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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

LEONEL LUNA, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

DEMCON CONCRETE CONTRACTORS,
INC., a California corporation; D AND D
CONCRETE CONSTRUCTION, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 37-2023-00004126-CU-OE-CTL

*[Assigned for All Purposes to Hon. Carolyn M.
Caietti, Dept. C-70]*

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

Date: September 26, 2024
Time: 10:30 a.m.
Dept.: C-70

Complaint Filed: January 30, 2023

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on September 26, 2024 at 10:30 a.m. in Department 10 of the above-entitled Court, located at 330 West Broadway, San Diego, CA 92101, Plaintiff Leonel Luna (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Leonel Luna as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Settlement (hereinafter the “Settlement”);
5. Approving an award of \$366,666.67 in attorneys’ fees to Class Counsel;
6. Approving an award of \$7,062.46 in costs to Class Counsel;
7. Approving an award of \$10,000.00 in costs to Phoenix Class Action Administration Solutions for its settlement administration services;
8. Approving an enhancement payment of \$10,000.00 to Plaintiff Leonel Luna for his services as Class Representative;
9. Approving an award of \$37,500.00 to the Labor & 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 Settlement and Final Judgment filed concurrently herewith.

This Motion is made on the following grounds: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested awards of attorneys’ fees and costs, service award LWDA payment, and settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed]

1 Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment
2 submitted concurrently herewith should be entered so as to give finality to, and allow for disbursements
3 from, the Settlement.

4 This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the
5 supporting declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Leonel Luna¹, Yami Burns of
6 Phoenix Class Action Administration Solutions, and the exhibits attached thereto; the Settlement; all other
7 pleadings and papers on file in this action; and on any further oral or documentary evidence or argument
8 presented at the time of hearing.

9
10 Dated: September 4, 2024

Respectfully submitted,
LIDMAN LAW, APC

11
12 By:



13 Scott M. Lidman
14 Attorney for Plaintiff
LEONEL LUNA

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27 ¹ The declaration of Plaintiff Leonel Luna was originally filed with this Court on November 27, 2023 in
28 connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-
filed his declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Leonel Luna (“Plaintiff”) submits this memorandum of points and authorities in support
4 of his motion for final approval of the class action settlement (the “Settlement”) with Defendants Demcon
5 Concrete Contractors, Inc. and D and D Concrete Construction, Inc. (hereinafter collectively referred to
6 as “Defendants”) on behalf of the Settlement Class defined as: “all current and former non-exempt, hourly
7 employees of Defendants Demcon Concrete Contractors, Inc. and D and D Concrete Construction, Inc.
8 who worked at any time in California during the Class Period. For purposes of the settlement, the ‘Class
9 Period’ shall mean the time period of January 30, 2019 through December 17, 2023.” In this non-
10 reversionary Settlement, all participating Settlement Class members will receive **automatic** payments
11 without the need to submit a claim form, resulting in an average settlement payment of approximately
12 \$1,464.89 to each participating Settlement Class member. This is a favorable resolution of the highly
13 disputed wage and hour claims in this case and the significant litigation risks that Plaintiff faced.

14 Since this Court granted preliminary approval on April 29, 2024, nothing has changed to impact
15 the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice
16 of the Settlement and of their projected Settlement payments, no Settlement Class members have opted
17 out of the Settlement and not a single Settlement Class member filed an objection to any portion of the
18 Settlement.

19 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the
20 Settlement Class continues to meet the requirements for class certification for settlement purposes under
21 Code of Civil Procedure § 382; (2) the Settlement warrants final approval because it is a fair, adequate,
22 and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class
23 Counsel’s attorneys’ fees and costs, Plaintiff’s Class Representative Service Award, payment to the Labor
24 Workforce Development Agency (“LWDA”), and settlement administration costs are all fair, adequate,
25 and reasonable.

26 In light of the foregoing, Plaintiff respectfully requests that this Court enter the [Proposed] Order
27 Granting Plaintiff’s Motion for Final Approval of Class Action Settlement and also enter the [Proposed]
28 Final Judgment submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

On January 30, 2023, Plaintiff filed a putative class action complaint against Defendants in San Diego County Superior Court. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On April 6, 2023, Plaintiff filed a First Amended Class and Representative Action Complaint. Plaintiff’s primary allegations are that Defendants: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to indemnify all necessary business expenses; (7) failed to pay all wages upon termination; (8) engaged in unlawful business practices; and (9) is liable for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”). *Id.*

A. Plaintiff’s Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of liability are related to Defendants’ alleged failure to pay Settlement Class members for all time worked and its alleged failure provide Settlement Class members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶ 11. Specifically, Plaintiff alleges Defendants would keep track of his hours and the hours of the other non-exempt employees, and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. Lidman Decl., ¶ 12. Plaintiff also alleges that this time shaving and/or rounding practice utilized by Defendants was not-even handed over time and would almost exclusively round and shave in Defendants’ favor such that the employees were routinely underpaid for their time worked. *Id.*

Plaintiff alleges that he and Settlement Class members were not provided with all legally-required off-duty first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 14. Specifically, Plaintiff alleges Defendants had a policy and practice of requiring their leads/foremen to record Settlement Class members’ first meal periods occurring four hours into their shifts and exactly 30-minutes in duration on their time sheets even when a timely meal period was not always provided. *Id.*

Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to Defendants’ rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 16.

Specifically, Plaintiff alleges that as a result of the work demands imposed by Defendants, he was prevented from taking his rest periods. *Id.*

Plaintiff alleges that Defendants failed to reimburse him and Settlement Class members for necessary business expenditures, including the use of their personal cellular phone for work activities. Lidman Decl., ¶ 18.

As a result of the alleged unpaid wages and unpaid meal and rest period premium wages described above, Plaintiff alleges that Defendants issued inaccurate wage statements in violation of Labor Code § 226, failed to pay all wages to Settlement Class members upon their separation of employment, and are thus liable for civil penalties under the Labor Code Private Attorney General Act (“PAGA”). Lidman Decl., ¶¶ 22-25.

As explained *infra* and in Plaintiff’s Motion for Preliminary Approval, Defendants deny Plaintiff’s claims and assert several affirmative defenses, both on the merits and with respect to class certification. Lidman Decl., ¶¶ 12-25.

B. Mediation and Settlement

After agreeing to participate in private mediation, Defendants informally produced Plaintiff’s time and pay records, time and pay records for the putative class, and other relevant documentation regarding the claims in this action. Lidman Decl., ¶ 27. After the detailed review of the records produced by Defendants, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff’s claims and Defendants’ defenses thereto, if a settlement could not be reached. *Id.*

On September 28, 2023, after extensive research and analysis, a full-day mediation was held with Michael Ludwig, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 28. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Settlement (“Settlement”). *Id.*

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1 **C. Preliminary Approval of Settlement**

2 Plaintiff submitted the Settlement to the Court with his Motion for Preliminary Approval on
3 November 27, 2023. Lidman Decl., ¶ 29. Plaintiff also submitted the Settlement to the Cal. Labor
4 Workforce Development Agency (“LWDA”) as required under the PAGA. Lidman Decl., ¶ 43, Exh. D.

5 On April 25, 2024, the Court granted preliminary approval of the class action settlement. On
6 April 29, 2024, the Court signed the Amended Order Granting Preliminary Approval. Lidman Decl., ¶
7 29, Exh. A (Order Granting Preliminary Approval). Plaintiff submitted the Order Granting Preliminary
8 Approval on August 8, 2024 to the LWDA. Lidman Decl., ¶ 44, Exh. E.

9 On May 28, 2024, the Court-approved Notice Packet (consisting of the Notice of Pendency of
10 Class Action and Proposed Settlement and Notice of Settlement Award) was sent to 448 Settlement Class
11 members. The Settlement Class members had until July 29, 2024 to submit disputes, objections, and/or
12 requests for exclusion. *See* Declaration of Yami Burns of Phoenix Class Action Administration Solutions
13 (“Burns Decl.”), ¶¶ 8-10. As of the date of this filing, there have been **no objections, no disputes and**
14 **no opt-outs.** *Id.* Plaintiff now respectfully submits the Settlement for this Court’s final approval.

15 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

16 **A. Settlement Class Definition**

17 The Settlement Class encompasses “all current and former non-exempt, hourly employees of
18 Defendants Demcon Concrete Contractors, Inc. and D and D Concrete Construction, Inc. who worked at
19 any time in California during the Class Period.” Lidman Decl., ¶ 30. The “Class Period” shall mean the
20 time period of January 30, 2019 through December 17, 2023. *Id.*

21 **B. Monetary Terms of the Settlement**

22 The Settlement requires Defendants to pay a Gross Settlement Amount (“GSA”) of
23 \$1,100,000.00. Settlement, ¶ 4. The Net Settlement Amount (“NSA”) is the amount remaining from the
24 GSA after deducting requested attorneys’ fees (\$366,666.67) and verified costs (\$7,062.46), proposed
25 Class Representative Service Award to Plaintiff (\$10,000.00), Settlement Administration costs
26 (\$10,000.00), and PAGA payment to the LWDA (\$37,500.00). Based on these requested amounts, the
27 NSA is calculated to be approximately \$656,270.87. Burns Decl., ¶ 12; Lidman Decl., ¶ 34, Exh. B.
28

Each Settlement Class member will receive his or her settlement share based on the following formula: The Net Settlement Amount, not including the PAGA Amount payable to Settlement Class members, shall be allocated to Settlement Class members who worked during the Class Period, as follows: each Participating Settlement Class member shall receive a proportionate settlement share based upon the number of Actual Workweeks worked during the Class Period, the numerator of which is the Settlement Class member's total Actual Workweeks worked during the Class Period, and the denominator of which is the total Actual Workweeks worked by all Settlement Class members who worked during the Class Period.

Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Net Settlement Amount has been designated as the "PAGA Amount" as described above. Each Participating Settlement Class member who was employed by Defendants at any time from January 30, 2022 through December 17, 2023, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the period of January 30, 2022 through December 17, 2023, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Participating Settlement Class members' number of pay periods worked during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees during this time period.

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Sixty Seven percent (67%) as penalties and interest; and Thirty-Three percent (33%) as wages. Settlement, ¶ 4.D.²

C. Summary of Notice Process

1. Mailing of Notice Packets

On May 13, 2024, Defendants provided Phoenix Class Action Administration Solutions ("Phoenix") with data files containing the names, last known mailing addresses, social security numbers, and the number of workweeks worked by each Settlement Class member while employed during the Class Period. Burns Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Class Notice to the 448 Settlement Class members on May 28, 2024. *Id.*, ¶¶ 4-5. Following the initial mailing,

² Defendants will pay the employer's share of payroll taxes separately and apart from the Gross Settlement Amount. See Settlement, ¶ 3.D; Burns Decl., ¶ 15.

thirty-five (35) Notice Packets were returned to Phoenix as undeliverable. *Id.*, ¶ 6. As a result of a skip trace, forwarding address provided by the Post Office, or re-mail requests from Counsel or Class Members, twenty-nine (29) Notice Packets were re-mailed. *Id.* As of the date of filing this final approval motion, six (6) Notice Packets remains undeliverable with no forwarding address, and where no new address could be located through skip trace. *Id.*, ¶ 7.

Settlement Class members had until July 29, 2024 to submit objections, requests for exclusion, or disputes. Burns Decl., ¶¶ 8-10.

As of the date of this filing, there were no objections, no disputes, and no Settlement Class members have elected to opt-out of the Settlement. *Id.* Accordingly, as of the date of this Motion, the participation rate amongst the Settlement Class members is 100% and the average estimated payment is \$1,469.89, with the highest estimated payment to a Settlement Class member being \$7,915.51 and the lowest estimated payment to a Settlement Class Member being \$31.16. *Id.*, ¶ 13.

D. Timing of Payments

The Gross Settlement Amount (and employer-side taxes separate from the Gross Settlement Amount) shall be deposited by Defendants into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class Members. Settlement, ¶ 3.B. Defendants shall fund the Gross Settlement Payment by no later than May 1, 2025.³ *Ibid.* This Settlement shall become effective on the “Effective Date” which is defined as the latter of: a) the Court's final approval of the settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. Settlement, ¶ 3.C.

Within seven (7) calendar days following Defendants’ deposit of the Gross Settlement Amount and required employer-side payroll taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and

³ Pursuant to the Settlement Agreement, Defendants are required to fund the Gross Settlement within the latter of: (i) eighteen (18) months after the Parties executed the Settlement Agreement; or (ii) thirty (30) days after the Effective Date. Settlement, ¶ 4.B. The latter of these dates is May 1, 2025, eighteen months after the Parties executed the Settlement. Lidman Decl., ¶ 31.

1 approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement
2 Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to
3 Participating Settlement Class members. *See* Settlement, ¶ 4.C.

4 **E. Uncashed Funds**

5 The Settlement provides that Settlement Class members have 180 days from the date the
6 Settlement Administrator mails the checks to cash his or her check. Settlement ¶ 6.E. Any funds
7 remaining after 180 days will be delivered to the California State Controller’s Office – Unclaimed
8 Property Fund in the name of the Settlement Class member. Settlement ¶ 6.E. As all settlement funds
9 will be distributed to the Settlement Class members, there will be no residue and it is unnecessary to
10 designate *cy pres* recipients. Settlement ¶ 4.D; Lidman Decl., ¶ 31.

11 **IV. ARGUMENT**

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

15 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its
16 members are too numerous for joinder to be practical; (2) the representative and absent class members
17 share a community of interest, and questions of law and fact common to the class predominate over
18 questions unique to individual class members; (3) the representative’s claims are typical of the class’
19 claims; and (4) the representative will fairly and adequately represent the class’ interests. *See Richmond*
20 *v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

21 Here, this Court found that the Settlement Class meets all the requirements for class certification
22 for settlement purposes when it granted preliminary approval of the Settlement on April 29, 2024. *See*
23 Lidman Decl., ¶ 30; Exh. A. Subsequent to the Court’s order granting preliminary approval, no events
24 have cast doubt on the propriety of this determination, and in fact, the reaction of the Settlement Class
25 members thus far to the Settlement has been strongly in support of the Settlement, with no Settlement
26 Class members objecting to any portion of the Settlement and no Settlement Class members electing to
27 opt-out of the Settlement. *See* Burns Decl., ¶¶ 8-10. This Court should therefore confirm its conditional
28 certification of the Settlement Class.

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

3 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
4 *Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a
5 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*
6 *Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval
7 process consists of preliminary settlement approval, notice being given to class members, and a final
8 fairness and approval hearing being held, at which class members have the opportunity to be heard with
9 respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff
10 respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

11 **1. *The Settlement was Reached at Arm’s-Length, Through Experienced Counsel***
12 ***and an Experienced Mediator, and Was Based on Sufficient Information to***
13 ***Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and***
14 ***Risks of Continued Litigation***

15 A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on
16 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
17 experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford*
18 *Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a
19 trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the
20 case. *Mallick v. Superior Court*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the
21 overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*,
22 *supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider
23 include, but are not limited to:

24 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
25 further litigation, the risk of maintaining class action status through trial, the amount
26 offered in settlement, the extent of discovery completed and the stage of the
27 proceedings, the experience and views of counsel, the presence of a governmental
28 participant, and the reaction of the class members to the proposed settlement.

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

4 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs might
5 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
6 circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements
7 inherently involve compromise, even settlements providing for substantially narrower relief than likely
8 would be obtained if the suit were successfully litigated can be reasonable because, “the public interest
9 may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding
10 litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109
11 (7th Cir. 1972)).

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

18 As detailed in Plaintiff’s Motion for Preliminary Approval, there is significant risk of non-
19 certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example,
20 with respect to Plaintiff’s unpaid wages claim, Defendants contend that they compensated Settlement
21 Class members for all of their time worked. Lidman Decl., ¶ 13. Defendants also contend that their
22 rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-compensable. *Id.*
23 Defendants further assert that Plaintiff would be unable to certify a rounding class given the
24 individualized inquiries that would be required, and also that Defendants’ rounding mechanism was,
25 according to them, allegedly facially neutral. *Id.*

26 As for Plaintiff’s meal period claim, Defendants counter that they have always provided non-
27 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
28 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather

1 than any policy or practice of Defendants. Lidman Decl., ¶ 15. Defendants points out that under *Brinker*
2 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the
3 opportunity to take meal periods, not “ensure” meal periods are taken, and that they have always done so.
4 *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally, Defendants contend Plaintiff’s
5 meal period claim is not suited for class certification, since individual inquiries would be required to
6 assess which employees took non-compliant meal periods, how many meal periods were non-compliant
7 or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
8 period during a particular shift. *Id.*

9 As for Plaintiff’s rest period claim, Defendants contend they have always maintained and enforced
10 lawful rest period policies and practices, and that Settlement Class Members were authorized and
11 permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 17. Further,
12 Defendants argue that Plaintiff’s rest period claim is inherently unsuited for class treatment as it requires
13 an individualized inquiry into whether each Settlement Class Member was in fact authorized and
14 permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-
15 trials. *Id.*

16 As for Plaintiff’s unreimbursed business expenses claim, Defendants contend that employees did
17 not have to use their personal cell phones and would only do so at their own volition. Lidman Decl. ¶ 19.
18 Defendants argue that this claim is not suitable for class treatment because it would require individualized
19 determinations as to whether each employee used a personal cell phone, how often, and how much of that
20 use was a reasonable percentage of their individual monthly expenses. *Id.*

21 As for Plaintiff’s wage statement claim, Defendants argue that their alleged wage statement
22 violations could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or
23 any other employee “suffer[ed] injury” as a result of the alleged wage statement violations as required by
24 Lab. Code § 226(e) for imposition of penalties. Lidman Decl. ¶ 21.

25 As for Plaintiff’s waiting time penalties, Defendants assert that they have strong defenses to the
26 waiting time claim because there exists good-faith disputes as to Plaintiff’s underlying claims, precluding
27 imposition of penalties. Lidman Decl., ¶ 23. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute
28 that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12

Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Lidman Decl., ¶ 22.

Lastly, since Plaintiff’s PAGA claim is a derivative claim based on the underlying claims, Defendants assert the PAGA claim would fail with those claims. Lidman Decl., ¶ 25. Defendants also maintain that given their good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiff’s claims. *Id.*

These considerations not only bore heavily on the negotiations leading to the Settlement, but also confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further litigation. Lidman Decl., ¶ 26. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff carefully vetted the claims at issue and conducted a detailed statistical analysis of class-wide data to arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable in view of them. *Id.*

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

Individual settlement payments will be calculated based on the number of Actual Workweeks worked by each Settlement Class member. See Settlement ¶ 4.B. This method of distribution compensates Settlement Class members based on the estimated extent of their injuries, as Settlement Class members who worked more shifts, would have been subject to more of the alleged wage and hour violations than those who worked fewer shifts. Thus, the formula for compensating Settlement Class members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

3. The 100% Participation Rate and Absence of Any Objections Further Confirms that the Settlement is Fair, Adequate, and Reasonable

Class members’ response to a settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a fairness presumption. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a

1 “particularly impressive” favorable response from class members). Here, as of the filing of this Motion,
2 not a single Settlement Class member has objected to the Settlement, no Settlement Class members have
3 elected to opt-out, and only six (6) of the 448 Class Notices remain undeliverable as of the date of this
4 Motion. Burns Decl., ¶¶ 6-10. The extremely favorable response of the Settlement Class further confirms
5 that the Settlement is fair, adequate, and reasonable.

6 **C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the**
7 **Common Fund Confirmed by a Lodestar Cross-Check**

8 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
9 their attorneys’ fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
10 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
11 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
12 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
13 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra,*
14 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court
15 confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), that “[t]he percentage of fund
16 method survives in California class action cases.” Specifically, the *Laffitte* Court held:

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

23 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
24 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
25 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
26 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
27 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
28 equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*

1 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
2 attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method
3 and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery;
4 and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities*
5 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored
6 in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
7 counsel for success and penalizes it for failure.") (citation omitted).

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

16 Here, Class Counsel's fee request of \$366,666.67 (one-third of the Gross Settlement Amount) is
17 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
18 "regardless whether the percentage method or the lodestar method is used, fee awards in class actions
19 average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
20 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
21 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively
22 small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour
23 class actions..."); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
24 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
25 attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience
26 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 32. Thus, the percentage sought by
27 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

9 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
10 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
11 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
12 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
13 class actions such as this one, where the value of the benefit conferred to the class “can be monetized
14 with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of
15 the common fund to ensure that the fee awarded is reasonable and within the range of fees freely
16 negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th
17 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
18 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in
19 order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at
20 503-05.

21 In this case, Class Counsel have a lodestar of \$176,227.50 without the use of any multiplier.
22 Lidman Decl., ¶ 37. A summary showing the number of hours of work performed by each attorney and
23 paralegals is set forth below. The billing rates used are reasonable especially in light of the hourly rates
24 identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. *Id.*, at ¶¶
25 37-38, Exh. C.

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Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (26 th Year Attorney)	\$900	92.5	\$83,250
Paul K. Haines (17th Year Attorney)	\$800	25.5	\$20,400
Milan Moore (9th Year Attorney)	\$650	104.2	\$67,730
Paralegals	\$175	27.7	\$4,847.50
Total Lodestar			\$176,227.50

Based on the lodestar analysis, Plaintiff is requesting 2.08 multiplier which is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees). First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See Burns Decl.*, ¶¶ 8-10. Additionally, the *average* settlement payment in this case of approximately \$1,464.89 is well-above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108). The fact that Class Counsel achieved these

1 results without engaging in a protracted legal battle, in the face of serious defense challenges and an
2 uncertain legal landscape confirms the strength of the results achieved.

3 As discussed above, this case presented significant risk as to both class certification and merits
4 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
5 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
6 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
7 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
8 compensation for over one year of work. Lidman Decl., ¶ 36. During this time, Class Counsel have
9 expended \$6,762.46, in actual costs, have devoted substantial time to this litigation and expect to incur
10 approximately \$300.00 in future costs for filing the instant motion, filing the final declaration regarding
11 distribution of settlement, service and messenger fees, postage fees, parking, mileage, and/or CourtCall
12 costs for future appearances. Lidman Decl., ¶ 34, Exh. B. Class Counsel's efforts have included
13 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, analyzing
14 Plaintiff's timekeeping data and payroll records, preparing for and attending mediation, reviewing
15 Defendants' financial records, negotiating and revising the long-form Settlement, preparing the Motion
16 for Preliminary Approval, preparing this Motion, and otherwise litigating the case. *See* Lidman Decl., ¶
17 33. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing
18 on class certification and/or merits issues., the contingent risk borne by Class Counsel was great. Lidman
19 Decl., ¶ 36.

20 Class Counsel's previous experience in litigating wage and hour class actions also supports the
21 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
22 hour class action litigation, with substantial experience litigating claims for meal and rest period
23 violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration Milan Moore ("Moore Decl."),
24 ¶¶ 3-5; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. They have been certified as class counsel
25 in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the strengths
26 and weaknesses of the case against Defendants and the reasonableness of the Settlement. *See* Lidman
27 Decl., ¶ 35. Practice in the narrow field of wage and hour litigation requires skill and knowledge
28 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class

1 action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their
2 skill, reputation, and experience, a fee award of one-third of the Class Settlement Amount is reasonable.

3 Other factors also show that the fee amount requested in this case is reasonable under the
4 circumstances. This case involved nuanced legal issues including questions surrounding Defendants’
5 obligation to “provide” meal periods and “authorize and permit” rest periods, and the propriety of
6 statutory penalties, to name just a few. Lidman Decl., ¶¶ 12-25. Thus, Class Counsel’s requested fee
7 award is fair, reasonable, and adequate and should be approved.

8 **D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and**
9 **Reasonable**

10 Class Counsel have incurred \$7,062.46 (including anticipatory fees and expenses related to the
11 instant motion and other future activity in this case) in litigation costs. Class Counsel’s request is fair,
12 adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Lidman
13 Decl., ¶ 36; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by
14 courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-
15 of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, No. 05-
16 03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)(“costs of reproducing pleadings, motions and
17 exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees of*
18 *Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th
19 Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F.
20 Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research,
21 copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the
22 expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class
23 member has objected to them, Plaintiff respectfully requests the Court grant the request for actual costs
24 incurred.

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

2 Plaintiff also requests that the Court approve \$10,000.00 in administration costs to the Settlement
3 Administrator, Phoenix Class Action Administration Solutions (“Phoenix”). As detailed in the
4 declaration of Yami Burns on Behalf of Phoenix submitted herewith, Phoenix performed duties in
5 connection with this Settlement that were integral in effectuating the Settlement and the Notice process.
6 Among other things, Phoenix calculated each Settlement Class member’s individual settlement payment,
7 updated addresses contained in the class data supplied by Defendants, formatted and translated the Notice
8 Packets for mailing, mailed Class Notices to all 448 Settlement Class members, kept the parties informed
9 of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Burns
10 Decl., ¶¶ 2. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should
11 be finally approved.

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

15 Courts routinely approve service payments to compensate named plaintiffs for the services they
16 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
17 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in
18 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
19 \$50,000 service payment).

20 Here, Plaintiff seeks an enhancement payment of \$10,000.00, and believes this request is
21 reasonable given Plaintiff’s efforts in this case, the risks he undertook on behalf of Settlement Class
22 members and the exceptional results obtained in the Settlement. Lidman Decl., ¶ 42; Declaration of
23 Leonel Luna (“Luna Decl.”), ¶ 8; Plaintiff gathered documents for use in the lawsuit and attended several
24 meetings with Class Counsel discussing the case, the merits, the defenses, and the overall fairness of the
25 settlement reached. *See* Lidman Decl., ¶ 42; Luna Decl., ¶¶ 7,9. Moreover, after receiving notice of the
26 proposed Class Representative Service Award for Plaintiff, no Settlement Class member has objected to
27 the proposed award, as of the date of this filing. *See* Burns Decl., ¶ 9. Thus, the enhancement payment
28

1 to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved.

2 **V. CONCLUSION**

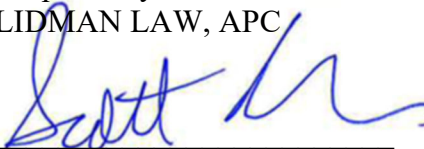
3 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant Plaintiff's
4 motion in its entirety and adopt the [Proposed] Order Granting Plaintiff's Motion for Final Approval of
5 Class Action Settlement and Final Judgment submitted herewith.

6 Based on the terms of the agreement, Plaintiff proposes the deadline for the Settlement
7 Administrator declaration regarding the disbursement be set for June 1, 2025.

8
9 Dated: September 4, 2024

Respectfully submitted,
LIDMAN LAW, APC

10
11 By:



Scott M. Lidman
Attorney for Plaintiff
LEONEL LUNA