settlement purposes under California Code of Civil Procedure § 382;
2. Confirming the appointment of Plaintiff Miriam Moreno as the Class Representative for settlement purposes;
3. Confirming the appointment of Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Settlement (“Settlement Agreement” or “Settlement”);
5. Approving an award of \$83,333.33 in attorneys’ fees to Class Counsel;
6. Approving an award of \$9,381.16 in actual litigation costs reimbursement to Class Counsel;
7. Approving an award of \$8,750.00 in costs to Phoenix Settlement Administrators (“Phoenix”) for its settlement administration services;
8. Approving a Class Representative Enhancement Payment of \$5,000.00 to Plaintiff Miriam Moreno for her service as the Class Representative;
9. Approving an award of \$10,000.00 for civil penalties under the Private Attorneys General Act (“PAGA”), \$7,500.00 of which will be paid to the California Labor and Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Order Granting Plaintiff’s Motion for Final Approval of Class Action and PAGA Action Settlement, Attorneys’ Fees and Costs, and Class Representative Enhancement Payment, and Final Judgment (the “[Proposed] Judgment and Order”) submitted herewith.

1 This Motion is made on the following grounds: (1) the Settlement Class continues to meet
2 the requirements for class certification for settlement purposes only under Code of Civil
3 Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the
4 Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed
5 wage and hour claims; (4) the requested awards of attorneys' fees and costs, Class Representative
6 Enhancement Payment, LWDA payment for its share of PAGA penalties, and settlement
7 administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the
8 [Proposed] Judgment and Order submitted concurrently herewith should be entered so as to give
9 finality to, and allow for disbursements from, the Settlement.

10 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
11 Authorities; the supporting declarations of Matthew K. Moen, Paul K. Haines, Fletcher W.
12 Schmidt, Plaintiff Miriam Moreno,¹ and Mayra J. Gonzalez of Phoenix, and the exhibits attached
13 thereto; the Settlement Agreement; all other pleadings and papers on file in this action; and on
14 any further oral or documentary evidence or argument presented at the time of hearing.

15 Dated: January 24, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

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17 By:


Matthew K. Moen
Attorneys for Plaintiff

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¹ Plaintiff Miriam Moreno previously submitted her declaration in support of preliminary settlement approval on June 12, 2024. For the convenience of the Court, Plaintiff is re-submitting her declaration with the current filing.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND	2
III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS	3
A. Settlement Class Definition	3
B. Monetary Terms	3
C. Summary of Notice Process	5
D. Timing of Payments	6
IV. ARGUMENT	6
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	6
B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims	7
1. The Settlement was Reached at Arms' Length, Through Experienced Counsel and an Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement Considering the Claims Asserted and Risks of Continued Litigation	7
2. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Settlement Class Member Will Be Paid Based on the Extent of His or Her Injury	12
3. The 100% Participation Rate and Absence of Any Objections Further Confirm That the Settlement is Fair, Adequate, and Reasonable	12
C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Maximum Settlement Amount Confirmed by a Lodestar Cross-Check	13
D. The Requested Cost Reimbursement Warrants Final Approval as Fair, Adequate, and Reasonable	16
E. The Court Should Finally Approve the Requested Settlement Administration Costs	17
F. The Court Should Finally Approve Plaintiff's Requested Class Representative Enhancement Payment Because the Requested Amount is Fair, Adequate, and Reasonable Considering Plaintiff's Efforts and the Risks Assumed on Behalf of the Class	18
V. CONCLUSION	19

TABLE OF AUTHORITIES

Federal Cases

<i>Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.</i> 455 F.2d 101 (7th Cir. 1972)	8
<i>Bouman v. Block</i> 940 F.2d 1211 (9th Cir.1991)	15
<i>Culley v. Lincare, Inc.</i> 236 F.Supp.3d 1184 (E.D. Cal. 2017).....	9
<i>Harris v. Marhoefer</i> 24 F.3d 16 (9th Cir. 1994)	17
<i>In re Immune Response Securities Litigation</i> 497 F.Supp.2d 1166 (S.D. Cal. 2007).....	17
<i>In re Pacific Enterprises Securities Litig.</i> 47 F.3d 373 (9th Cir. 1995)	13
<i>In re Rite Aid Corp. Securities Litigation</i> 396 F.3d 294 (3d Cir. 2005).....	13-14
<i>Pennsylvania v. Delaware Valley Citizens' Council for Clean Air</i> 483 U.S. 711 (1987).....	15
<i>Rawlings v. Prudential-Bache Properties, Inc.</i> 9 F.3d 513, 516 (6th Cir. 1993)	13
<i>Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.</i> 460 F.3d 1253 (9th Cir. 2006)	17
<i>Van Vranken v. Atlantic Richfield Co.</i> 901 F.Supp. 294 (N.D. Cal. 1995)	18

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	12
<i>ABM Industries Overtime Cases</i> (2017) 19 Cal.App.5th 277	17
<i>AHMC Healthcare, Inc. v. Superior Ct.</i> (2018) 24 Cal.App.5th 1014	8
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	18

1	<i>Berkeley Cement, Inc. v. Regents of University of California</i>	
2	(2019) 30 Cal.App.5th 1133	17
3	<i>Carrington v. Starbucks Corporation</i>	
4	(2018) 30 Cal.App.5th 504	11
5	<i>Cellphone Termination Fee Cases</i>	
6	(2010) 186 Cal.App.5th 1380	18
7	<i>Chavez v. Netflix, Inc.</i>	
8	(2008) 162 Cal.App.4th 43	13, 14
9	<i>Clark v. American Residential Services, LLC</i>	
10	(2009) 175 Cal.App.4th 785	18
11	<i>Coalition for L. County Planning etc. Interest v. Bd. of Supervisors</i>	
12	(1977) 76 Cal.App.3d 241	14
13	<i>Consumer Privacy Cases</i>	
14	(2009) 175 Cal.App.4th 545	14
15	<i>Dunk v. Ford Motor Co.</i>	
16	(1996) 48 Cal.App.4th 1794	7
17	<i>Graham v. DaimlerChrysler Corp.</i>	
18	(2004) 34 Cal.4th 553	15
19	<i>Ketchum v. Moses</i>	
20	(2001) 24 Cal.4th 1122	14
21	<i>Laffitte v. Robert Half Int'l, Inc.</i>	
22	(2016) 1 Cal.5th 480	13
23	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i>	
24	(1980) 103 Cal.App.3d 573	7
25	<i>Mallick v. Superior Court</i>	
26	(1979) 89 Cal.App.3d 434	7
27	<i>Maria P. v. Riles</i>	
28	(1987) 43 Cal.3d 1281	13
	<i>Price v. Starbucks Corp.</i>	
	(2011) 192 Cal.App.4th 1136	10
	<i>Richmond v. Dart Industries, Inc.</i>	
	(1981) 29 Cal.3d 462	6
	<i>See's Candy Shops, Inc. v. Superior Court</i>	
	(2012) 210 Cal.App.4th 889	8

1	<i>Serrano v. Priest</i>	
2	(1977) 20 Cal.3d 25	13, 14
3	<i>Stambaugh v. Superior Court</i>	
4	(1976) 62 Cal.App.3d 231	7
5	<i>Thayer v. Wells Fargo Bank</i>	
6	(2001) 92 Cal.App.4th 819	14
7	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
8	(2012) 203 Cal.App.4th 1112	11
9	<i>Wershba v. Apple Computer, Inc.</i>	
10	(2001) 91 Cal.App.4th 224	8, 13
11	<i>Westside Community for Independent Living, Inc. v. Obledo</i>	
12	(1983) 33 Cal.3d 348	13
13	<u>State Statues and Rules</u>	
14	8 Cal. Code Regs. § 13520.....	11
15	Labor Code § 1194.....	13
16	Labor Code § 226(e)(1)	10
17	Labor Code § 2699(e)(2)	11
18	Labor Code § 2699(g).....	13
19	Labor Code § 226(e)	13
20	<u>Unpublished Cases</u>	
21	<i>Ashker v. Sayre</i>	
22	No. 05-03759 CW	
23	2011 WL 825713 (N.D. Cal. 2011)	17

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Miriam Moreno (“Plaintiff”) hereby submits this Memorandum of Points and
4 Authorities in support of her Motion for Final Approval of this Class Action and PAGA Action
5 Settlement (the “Settlement”)² on behalf of all current and former non-exempt employees who
6 worked for Defendant Beacon Day School, Inc. (“Defendant”) in California between December
7 14, 2018 and February 24, 2024 (the “Class Period”). Plaintiff and Defendant are referred to
8 collectively as “the Parties.”

9 This is a \$250,000.00 non-reversionary Settlement, in which all participating Settlement
10 Class members will automatically receive payments without the need to submit a claim form. This
11 results in average Individual Settlement Payments of approximately \$296.75 to each of the 450
12 participating Settlement Class members, with the highest Individual Settlement Payment expected
13 to be approximately \$1,035.63, and the lowest Individual Settlement Payment expected to be
14 approximately \$3.16. *See* Declaration of Mayra J. Gonzalez (“Gonzalez Decl.”), ¶¶ 11, 13.
15 Further, this Settlement provides additional consideration to the State of California and 267
16 PAGA Aggrieved Employees for settlement of Plaintiff’s claim for civil penalties under PAGA.
17 *Id.*, ¶ 14. This results in average payments to the PAGA Aggrieved Employees of approximately
18 \$9.36, with the highest Individual PAGA Payment expected to be approximately \$25.75, and the
19 lowest Individual PAGA Payment expected to be approximately \$0.26. *Id.* This is a fair and
20 reasonable resolution of the disputed wage and hour claims at issue in this case considering the
21 significant litigation risks that Plaintiff faced. After receiving notice of the Settlement and
22 estimated Individual Settlement Payments, zero Settlement Class members objected to the
23 Settlement and no Settlement Class member opted out from participation, resulting in a 100%
24 participation rate. *Id.*, ¶¶ 8-11.

25 As explained below, the Court should grant Plaintiff’s Motion in its entirety because:
26 (1) the Settlement Class continues to meet the requirements for class certification for settlement

27
28 ² The Parties’ Stipulation of Settlement (the “Settlement Agreement”) is attached as Exhibit 1 to
the Declaration of Matthew K. Moen (“Moen Decl.”), filed concurrently herewith.

purposes under Code of Civil Procedure § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel’s attorneys’ fees and costs, Plaintiff’s Class Representative Enhancement Payment, payment to the LWDA, and settlement administration costs are all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed] Order Granting Plaintiff’s Motion for Final Approval of Class Action and PAGA Action Settlement, Attorneys’ Fees and Costs, and Class Representative Enhancement Payment, and Final Judgment (the “[Proposed] Judgment and Order”), submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant operates private schools specializing in the education and care of children with autism and related disorders across Southern California. Moen Decl., ¶ 9. Plaintiff was employed by Defendant as a non-exempt “Behavioral Interventionist” from May 9, 2022 to October 25, 2022. *Id.*; Declaration of Mariam Moreno (“Moreno Decl.”), ¶ 2. Plaintiff’s primary job duties consisted of supervising and providing special education services to children at Defendant’s school. *Id.* Like all Settlement Class members, Plaintiff was subject to Defendant’s wage and hour policies and practices. Moen Decl., ¶ 9; Moreno Decl., ¶¶ 3-4.

On December 14, 2022, Plaintiff filed a class action complaint alleging Defendant failed to: (i) pay all minimum wages owed; (ii) pay all overtime wages owed; (iii) provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse all necessary business expenses; (vi) issue accurate and itemized wage statements; (vii) timely pay all final wages upon separation; and (viii) comply with California’s Unfair Competition laws. Moen Decl., ¶ 10. On February 21, 2023, after exhausting her administrative remedies with the LWDA, Plaintiff filed the operative FAC to add a ninth cause of action for civil penalties under PAGA, premised on the same underlying Labor Code violations. *Id.*

In connection with mediation, Defendant provided Plaintiff with electronic timekeeping and payroll records for an approximately 10% sample of Settlement Class members spanning the entire Class Period, as well as key policy documents and data points. Moen Decl., ¶ 12. Plaintiff then retained an expert with a Ph.D. in economics to analyze the produced data and conducted a

comprehensive, class-wide analysis to create a class-wide exposure model for the claims at issue. *Id.* On January 25, 2024, the Parties participated in a mediation session with Honorable William McCurine, Jr. (Ret.), during which the Parties exchanged divergent views on Defendant’s liability and exposure valuations and the likelihood of certification of Plaintiff’s claims. *Id.* At the conclusion of mediation, the Parties reached a tentative settlement. *Id.* Over the following months, the Parties finalized the terms of the Settlement that this Court preliminarily approved on October 3, 2024. *Id.*, Exhibit 1 (Settlement Agreement); Exhibit 2 (Preliminary Approval Order).³

On October 23, 2024, the Court-approved Notice of Class and PAGA Action Settlement, Request for Exclusion Form, and Notice of Individual Settlement Payment, (collectively, the “Notice Packet”) was mailed via first class mail to all 450 potential Settlement Class members. *See* Gonzalez Decl., ¶ 5, Exhibit A. Settlement Class members had until December 23, 2024, to submit disputes, objections, and/or requests for exclusion (the “Response Deadline”). *Id.*, ¶¶ 8-10. After the Response Deadline passed, not a single Settlement Class member had objected to the Settlement or elected to opt-out of the Settlement, resulting in a 100% participation rate. *Id.*, ¶¶ 8-11.⁴ Plaintiff now respectfully submits the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class includes: All current and former non-exempt employees who worked for Defendant in California between December 14, 2018 and February 24, 2024. *See* Moen Decl., Exhibit 2.

B. Monetary Terms

Defendant will pay a non-reversionary Maximum Settlement Amount (“MSA”) of

³ On June 12, 2024, Plaintiff submitted the Parties’ Stipulation of Settlement to the LWDA in connection with the filing of her Motion for Preliminary Approval. *See* Moen Decl., Exhibit 3. Further, on October 3, 2024, Plaintiff provided notice of the Court’s Preliminary Approval ruling to Defendant and the LWDA. *Id.*, ¶ 12, Exhibit 4; *see also* ROA # 85, 87.

⁴ Phoenix reports one (1) settlement class member disputing the workweek information included in their Notice Packet. *See* Gonzalez Decl., ¶ 10. Upon reviewing the dispute, the dispute was approved, and the settlement class member’s workweeks were updated and the dispute was resolved. *Id.* There are no outstanding disputes following the close of the Response Deadline.

\$250,000.00. Settlement, ¶ 3. The Net Settlement Amount (“NSA”) is the amount remaining from the MSA after deducting Court-approved amounts for attorneys’ fees (\$83,333.33) and verified costs reimbursement (\$9,381.16), the Class Representative Enhancement Payment (\$5,000.00), settlement administration costs (\$8,750.00), and the PAGA Amount (\$10,000.00). *Id.*, ¶ 4.A; Moen Decl., ¶¶ 13-14, Exhibit 5 (Expense Summary).⁵ Based on these requested amounts, the NSA is calculated to be approximately \$136,035.51. Gonzalez Decl., ¶ 12.

Phoenix will calculate and apportion Individual Settlement Payments from the NSA using the following formula: (1) the \$2,500.00 payable to the PAGA Aggrieved Employees shall be designated as the “Individual PAGA Payment,” and will be distributed to each PAGA Aggrieved Employee who was employed by Defendant at any time between December 14, 2021, through February 24, 2024 (“PAGA Period”), proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the total workweeks worked by all PAGA Aggrieved Employees during the PAGA Period; (2) twenty percent (20%) of the NSA will be designated as the “Wage Statement Amount,” and distributed to each participating Settlement Class member who was employed by Defendant at any time between December 14, 2021 and February 24, 2024, proportionate to the number of workweeks that he or she worked during the aforementioned time period by multiplying the Wage Statement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the aforementioned time period, and the denominator of which is the aggregate number of workweeks worked by all participating Settlement Class members during the aforementioned time period; (3) twenty-five (25%) of the NSA will be designated as the “Waiting Time Amount,” and distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time between December 14, 2019, and February 24, 2024; and (4) the remainder of the NSA will be distributed to each participating Settlement Class

⁵ Plaintiff’s Counsel’s expense summary identifies Plaintiff’s Counsel’s to-date out of pocket expenses as \$9,271.16. Moen Decl., Exhibit 5. The total amount that Plaintiff’s Counsel is requesting for expense reimbursement (\$9,381.16) includes an additional \$110.00 in anticipated future costs for the filing and service of the Motion for Final Approval, which will be incurred by the time the motion is heard, and costs for the filing of the Final Accounting Declaration. *Id.*, ¶ 14.

1 member based on their proportionate number of workweeks worked during the Class Period, by
2 multiplying the remaining NSA by a fraction, the numerator of which is the Settlement Class
3 member's total workweeks worked during the Class Period, and the denominator of which is the
4 total number of workweeks worked by all participating Settlement Class members during the
5 Class Period. Settlement, ¶ 4.B. Individual Settlement Payments will be classified as ten percent
6 (10%) wages to be reported on an IRS Form W-2, and ninety percent (90%) as interest and
7 penalties to be reported on an IRS Form 1099. Settlement, ¶ 4.D. The Individual PAGA Payments
8 payable to the PAGA Aggrieved Employees will be classified as 100% penalties to be reported
9 on an IRS Form 1099. *Id.* This allocation between taxable and non-taxable amounts is appropriate
10 because the unpaid wages portion of Plaintiff's exposure analysis only amounts to approximately
11 10.8% of the total reasonable exposure Defendant faced due to the substantial derivative penalties,
12 as well as a portion of Defendant's maximum reasonable exposure being comprised of non-
13 taxable expense reimbursements. Moen Decl., ¶ 29.

14 **C. Summary of Notice Process**

15 On October 1, 2024, Defendant provided Phoenix, the Court-approved Settlement
16 Administrator, with a mailing list containing the names, last known mailing addresses, Social
17 Security numbers, and employment dates for each potential Settlement Class member. Gonzalez
18 Decl., ¶ 3. After Phoenix conducted a National Change of Address search to update the Settlement
19 Class members' addresses as accurately as possible, Phoenix mailed the Notice Packets to all 450
20 potential Settlement Class members on October 23, 2024. *Id.*, ¶¶ 4-5. A total of twenty-two Notice
21 Packets were returned to Phoenix, which conducted a skip trace that resulted in eighteen (18) new
22 addresses being found. *Id.*, ¶ 6. Ultimately, four (4) Notice Packets remain undeliverable. *Id.*, ¶
23 7. Settlement Class members had until December 23, 2024, to submit objections, disputes, and/or
24 requests for exclusion. *Id.*, ¶ 8. As of the date of this filing, not a single Settlement Class member
25 objected to the Settlement and zero Settlement Class members opted out from participation,
26 resulting in a 100% participation rate. *Id.*, ¶¶ 8-11. Phoenix also reports zero outstanding disputes
27 regarding the information included in the Notice Packet. *Id.*, ¶ 10.

28 ///

1 **D. Timing of Payments**

2 Defendant will deposit the MSA (\$250,000.00) with the Settlement Administrator within
3 thirty (30) calendar days after the Effective Date. *See* Settlement, ¶ 3.B. Within ten (10) business
4 days following the full funding of the MSA, the Settlement Administrator will calculate each
5 Individual Settlement Payment, and mail all payments due under the Settlement Agreement to the
6 participating Settlement Class members. *Id.*, ¶ 4.C. Settlement Class members will have 180 days
7 from the date Phoenix mails the Individual Settlement Payments and Individual PAGA Payment
8 to cash their checks. *Id.*, ¶ 4.E. In the event that there are any uncashed checks remaining after
9 180 days, Phoenix will transfer any remaining funds to the California State Controller’s Office to
10 be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the
11 name of the Settlement Class member and/or PAGA Aggrieved Employee to whom the check
12 was issued, until such time that he or she claims his or her property. *Id.* Based on the settlement
13 disbursement timeline, Plaintiff proposes the Court hold a final accounting hearing on or after
14 November 14, 2025.

15 **IV. ARGUMENT**

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

19 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
20 and its members are too numerous for joinder to be practical; (2) the representative and absent
21 class members share a community of interest, and questions of law and fact common to the class
22 predominate over questions unique to individual class members; (3) the representative’s claims
23 are typical of the class’ claims; and (4) the representative will fairly and adequately represent the
24 class’ interests. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, the Court
25 found that the Settlement Class meets all the requirements for class certification for settlement
26 purposes when it granted preliminary approval of the Settlement on October 3, 2024. *See* Moen
27 Decl., Exhibit 2. Since then, no events have cast doubt on the propriety of this determination, and
28 in fact, the reaction of the Settlement Class members has been overwhelmingly supportive of the

Settlement, with not a single Settlement Class member objecting to the Settlement or opting out from participation, resulting in a 100% participation rate. Gonzalez Decl., ¶¶ 8-11. 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 Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79. 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 can be heard with respect to the settlement. *Id.* Now that the settlement administrator has provided notice to the Settlement Class members, Plaintiff respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

1. The Settlement was Reached at Arms' Length, Through Experienced Counsel and an Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement Considering the Claims Asserted and Risks of Continued Litigation

A settlement is presumptively fair where it is reached through arms'-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.* (1996) 48 Cal.App.4th 1794, 1802. 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* (1979) 89 Cal.App.3d 434, 438. 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 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery

completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

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

Here, the Settlement resulted from extensive arms’-length settlement negotiations between qualified and experienced counsel with the aid of a neutral third-party mediator. The Settlement is fair, adequate, and reasonable for all Settlement Class members. While Plaintiff steadfastly maintains that her claims are meritorious, Defendant vigorously contests liability and the appropriateness of class treatment and, correspondingly, Plaintiff acknowledges the substantial risks and uncertainty in proceeding with class certification and eventually trial, which justify a downward departure from the maximum exposure that Plaintiff calculated each claim carried.

As detailed in Plaintiff’s Motion for Preliminary Approval, Defendant contends that its timekeeping practices are lawful and its rounding practice is neutral and operates in an even-handed way, which Defendant asserts is lawful under the court’s ruling in *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889. Moen Decl., ¶ 15; *see also AHMC Healthcare, Inc. v. Superior Ct.* (2018) 24 Cal.App.5th 1014, 1027-29 (finding employer’s time-rounding policy lawful where it was neutral “on its face” and “in practice”). Moreover, Defendant contends that Plaintiff could not certify this claim, as it would require individualized inquiries

1 into each employee on a pay period by pay period basis as to whether the employee actually
2 started working after their first punch of the day or instead went to the break room for coffee,
3 socialized with coworkers, or otherwise did not work, and whether the employee was overpaid or
4 underpaid based on Defendant's rounding practice, resulting in an unmanageable series of mini-
5 trials. Moen Decl., ¶ 15. Finally, because *Camp v. Home Depot U.S.A., Inc.* has been granted
6 review by the California Supreme Court, the decision is only persuasive, not binding authority,
7 and Plaintiff faces the risk that the *Camp* holding could be reversed, rendering Plaintiff's reliance
8 on *Camp* misplaced, and Defendant claims that under *See's Candy*, its rounding practice will be
9 found neutral and lawful. *Id.*

10 As to Plaintiff's allegation that Defendant failed to include the value of non-discretionary
11 annual bonuses when calculating employees' respective regular rates of pay, Defendant argues
12 any bonus payments made were purely discretionary, and therefore are properly excluded from
13 the regular rate of pay. *See e.g., Culley v. Lincare, Inc.*, 236 F.Supp.3d 1184, 1190 (E.D. Cal.
14 2017); Moen Decl., ¶ 16. As such, Defendant contends that Plaintiff's claim will fail on the merits.
15 *Id.* Further, Defendant asserts that this claim is unmanageable, as it requires individualized
16 inquiries into whether each bonus payment made by Defendant was discretionary or non-
17 discretionary, and into exactly how much money each employee was owed as a result, resulting
18 in an unmanageable series of mini-trials. *Id.*

19 As to Plaintiff's meal period allegations, Defendant contends it maintained lawful meal
20 period policies/practices throughout the Class Period. Moen Decl., ¶ 17. Defendant also contends
21 that, in the event an employee was not provided a lawful meal period, Defendant pays the
22 employee a meal period premium as required by law. *Id.* In support of this position, Defendant
23 produced timekeeping and payroll records showing that employees receive a meal period
24 premium in each instance in which their timekeeping records do not reflect a lawful meal period
25 being taken. *Id.* Finally, Defendant contends that Plaintiff's meal period claim is not suited for
26 class certification as individual inquiries would be required to assess whether an employee chose
27 to not take an otherwise provided meal period, or whether was an employee ever validly waived
28 a meal period, resulting in an unmanageable series of mini-trials. *Id.*

1 As to Plaintiff's rest period claim, Defendant maintains it authorized and permitted the
2 Settlement Class members to take all lawful rest periods to which they are entitled. Moen Decl.,
3 ¶ 18. To support this position, Defendant asserts it maintained a facially lawful written rest period
4 policy that it enforced at all times throughout the putative class period, and designated specific
5 employees as "floaters" who were responsible for relieving the other employees in order for them
6 to take rest periods during the work day. *Id.* Further, Defendant asserts that this claim is
7 unmanageable and not suited for class certification, as it requires individualized inquiries into
8 whether each employee was authorized and permitted to take a lawful rest period and on which
9 days, which Defendant argues Plaintiff will be unable to substantiate with any common,
10 documentary evidence, as rest periods are not required to be recorded, resulting in an
11 unmanageable series of mini-trials. *Id.*

12 In response to Plaintiff's allegations that Defendant failed to reimburse the Settlement
13 Class members for all necessary business expenses incurred, Defendant maintains that Settlement
14 Class members were not required to use their personal cellular phones as part of their job. Moen
15 Decl., ¶ 19. Instead, Defendant asserts that it provided company phones for all employees to use,
16 maintained lawful reimbursement policies/practices throughout the putative class period, and paid
17 employees a cell phone stipend during the COVID-19 pandemic and following remote work
18 period. *Id.* Lastly, Defendant argues this claim is not suitable for class treatment, as it would
19 require individualized inquiries to determine which employees incurred expenses, if any, whether
20 those expenses were reasonable and necessary, and why the employee had used their personal cell
21 phone rather than the company-provided phones without submitting an expense reimbursement
22 request. *Id.*

23 As to Plaintiff's derivative penalty claims, Defendant argues that Plaintiff's underlying
24 claims will fail and, as a result, the derivative wage statement, waiting time, and PAGA claims
25 will also fail. Moen Decl., ¶ 20; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
26 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
27 Defendant also maintains that Plaintiff cannot show that the wage statement violations were
28 "knowing and intentional," or that the putative class members "suffer[ed] injury" as a result of

1 the alleged violations, as required by Labor Code § 226(e) for the imposition of wage statement
2 penalties. Moen Decl., ¶ 20; *see* Labor Code § 226(e)(1). Moreover, Defendant maintains that its
3 good faith defenses to Plaintiff’s underlying claims would preclude the recovery of waiting time
4 penalties, which are only available for the “willful” failure to pay wages, and that this Court would
5 exercise its discretion to substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 20;
6 *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude
7 imposition of waiting time penalties under Section 203.”); Labor Code § 2699(e)(2); *Thurman v.*
8 *Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks*
9 *Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of
10 exposure).

11 Finally, Defendant also argued that as a relatively small, family-owned business, it simply
12 does not have the financial resources to satisfy a sizable judgment or settlement and is constrained
13 by cash-flow issues. Moen Decl., ¶ 21. Further, Defendant argued that its business model is not a
14 typical “for profit” operation, but instead was started as a school for children with special needs
15 because of the founder’s personal experience as the parent of a child with special needs, and only
16 was able to stay in business through the COVID-19 pandemic due to government assistance. *Id.*
17 Plaintiff’s counsel ultimately concluded that it would be an uphill battle to collect a judgment that
18 was significantly in excess of the amount offered in settlement. *Id.*

19 These considerations not only bore heavily on the negotiations leading to the Settlement,
20 but also confirm that the Settlement is a fair, adequate, and a reasonable compromise considering
21 the risks of further litigation. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff
22 and Class Counsel carefully vetted the claims at issue and retained an expert with a Ph.D. in
23 economics to conduct a detailed analysis of Defendant’s data to arrive at the calculated damages
24 figures. It was only after this comprehensive analysis that the Parties participated in a mediation
25 session and ultimately reached the Settlement now before the Court. Thus, while these risks are
26 far from exhaustive, they show that the Settlement is fair, adequate, and reasonable.

27 ///

28 ///

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

4 Phoenix will calculate Individual Settlement Payments based on the proportionate number
5 of workweeks worked by each participating Settlement Class member during the Class Period
6 divided by the total number of workweeks worked by all participating Settlement Class members,
7 as well as membership in various subclasses. Settlement, ¶¶ 4.B.i-iv. Further, 25% of the PAGA
8 Amount will be paid to all PAGA Aggrieved Employees, regardless of their election to opt-out
9 from participating in the Settlement, based on the proportionate number of workweeks worked
10 by the PAGA Aggrieved Employees during the PAGA Period, divided by the total number of
11 workweeks worked by all PAGA Aggrieved Employees during the PAGA Period. *Id.*, ¶ 4.B.i.
12 This method of distribution compensates Settlement Class members based on the estimated extent
13 of their injuries, as Settlement Class members who worked more workweeks during the relevant
14 time periods were subjected to more of the alleged wage and hour violations than those who
15 worked fewer workweeks, and only Settlement Class members with standing to pursue derivative
16 wage statement, waiting time, and/or PAGA penalties would have been eligible to recover those
17 penalties. Thus, the formula is tethered to the damages and penalties that Settlement Class
18 members could recover and is therefore, fair, adequate, and reasonable.

19 **3. *The 100% Participation Rate and Absence of Any Objections Further***
20 ***Confirm That the Settlement is Fair, Adequate, and Reasonable***

21 The Settlement Class members' response to the Settlement is relevant in evaluating
22 whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. Further, the absence of
23 objections and requests for exclusion support a fairness presumption. *See 7-Eleven Owners for*
24 *Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections
25 and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from
26 class members). Here, zero Settlement Class members objected to the Settlement or opted out
27 from participation, resulting in a 100% participation rate. Gonzalez Decl., ¶¶ 8-11. This extremely
28 positive reaction from the Settlement Class members further confirms that the Settlement is fair,
adequate, and reasonable.

1 **C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the**
2 **Maximum Settlement Amount Confirmed by a Lodestar Cross-Check**

3 Plaintiff and the Settlement Class members are entitled to recover their attorneys’ fees and
4 costs for their wage claims. *See* Labor Code §§ 226(e), 1194, and 2699(g). A fee award is justified
5 where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria*
6 *P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v.*
7 *Obledo* (1983) 33 Cal.3d 348, 352-53; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (finding that
8 “when a number of persons are entitled in common to a specific fund, and an action brought by a
9 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
10 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”).

11 California state and federal courts routinely award fee awards of one-third of the
12 settlement fund in class actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11; *see*
13 *also Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method);
14 *In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee
15 award). Indeed, the California Supreme Court approved the use of the “percentage of fund”
16 method in California. *See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (“the
17 percentage of fund method survives in California class action cases...”). Specifically, the *Laffitte*
18 Court held:

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

25 *Id.*, at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties,*
26 *Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (holding that the percentage of the fund method more
27 accurately reflects the results achieved than the lodestar method and “establishes reasonable
28 expectations on the part of Plaintiffs’ attorneys as to their expected recovery; and it encourages
early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*,
396 F.3d 294, 300 (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.”). This is consistent with Class Counsel’s experience in similar wage-and-hour class action matters. Moen Decl., ¶ 23. Here, Class Counsel’s fee request of \$83,333.33, representing one-third of the MSA, is the same percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery method. *Id.*, ¶ 23.

In *Laffitte*, the California Supreme Court 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. 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, supra*, 20 Cal.3d at 48-49; *Ketchum v. Moses*, (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank*, (2001) 92 Cal.App.4th 819, 834 (“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*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, (1977) 76 Cal.App.3d 241, 251 (approving multiplier of approximately 12.8). In class and representative actions, where the value of the benefit conferred “can be monetized with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, (2009) 175 Cal.App.4th 545, 557.

In this case, Plaintiff’s counsel has a lodestar of approximately \$92,240.00, which results in a **negative multiplier** of 0.90 compared to the \$83,333.33 fee request. Moen Decl., ¶ 23. A summary showing the number of hours of work performed by each attorney and paralegal is set

forth below. *Id.* The billing rates used are reasonable in view of the evidence submitted herewith, and have all been previously approved by various courts throughout California.⁶ *Id.*, ¶ 2-7, 23-25, Exhibit 6 (Class Counsel’s detailed hourly breakdown); Exhibit 7 (2024 *Laffey* Matrix); Declaration of Paul K. Haines, ¶¶ 2-11; Declaration of Fletcher W. Schmidt, ¶¶ 2-9.

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (18th Year Attorney)	\$850	7.5	\$6,375.00
Fletcher W. Schmidt (12th Year Attorney)	\$750	42.1	\$31,575.00
Matthew K. Moen (9th Year Attorney)	\$650	55.7	\$36,205.00
Aden M. Khachadorian (2nd Year Attorney)	\$425	40.0	\$17,000.00
Firm Paralegals	\$175	6.2	\$1,085.00
Total Lodestar			\$92,240.00

As discussed above, this case presented significant risks to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and for expending considerable effort, all while working on a pure contingency basis. Since the initiation of this lawsuit, Class Counsel has expended more than \$9,000.00 in litigation costs and devoted substantial time to this litigation without receiving any compensation to date. Moen Decl., ¶ 26, Exhibit 5. Class Counsel’s efforts include conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research and analysis, reviewing class documents and data produced by Defendant, extensively reviewing and evaluating the produced timekeeping and payroll records with the assistance of a retained expert

⁶ When setting rates, courts should utilize attorneys’ “current” rates, i.e., their rates at the time of the fee application. This accounts for the delay in receiving payment, as well as lost interest and inflation. *See Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 584 (approving use of present-day rates to account for the delay in payment); *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air* (1987) 483 U.S. 711, 716 (“In setting fees for prevailing counsel, the courts have regularly recognized the delay factor...by basing the award on current rates.”); *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir.1991) (affirming district court’s use of current hourly rates).

1 to build a comprehensive damages model, preparing for and attending mediation, negotiating and
2 drafting the Memorandum of Understanding, long-form Settlement Agreement, Notice Packet
3 documents, preparing the Motions for Preliminary and Final Approval, overseeing the Notice
4 process, and otherwise litigating the case. *Id.* Class Counsel will also expend future attorney time
5 attending the hearing on this Motion, overseeing the disbursement process, and reviewing and
6 filing the Settlement Administrator's final accounting declaration with the Court, among other
7 tasks. *Id.* Given the considerable potential for adverse outcomes in this case, including, but not
8 limited to, losing on class certification, the contingent risk borne by Class Counsel was great. The
9 quality of Class Counsel's work, and the efficacy and dedication with which it was performed,
10 should be equivalently compensated.

11 Class Counsel's previous experience in litigating wage and hour class actions also
12 supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and
13 defense-side wage and hour class action litigation and collectively bring more than four decades
14 of wage-and-hour class and representative action litigation experience. *See* Moen Decl., ¶¶ 2-7;
15 *see also generally* Declaration of Paul K. Haines; Declaration of Fletcher W. Schmidt. Class
16 Counsel have also been certified as class counsel in numerous other cases in both State and federal
17 court. *Id.* Class Counsel's experience in similar matters was integral in evaluating the strengths
18 and weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field
19 of wage and hour litigation requires skill and knowledge concerning the rapidly evolving
20 substantive state and federal law, as well as the procedural law of class action litigation. Because
21 it is reasonable to compensate Class Counsel equal with their skill, reputation, and experience,
22 the requested fee award of one-third of the MSA is fair and reasonable and should therefore be
23 approved.

24 **D. The Requested Cost Reimbursement Warrants Final Approval as Fair,**
25 **Adequate, and Reasonable**

26 Class Counsel incurred and respectfully requests reimbursement of \$9,381.16 in actual
27 litigation costs, which is more than \$2,600.00 *less* than the \$12,000.00 amount preliminarily
28 approved by the Court as set out in the Settlement Agreement. Moen Decl., ¶ 27, Exhibits 2 and

5; *see also* Settlement, ¶¶ 3.C.4, 5. The unclaimed amount of litigation costs will be paid to the Settlement Class members as part of the NSA. Settlement, ¶ 3.D. Class Counsel’s request is fair, adequate, and reasonable, as all these costs are documented and reasonably incurred. *See* Moen Decl., Exhibit 5.⁷ Moreover, the costs Plaintiff seeks to reimburse are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer* 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Berkeley Cement, Inc. v. Regents of University of California* (2019) 30 Cal.App.5th 1133, 1142 (affirming trial court’s discretion to award costs of voluntary mediation); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation* 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable); *see also ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 295 (recognizing necessity of expert testimony on topics that are not a matter of common knowledge).

Notably, not a single Settlement Class member objected to the Settlement, including Class Counsel’s request for up to \$12,000.00 in reimbursement of verified costs. Gonzalez Decl., ¶ 9. Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class member has objected to them, the Court should grant Class Counsel’s request for \$9,381.16 in actual litigation costs reimbursement.

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

Plaintiff also requests that this Court approve \$8,750.00 in administration costs to Phoenix as the Settlement Administrator. Moen Decl., ¶ 28; Gonzalez Decl., ¶ 16, Exhibit B. As detailed

⁷ Class Counsel utilized the expert services of Dr. J. Michael DuMond, Ph.D., of Berkeley Research Group, to perform all expert analyses for this case, and are providing a copy of the expert invoice received by Class Counsel in support of this Motion. Moen Decl., ¶ 27, Exhibit 8 (Expert Invoice).

1 in the declaration of Mayra J. Gonzalez, submitted concurrently with this Motion, Phoenix
2 performed duties in connection with this Settlement that were integral in effectuating the
3 Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class
4 member's Individual Settlement Payment, updated addresses contained in the class data supplied
5 by Defendant, formatted and translated the Notice Packets for mailing, mailed Notice Packets to
6 all 450 individuals who were eligible to take part in the Settlement, conducted a skip-trace for
7 any returned Notice Packets, kept the Parties informed of the status of the Notice Packet mailing
8 through weekly reports, and otherwise administered the Settlement. *See generally*, Gonzalez
9 Decl. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should
10 be finally approved.

11 **F. The Court Should Finally Approve Plaintiff's Requested Class**
12 **Representative Enhancement Payment Because the Requested Amount is**
13 **Fair, Adequate, and Reasonable Considering Plaintiff's Efforts and the Risks**
14 **Assumed on Behalf of the Class**

15 Courts routinely approve service awards to compensate named plaintiffs for the services
16 they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins.*
17 *Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs
18 for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* 901 F.Supp. 294
19 (N.D. Cal. 1995) (approving \$50,000.00 service payment). The common law in both California
20 state and federal courts has long recognized the important function of enhancement payments to
21 incentivize plaintiffs to bring class actions to vindicate others' rights. *See Cellphone Termination*
22 *Fee Cases* (2010) 186 Cal.App.5th 1380, 1394 (stating that the question of whether a class
23 representative was entitled to a service award was answered in the affirmative in *Clark v.*
24 *American Residential Services, LLC*, (2009) 175 Cal.App.4th 785).

25 Here, Plaintiff seeks an enhancement payment of \$5,000.00, and believes that this request
26 is reasonable given Plaintiff's considerable efforts in this case, the risks Plaintiff undertook on
27 behalf of the Settlement Class Members, and her general release of all claims against Defendant
28 subject to a waiver of California Civil Code section 1542. Moen Decl., ¶ 29; Moreno Decl., ¶¶ 5-
6; Settlement, ¶¶ 2.C, 3.C.3. Among other things, Plaintiff searched for relevant documents for

1 use in the lawsuit and provided factual information to her attorneys, held various phone calls with
2 her attorneys to discuss the claims in the lawsuit and Defendant's practices, discussed the status
3 of the case and general case strategy with her attorneys on multiple occasions, provided valuable
4 input to assist her attorneys in preparing for mediation, was available for the full-day mediation
5 that lead to the Settlement, reviewed and provided input regarding the Settlement in this case, and
6 otherwise assisted her attorneys in moving the case towards resolution. Moen Decl., ¶ 29; Moreno
7 Decl., ¶ 6.

8 Plaintiff has invested significant time and effort into seeing this litigation through
9 resolution, and the Settlement Class, who would not be receiving anything if it were not for
10 Plaintiff's decision to pursue these claims, will benefit greatly from her participation. Moen Decl.,
11 ¶ 30. In addition, Plaintiff has also agreed to a broader, general release of claims beyond what
12 other Settlement Class Members are releasing in this action, including a waiver of Civil Code
13 section 1542. *Id.*; Settlement, ¶ 2.C. Plaintiff deserves to be compensated for these risks and her
14 broad release, which other Settlement Class members are not subject to. Moreover, after receiving
15 notice of the proposed enhancement payment, not a single Settlement Class member objected to
16 the proposed award. Gonzalez Decl., ¶ 9. Thus, Plaintiff's request for an enhancement payment
17 of \$5,000.00 is proper and justified as part of the Settlement and should be finally approved.

18 **V. CONCLUSION**

19 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant
20 Plaintiff's Motion in its entirety and adopt the [Proposed] Judgment and Order, submitted
21 herewith.

22
23 Dated: January 24, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

24 By:



25 Matthew K. Moen
26 Attorneys for Plaintiff
27
28