Aaron A. Bartz (SBN 198722)
aaron@bartzlawgroup.com
Rex J. Phillips (SBN 237747)
rex@bartzlawgroup.com
BARTZ LAW GROUP, APC
5151 California Ave., Suite 100
Irvine, California 92617
Telephone: (949) 504-4413
Facsimile: (949) 656-7760

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Attorneys for Plaintiffs ALIXUS CORTEZ, KIARA THIBODEAUX, and ASHLEY MENDEZ and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ALIXUS CORTEZ, an individual; KIARA THIBODEAUX, an individual; ASHLEY MENDEZ, an individual; on behalf of themselves and all others similarly situated and the general public,

Plaintiffs,

v.

BLACK KNIGHT PATROL, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 23STCV02135

[Assigned for All Purposes to:
The Hon. Stuart M. Rice, Dept. 1]

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

Date: May 23, 2025
Time: 10:30 a.m.
Dept: 1

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

PLEASE TAKE NOTICE that on May 23, 2025, at 10:30 a.m., or as soon thereafter as the matter may be heard in Department 1 of the above-entitled court, located at the Los Angeles Superior Court, 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Alixus Cortez, Kiara Thibodeaux, and Ashley Mendez ("Plaintiffs") will hereby move the Court for final approval of a class action settlement, entry of a final Order and Judgment, approval of Plaintiffs' enhancement awards, approval of Plaintiffs' attorneys' fees and costs, and approval of the settlement administration expenses.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Aaron Bartz, Alixus Cortez, Kiara Thibodeaux, Ashley Mendez, Jarrod Salinas, and all documents and records on file in this action, and on such other further oral and documentary evidence as may be given at the hearing on this Motion.

Dated: May 1, 2025 BARTZ LAW GROUP, APC

//Aaron Bartz//
Aaron A. Bartz
Attorneys for Plaintiffs ALIXUS CORTEZ, KIARA THIBODEAUX, and ASHLEY MENDEZ, and all others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This class action and PAGA settlement is sought on behalf of 818[1] current and former non-exempt employees who worked in California for Defendant Black Knight Patrol, Inc. ("Defendant")[2] from January 31, 2019 to January 7, 2025 for the Class Period and January 25, 2022 to January 7, 2025 for the PAGA Period.

Pursuant to the preliminary approval order, the notice of class settlement and related settlement documents were mailed to the class on March 18, 2025. (*See* Exhibit A to Declaration of Jarrod Salinas ("Salinas Decl."), ¶ 5).[3] As of the date of filing this Motion, no Class Member has opted out of the Settlement and no Class Member has objected to the Settlement. (Salinas Decl., ¶¶ 8-9).

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

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[1] At preliminary approval, Defendant estimated that there were 785 class members. Because the class data was incomplete, the number of class members rose slightly.

[2] Defendant's owner Manuel Jimenez was also added as a defendant to this action, and he is also responsible for fulfilling all settlement obligations individually and jointly and severally with Defendant Black Knight Patrol, Inc.

[3] Defendant Black Knight Patrol, Inc. is missing addresses for approximately 111 class members, and is currently working to rectify the issue. Class Counsel understands that those missing addresses should be supplied to the settlement administrator shortly, and that class notices will be sent out to those class members within a matter of days. (Declaration of Aaron Bartz ("Bartz Decl."), ¶ 4). The parties are preparing a Stipulation and Order to have a further hearing to allow the class members with missing addresses to receive Class Notices and to appear at a further settlement approval hearing.

There is no claim form requirement, and each member of the settlement class is entitled to receive compensation, with no reversion to the Defendant. The gross settlement is $500,000. The net amount to be paid to class members (after payment of class counsel fees and expenses, settlement administration costs, Private Attorneys General Act ("PAGA") penalties, and Plaintiffs' enhancement awards), is approximately **$268,261**. Each class member's share of the settlement is based on workweeks, and each shall receive, on average, approximately **$328**.

II. THE SETTLEMENT

The class members entitled to the settlement fund are all current and former non-exempt employees who have performed work in the state of California for Defendant at any time during the period beginning from January 31, 2019 to January 7, 2025 for the Class Period and January 25, 2022 to January 7, 2025 for the PAGA Period. There are 818 class members. (Bartz Decl., ¶ 3).

The settlement fund is all in (except for the employer's share of payroll taxes, which Defendant shall pay in addition to the $500,000 settlement), there is no claim form requirement, and no residual will revert to Defendant. Of the 705 class members receiving Class Notice, no class members have opted out or objected to the settlement, so settlement checks may be distributed to those class members. In the event a class member does not negotiate (cash) his or her settlement check, the claims administrator shall distribute the unclaimed funds to the California State Controller's Unclaimed Property Fund.

The payment to the Settlement Class Members will be characterized eighty percent interest and penalties, and twenty percent wages. The administrator will issue W-2 statements for the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and interest.

Based upon Class Counsel's independent analysis and investigation in this matter, the Settlement Class will be compensated based on each member's respective number of workweeks worked in California during the Class Period. The total number of workweeks is 32,377.

Based on the settlement terms, there will be an approximate net settlement fund of **$268,261**. In exchange for their payment, the class will release Defendant from any and all claims rights, demands, liabilities, and causes of action, whether statutory, in tort, contract, or otherwise, alleged in the Operative Complaint and/or LWDA Letter, or that could have been alleged based on the facts pleaded in the Operative Complaint and/or LWDA Letter, arising during the Class Period as set forth in the Settlement Agreement at Paragraph 5.3. The named Plaintiff will, in addition to releasing claims alleged in the lawsuit, give a general release of all claims pursuant to Civil Code section 1542 as set forth in Section 5.1 and 5.2. The State of California and all Aggrieved Employees, including Non-Participating Class Members who are Aggrieved Employees, are deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from the claims for civil penalties for the violations of the California Private Attorneys General Act of 2004 that were alleged, or could have been alleged, based on the facts alleged in the Operative Complaint and/or the LWDA Letter during the PAGA Period.

The all-in settlement fund will also include all of the attorneys' fees and costs allowed by this Court. The attorneys' fees shall not exceed one-third of the $500,000 settlement fund, or $166,666. Defendant will also pay class counsel's costs, which are $11,323, as well as settlement administration costs of $21,250, out of the common fund.

The PAGA allocation of the settlement is $10,000, of which $7,500 (75%) will be distributed to the Labor Workforce and Development Agency (LWDA), with the remaining portion - $2,500 (25%) - going to PAGA Members (all allegedly aggrieved persons who worked for Defendant at any time from January 25, 2022 through January 7, 2025).

The settlement also includes Plaintiffs' class representative enhancements. Based on Plaintiffs' work in connection with this case, including connecting Class Counsel with other witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting with developing the claims and theories in this case, and attending Mediation, Plaintiffs seek $22,500, which includes $7,500 for each named Plaintiff.

In summary, the settlement fund is allocated as follows:

(1) Net settlement fund: $268,261;

(2) Attorney's fees and costs: $166,666 in attorneys' fees and $11,323 in costs;

(3) Settlement administrator expenses of $21,250;

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

(5) Class representative enhancements totaling $22,500, or $7,500 for each named Plaintiff.

(Bartz Decl., ¶ 7).

III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE IN THIS CASE

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

To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. (*See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal. App. 3d 573, 578-579.) The purpose of the requirement is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. (*See Officers for Justice v. Civil Service Comm.* (9th Cir. 1982) 688 F.2d 615, 625, cert. denied 459 U.S. 1217.) To determine whether to grant final approval to a proposed class action under Civil Code section 382, the Court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1801 (quoting *Officers of Justice, supra*, 688 F.2d at 623-624).) The settlement of a class action follows in three stages: (1) preliminary approval of the proposed settlement; (2) notice to class members; and (3) final approval or fairness hearing at which evidence and argument may be heard on the fairness of the settlement. Here, this Court already preliminarily approved the settlement, notice was provided to all class members, no class members have objected, and no class members have opted out.

A. The Settlement is Presumed Fair

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

B. The Settlement Was Reached Through Arm's Length Negotiations

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

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

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

C. **<u>Plaintiffs Conducted Sufficient Investigation and Discovery To Warrant Settlement</u>**

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

The agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Class Counsel obtained substantial informal discovery from Defendant, including personnel records, and pay data for Plaintiffs, and Excel spreadsheets and payroll records for a sampling of the class. (Bartz Decl., ¶ 10).

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

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

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

E. There Are No Objectors To The Settlement

Significantly, to Class Counsel's knowledge, there has not been a single objection to the settlement, and no class members have asked to be excluded from the settlement. This alone is a testament to the fairness and adequacy of the settlement.

F. The Strength of Plaintiffs' Case, The Amount Offered In Settlement, and The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement

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

Plaintiffs Alixus Cortez, Kiara Thibodeaux, and Ashley Mendez are former employees who worked for Defendant as security guards. Alixus Cortez worked for Defendant from April 2022 through February 2023. Kiara Thibodeaux has worked for Defendant from August 2022 to the present. Ashley Mendez worked for Defendant from August 2021 through December 2024. Defendant is a full-service private security company. The operative Complaint alleges claims for 1) Failure to Pay All Wages; 2) Waiting Time Penalties; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Proper Rest Periods; 5) Failure to Properly Maintain and Submit

Itemized Wage Statements; 6) Failure to Reimburse Expenses; 7) Unfair Business Practices; and 8) Violation of Labor Code § 2699 (PAGA). Plaintiff further allege that he and the Class are entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies.

Pursuant to *Kullar v. Footlocker Retail Inc.*, 168 Cal.App.4th 116, 118 and *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, the following describes the settlement's reasonableness. Plaintiffs recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of denial of motion for class certification and the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation.

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

CLAIM	**TOTAL EXPOSURE**	**SETTLEMENT VALUE**
Failure to Pay Wages	$511,000	$76,650
Meal	$1,965,000	$196,500
Rest	$2,936,000	$146,800
Waiting Time	$3,315,000	$160,750
Paystub	$1,676,300	$83,800
Reimbursement	$408,000	$20,400
PAGA	$9,720,000	$486,000
TOTAL	**$20,531,300**	**$1,170,900**

a. Overtime/Off-the-Clock Wage Violations

Labor Code § 510 provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Further, "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay . . ., [and] any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of an employee."

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

Plaintiffs contend that Defendant failed to pay all wages due in numerous respects. Plaintiffs assert that Defendant fails to pay for all hours worked, in that Plaintiffs and other security guards perform pre-shift and post-shift security briefings, and review and exchange passdown reports, all off-the-clock. Class counsel also interviewed Plaintiffs and class members regarding the amount of off-the-clock time, and estimate that, on average, class members were not paid for approximately 30 minutes per week of off-the-clock time.

Defendant contends that all work was fully compensated, and that any security briefings were done while security guards are clocked in, and that if security guards were not clocked in, that Defendant had no knowledge of such activities. *See Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585 (2000) (off-the-clock work is compensable only when an employer knows or should know that such work is being done).

Plaintiffs and their expert analyzed payroll and time records for the class members and calculated that the total estimated verdict value for this claim is approximately $511,000, based upon an average time worked off-the-clock per week of 30 minutes, and a weighted average of pay based upon the payroll data analyzed. Based on the defenses alleged, as well as the precarious financial condition of Defendant, the Plaintiffs placed a reasonable settlement value of the overtime/off-the-clock wage claim at fifteen percent of the total verdict value, or **$76,650**. (Bartz Decl., ¶ 12.a).

b. Meal and Rest Period Claims

i. Meal period liability and damages

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

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

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

Plaintiffs uncovered evidence that the vast majority of all security guards were required to sign an "On-Duty Meal Period Agreement" as a condition of their employment. Plaintiffs believe that the case is similar to *Lubin v. Wackenhut Corporation*, 5 Cal. App. 5th 926 (2016). In *Wackenhut*, plaintiff security guards sued their former employer for failure to provide off-duty meal breaks and rest breaks, among other things. *Id*. at 931. Defendant Wackenhut required all of its employees to sign on-duty meal agreements upon hiring: "Wackenhut's standard practice was to have all new security officers sign an on-duty meal agreement during orientation. It then allowed its clients to determine whether Wackenhut security officers would be provided an on-duty or off-duty meal period at each site." *Id*. at 939.

The *Wackenhut* court noted that plaintiff's theory of liability was clearly based on a common contention "that Wackenhut violated California labor laws by failing to provide employees with off-duty meal periods. This violation resulted from Wackenhut's policy of requiring all employees to sign on-duty meal agreements. . .." *Id.* at 941; citing *Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal. App. 4th 234 (2013).

Early in the class period, Defendant did not appear to maintain adequate time records, and therefore there is a prima facie *Donahue* violation. Later in the class period, Defendant's time records showed clock-in and clock-out times for meal periods, but there continued to be short, missed, and late meal periods, according to an analysis of Defendant's time records.

Defendant contends that Plaintiffs and other class members were paid for the time during their meal periods, so even if there were violations, that Plaintiffs were fully compensated. Moreover, Defendant contends that its time records show clock-in and clock-out times during meal periods after the start of the class period, which militate against a finding of liability.

Class Counsel and their expert calculated the maximum verdict value of the meal break claim to be approximately $1,965,000. This calculation is based on an observed net 71% violation rate, shifts totaling 140,000, and average rate of pay of $21.96 based on the payroll data for the class. Based on discussions with Plaintiffs, reviewing the various payroll records and policies, the defenses raised, Plaintiffs believe they had a ten percent probability of recovering all of these damages, which includes the risk of not recovering any damages based upon the Defendant's financial condition. Accordingly, Plaintiffs contend the reasonable exposure of the meal break claim is approximately **$196,500**. (Bartz Decl., ¶ 12.b.i).

ii. Rest period liability and damages

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

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

Moreover, any requirement to carry radios, pagers, cell phones, or other communications devices during a rest period constitutes an on-call rest period and violates California law. Plaintiffs believe *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016) is on point here. In *Augustus*, plaintiffs worked as security guards for defendant ABM Security Services, and were required to keep their pagers and radios on, even during rest periods, so they could respond when needs arose. *Id*. at 260. Plaintiffs sued defendant for failure to provide rest periods pursuant to Labor Code section 226.7 and IWC Wage Order 4-2001. *Id*. at 260. The California Supreme Court held that "state law prohibits on-duty and on-call rest periods. During required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." *Id*.

The California Supreme Court further held "one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minutes rest periods." *Id*. at 269. The Court noted that some employers may find it "burdensome to relieve their employee of all duties during rest periods" and suggested two possible options: to "provide employees with another rest period to replace one that was interrupted" or to "pay the premium set forth in Wage Order 4, subdivision 12(B), and section 226.7." *Id*. at 272.

Plaintiffs contend that *Augustus* applies here, in that Plaintiffs and the other security guards were always "on call" for their entire shift because they were required to carry their cell phones, and worked at single-guard posts, and unable to leave their posts or the property where they were assigned. On the other hand, Defendant contends that it had compliant policies, and that class members were not required to maintain contact with cell phones or other communication devices during their rest periods, and that if they did, it was voluntary. Moreover, at single-guard posts, Defendant contends that security guards could take their rest periods, and were instructed to alert customers of their unavailability by displaying a window sign that they would return in 10 minutes after their rest periods.

Class Counsel and their expert assumed a 100% violation rate for all shifts by class members of 3.5 hours or more. Based on that assumption, Plaintiffs' expert calculated total violations across the class, multiplied by an average rate of pay for the class members. As such, Class Counsel and their expert calculated the maximum verdict value of the rest period claims to be approximately $2,936,000. Based on the difficulty of proving rest period violations on a classwide basis, and the fact that unlike in *Augustus*, Defendant had no specific policy requiring class members to be on-call at all times, Plaintiffs believe they had a five percent chance of recovering all of the rest period damages, which also includes the financial condition risk of not recovering any damages. As such, Plaintiffs believe the reasonable exposure of the rest break claim is approximately **$146,800**. (Bartz Decl., ¶ 12.b.ii).

c. Waiting Time Penalty

The waiting time penalty claim is purely derivative. Plaintiffs and their expert analyzed the data to find that there are approximately 610 former employees included in the putative class that would be eligible for the Labor Code §203 penalties. Plaintiffs and their expert calculated the total verdict value at approximately $3,215,000. This amount was calculated by multiplying the average daily rate of pay during the statutory period by 30, which is the maximum number of days allowable as waiting time penalties under section 203, and then multiplying that by the total number of former employees. Plaintiffs further discounted the waiting time penalty claim based on risk and the fact that waiting time penalties are not awarded if a good faith dispute exists as to whether the wages were owing, including a financial condition discount based on whether Defendant could continue as a going concern if Plaintiffs obtained a substantial verdict against Defendant. Further, the class would have the burden of proving a “willful” withholding of wages. Plaintiffs considered that under Labor Code §203 there is only a penalty if "an employer willfully fails to pay" all wages due to an employee upon separation. Willfulness does not exist if there is a "good faith dispute," in fact or law that wages were due, even if the employer's reasoning ultimately proves incorrect. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1204; 8 Cal. Code Regs. § 13520 ("A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recover on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.")

Plaintiffs placed a settlement value of **$160,750** or approximately five percent of the verdict value, based upon the various risk factors discussed above. (Bartz Decl., ¶ 12.c).

d. Paystub

As to the paystub penalty, which is derivative of the other claims identified above, the Plaintiffs and their expert calculated a maximum reasonable exposure of this claim of approximately $1,676,000. This figure was arrived at by assuming that each wage statement that was provided to the class members violated Labor Code §226, and multiplying the number of pay periods during the statutory period by $50 for initial violations, and $100 for subsequent violations.

Defendant argues that, even assuming there are any violations, which they deny, any derivative violations were minor and Defendant presented evidence of a good faith dispute as to any violation. *Hurst v. Buczek Enters., LLC* (N.D. Cal. 2012) 870 F.Supp.2d 810, 829 (no section 226 violation where the employer "makes a good faith claim" in its defense); *Harris v. Vector Mktg. Corp.* (2009) 656 F.Supp.2d 1128, 1146 (N.D. Cal. 2009) (the "employer did not knowingly and intentionally fail to provide itemized wage statements" where there was a "good faith dispute"). Moreover, in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, the California Supreme Court recently expanded an employer's ability to claim a good faith defense to paystub penalties.

Based on the raised defenses, as well as the risk of certification and related risks of proving all violations, and financial condition discount, Plaintiffs have placed a reasonable settlement value of **$83,800** or five percent of the total verdict value of the pay stub claim. (Bartz Decl., ¶ 12.d).

e. Reimbursement Claim

California Labor Code section 2802(a) provides:

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

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

In *Cochran*, the court stated: "The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee. Thus, to be in compliance with section 2802, the employer must pay some reasonable percentage of the employee's cell phone bill." *Id*. at 1144.

Defendant contends that it paid for all reasonable and necessary expenses incurred by Plaintiffs and class members, and that the reimbursement claim has little to no value, especially because Defendant provided cell phone reimbursement amounts to class members.

Plaintiffs contend that this claim is valued at $408,000 based upon the assumption that each class member incurred approximately $50 per month of average cell phone usage. This amount was determined based upon class counsel's discussions with Plaintiffs and class members regarding their average cell phone usage on behalf of Defendant, and the average amount of cell phone bills. Defendant disputes that other than accessing phones to clock in or clock out, class members did not use their cell phones during work, and that if they did, Defendant did not require such usage. Given the fact that there are individualized issues in proving reimbursement violations and damages, and based upon the defenses raised, and Defendant's financial condition, Plaintiffs believe this claim's reasonable value is **$20,400**, or five percent of the total value. (Bartz Decl., ¶ 12.e).

f. PAGA

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

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

Plaintiffs and their expert calculated the reasonable PAGA penalties to be valued at $9,720,000, which includes the stacking of penalties for numerous violations, as set forth above. Based on the defenses raised, the Court's discretion to reduce penalties, and Defendant's financial condition, Plaintiffs believe the PAGA claim's reasonable value is five percent of the total value, or approximately **$486,000**. (Bartz Decl., ¶ 12.f).

g. Total Damage Exposure[4]

Plaintiffs believe that the $500,000 settlement achieved in this case is very good for the class members. Based upon a reasonable exposure value of $1,170,900, the settlement represents approximately 43% of that total value. Given the many defenses raised, the uncertainty of the certifiability of any class, the financial condition of the Defendant, and the risks of collecting against this Defendant, Class Counsel believe this settlement is a very good result for all of the class members. (Bartz Decl., ¶ 12.g).

G. 705 Class Members Have Received Proper Notice of the Settlement

Pursuant to the Court's Preliminary Approval Order dated January 7, 2025, the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, were sent out to 705 of the 818 Class Members via first-class mail by Claims Administrator Phoenix Class Action Administration Solutions ("Phoenix") on March 18, 2025. Prior to this date, the name, last known address, and social security number of each Class Member were provided by Defendant through a review of its personnel files. Upon its receipt of the Class Member contact information, Phoenix accessed the National Change of Address ("NCOA") database and updated the addresses provided by Defendant. (Salinas Decl. ¶ 4.)

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

To class counsel's knowledge, as of the date of the filing of this motion, 705 of the Class Notices have been delivered successfully and not a single Class Member has objected to the settlement and no Class Members have requested exclusion from the settlement. (Salinas Decl. ¶¶ 8-9.)

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

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

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

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

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

> spreading fees proportionately among those benefitted by the suit. (Citations omitted.)

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

Class counsel seeks an award of attorneys' fees of $166,666, or one-third of the settlement. Class counsel's fee is eminently reasonable here. Class counsel achieved a very good result for all class members, who will all be entitled to receive their share of the settlement according to their workweeks during the class period.

B. <u>Plaintiffs' Attorneys' Fees Are Also Recoverable Under The Lodestar Approach</u>

Fees in class cases are also appropriate under the lodestar method, whereby the number of hours reasonably expended is multiplied by a reasonable hourly rate. (*See Lealao, supra,* 82 Cal.App.4th at 26.) Indeed, pursuant to the California Supreme Court's seminal *Laffitte* decision: "The choice of a fee calculation method is generally one within the discretion of the trial court, the goal under either the percentage or lodestar approach being the award of a reasonable fee to compensate counsel for their efforts." *Laffitte*, *supra*, 1 Cal.5th at 504. "The lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved." *Id*. (quoting *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516(6th Cir. 1993)). Thus, this Court has the discretion to award Plaintiffs' attorneys based on the reasonable value of their services in this case. *See Newberg, supra*, §15:67 (finding that between 1993-2007, approximately 10% of courts solely use the lodestar approach in common fund cases).

Class Counsel have worked more than 143 hours to date on this case at rates reflecting those currently earned in the market place, which have been approved by numerous state and federal Courts in California, and calculated the lodestar fee on those hours at more than $111,248. (Bartz Decl., ¶ 22, and Ex. 5). To that end, Class Counsel respectfully requests the

Court apply a modest lodestar multiplier of 1.5 resulting in the requested fee of $166,666. A multiplier is appropriate when "(1) attorneys take a case with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was risky." *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016). Here, Plaintiffs' counsel took this case on a full contingency basis, and there a risk that the class may not be certified based on Defendant's defenses and recent pre-filing policy revisions. Plaintiffs' hourly rates are also lower than market rates for hourly defense counsel and do not reflect the risk with this being a contingency case. (Bartz Decl., ¶22).

California law also embraces the application of fee multipliers. *See Wershba v. Apple Computer,* 91 Cal.App.4th 224, 255 (2001) (under California law, "[m]ultipliers can range from 2 to 4 or even higher."). The multiplier requested here is also well below those granted in other complex class actions involving a common fund. *See Uschold v. NSMG Shared Servs., LLC*, 2020 WL 3035776, at *16 (N.D. Cal. June 5, 2020) (applying multiplier of **4** in wage and hour class action); *Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230 (N.D. Cal. Dec. 8, 2021) (multiplier of **5.49** granted after lodestar cross-check in wage and hour class action); *Steiner v. Am. Broadcasting Co.*, 248 Fed. App'x 780, 783 (9th Cir. 2007) (awarding cross-check multiplier of **6.85**); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274, at *7 (N.D. Cal., May 21, 2015) (applying **5.5** lodestar multiplier in UCL class action).

The multiplier also does not reflect additional work that will need to be performed in this case. Class Counsel estimate that they will spend at least 40 hours preparing for and attending the final approval hearing, conferring with the settlement administrator, and assisting in administering the settlement over the next several years. (Bartz Decl., ¶ 23). Accounting for such future incurred fees is permissible when performing a lodestar cross-check. *See In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litig.*, 746 Fed.Appx. 655, 659 (9th Cir. 2018); *Reyes v. Bakery and Confectionary Union and Ind. Int'l Pension Fund*, 281 F.Supp.3d 833, 856 (N.D. Cal. 2017) (finding that 125 anticipated future hours included in lodestar to manage "class members' claims" appropriate and reasonable).

When such future hours are included in the lodestar, the multiplier is reduced to approximately 1.12. (Bartz Decl., ¶ 23).

In evaluating the lodestar, and whether an adjustment is appropriate, courts look to the qualifications of counsel, the reasonableness of the rates charged, the novelty and difficulty of the case, the contingent nature of the case, the results achieved, and related matters. (*See, e.g.*, *Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 321-322.) All such factors support the fee award here.

1. Class Counsel Are Well-Qualified To Represent This Class And Their Rates Are Reasonable

Class counsel are experienced employment lawyers, and have extensive experience in the specific subcategory of wage and hour claims. (*See* Bartz Decl., ¶¶ 13-17.) Class counsel's rates are all within reasonable market rates in Southern California, and wage and hour class action attorneys. (*See* Bartz Decl., ¶ 22.)

2. Each Class Counsel's Lodestar Is Well Documented

A properly supported motion for attorney's fees is prima facie evidence that the expenses and services were necessarily incurred. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.) Class counsel here provide appropriately detailed declarations and detailed, contemporaneous billing statements in support of the lodestar amounts which total $111,248. (Bartz Decl., ¶ 22, and Ex. 5.)

3. Novelty And Difficulty Of The Case

This case raised potentially novel and difficult issues of proof based on Plaintiffs' allegations. Plaintiffs and their counsel were able to secure a favorable settlement only after investigating the claims and researching the theories of potential liability in this case.

4. Class Counsel Worked Efficiently And Skillfully

From the outset, Class Counsel pursued this case to achieve an efficient result. Class Counsel agreed to participate in an early mediation, and obtained the informal discovery necessary to prove Plaintiffs' claims.

5. Class Counsel Worked Entirely On A Contingency Basis

Class Counsel worked on a complete contingency and advanced all expenses and costs. The contingent risk included liability issues and damage issues. According to the California Supreme Court:

> A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.

(*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.)

6. Class Counsel Achieved Very Good Results

Class Counsel obtained a $500,000 settlement, whereby every one of the class members will receive a check, with no reversion to the Defendant. Thus far, not one class member objected to the settlement or excluded themselves from the class. Those numbers are a testament to the strength of the settlement achieved in this case.

Because Plaintiffs' attorneys achieved a very good result for the class members in this case, Class counsel respectfully requests attorneys' fees of $166,666.

V. PLAINTIFFS' COSTS AND THE CLASS ADMINISTRATOR EXPENSES SHOULD BE APPROVED

Moreover, Class Counsel seeks costs of $11,323, plus an Administration Expenses Payment for Phoenix of $21,250 (which includes costs incurred to date and also the estimated costs of distributing payments), which Defendant has agreed to pay out of the Gross Settlement Amount. All such costs are reasonably necessary in prosecuting this action. (Bartz Decl. ¶¶ 24, 26, and Ex. 6 thereto).

VI. THE ENHANCEMENT AWARDS FOR THE CLASS REPRESENTATIVES IS FAIR AND REASONABLE

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

In this litigation, the class representatives testify to their risks, their time and effort incurred, the adverse consequences suffered, and the benefits received in this case. (*See generally*, the Declarations of Alixus Cortez, Kiara Thibodeaux, and Ashley Mendez). In addition, the class representatives are required to execute a general release of all claims against Defendant, which includes a waiver of unknown claims and their rights under California Civil Code § 1542. For all of these reasons, the requested service payments totaling $22,500, or $7,500 for each named Plaintiff is appropriate and justified.

VII. CONCLUSION

Plaintiffs respectfully request that this Court issue an Order and Judgment approving the Settlement, and grant Plaintiffs' attorneys' fees and costs, Phoenix's administrative expenses, and Plaintiffs' enhancement awards.

Dated: May 1, 2025 BARTZ LAW GROUP, APC

//Aaron Bartz//
Aaron A. Bartz
Attorneys for Plaintiffs ALIXUS CORTEZ, KIARA THIBODEAUX, and ASHLEY MENDEZ, and all others similarly situated