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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

SERGIO RODRIGUEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

SUPERIOR TANK CO., INC., a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. BCV-23-100144 consolidated with
Case No. BCV-23-100926

*[Case Assigned to Hon T. Mark Smith
department T-2]*

**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: November 20, 2024
Time: 8:30 a.m.
Dept.: T-2

Complaint Filed: January 17, 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 November 20, 2024 at 8:30 a.m. in Department T-2 of the above-entitled Court, located at 3131 Arrow St., Bakersfield, California 93308, Plaintiff Sergio Rodriguez (“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 Sergio Rodriguez 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 Class Action and PAGA Settlement (hereinafter the “Settlement”);
5. Approving an award of \$183,333.33 in attorneys’ fees to Class Counsel;
6. Approving an award of \$10,027.62 in costs to Class Counsel;
7. Approving an award of \$8,250.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving an enhancement payment of \$7,500.00 to Plaintiff Sergio Rodriguez for his services as Class Representative;
9. Approving an award of \$15,000.00 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

1 administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed]
2 Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment
3 submitted concurrently herewith should be entered so as to give finality to, and allow for disbursements
4 from, the Settlement.

5 This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the
6 supporting declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Sergio Rodriguez¹, Mayra
7 Gonzalez of Phoenix Settlement Administrators, and the exhibits attached thereto; the Settlement; all other
8 pleadings and papers on file in this action; and on any further oral or documentary evidence or argument
9 presented at the time of hearing.

10
11 Dated: October 25, 2024

Respectfully submitted,
LIDMAN LAW, APC

12
13 By:



14 Scott M. Lidman
15 Attorney for Plaintiff
16 SERGIO RODRIGUEZ
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27 ¹ The declaration of Plaintiff Sergio Rodriguez was originally filed with this Court on June 14, 2024 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 Sergio Rodriguez (“Plaintiff”) submits this memorandum of points and authorities in
4 support of his motion for final approval of the class action settlement (the “Settlement”) with Defendant
5 Superior Tank Co., Inc. (“Defendant”) on behalf of the Settlement Class defined as: “all current and
6 former non-exempt employees of Defendant Superior Tank Co., Inc. who worked for Defendant in
7 California during the Class Period.” For purposes of the settlement, the Class Period shall mean the time
8 period of January 17, 2019 through the date the Court issued the order preliminarily approving this
9 Settlement Agreement, which was July 15, 2024. In this non-reversionary Settlement, all participating
10 Settlement Class members will receive **automatic** payments without the need to submit a claim form,
11 resulting in an average settlement payment of approximately \$1,297.05 to each participating Settlement
12 Class member. This is a favorable resolution of the highly disputed wage and hour claims in this case
13 and the significant litigation risks that Plaintiff faced.

14 Since this Court granted preliminary approval on July 15, 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 17, 2023, Plaintiff filed a putative class action complaint against Defendant in Kern County Superior Court. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff’s primary allegations are that Defendant: (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 timely pay all wages upon separation of employment; and (8) engaged in unlawful business practices. *Id.*

On March 30, 2023, Plaintiff submitted the Class Action to arbitration before the American Arbitration Association, AAA Case No. 012300013261. Lidman Decl., ¶ 10. On September 8, 2023, Plaintiff filed a First Amended Demand for Arbitration adding a cause of action for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”). *Id.*

On April 30, 2024, the arbitrator dismissed the arbitration without prejudice so that the Class Action could return to this Court, and the Parties could appropriately seek approval of this Settlement. Lidman Decl., ¶ 10. On May 24, 2024, this Court lifted the stay in this action to allow Plaintiff to file a Motion for Preliminary Approval of the class-wide settlement. *Id.* Further, on May 24, 2024, this Court, pursuant to a stipulation between the Parties, consolidated for all purposes the instant action and the PAGA Action. *Id.*

On July 15, 2024, this Court granted Plaintiff’s Motion for Preliminary Approval. Lidman Decl., ¶ 10.

A. Plaintiff’s Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of liability are related to Defendant’s alleged failure to pay Settlement Class members for all time worked and its alleged failure to provide Settlement Class members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶ 11.

Specifically, Plaintiff alleges Defendant failed to compensate its non-exempt employees for all time worked. Lidman Decl., ¶ 11. Plaintiff alleges that Defendant failed to account for time spent at the yard before and after a shift, and also unlawfully rounded time. *Id.* Plaintiff also alleges that this time

1 shaving and/or rounding practice utilized by Defendant was not even-handed over time and would almost
2 exclusively round and shave in Defendant's favor such that Plaintiff was routinely underpaid for all his
3 time worked. *Id.* As a result, Defendant failed to pay Plaintiff and other non-exempt employees for all
4 minimum and overtime wages owed. *Id.*

5 Plaintiff alleges that he and Settlement Class Members were not provided with all legally-required
6 meal periods in compliance with California law due to Defendant's unlawful meal period
7 policies/practices. Lidman Decl., ¶ 13. Due to work demands and the manner in which Defendant tracked
8 the time of its employees, Plaintiff was often prevented from taking meal periods that commenced before
9 the end of the fifth hour of work and/or which were at least 30 minutes in length. *Id.* Therefore, based
10 on a review of the sampling of the time punch data and payroll records, Plaintiff calculated a 21.6%
11 violation rate. *Id.*

12 Plaintiff alleges that he and other Settlement Class Members were not authorized and permitted
13 to take all required rest periods due to Defendant's rest period policies/practices which fail to authorize
14 and permit all rest periods for every four hours worked, or major fraction thereof. Lidman Decl., ¶ 15.

15 Plaintiff further alleges that Defendant issued inaccurate wage statements in violation of Labor
16 Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages described
17 above. Lidman Decl., ¶ 17. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a)
18 because the wage statements issued to Settlement Class Members did not include all hours worked and
19 the rate at which they were being paid. *Id.*

20 Plaintiff alleges that Defendant is also liable for waiting time penalties under Labor Code section
21 203 as a result of its failure to pay all wages upon separation of employment. Lidman Decl., ¶ 19. Based
22 on the data provided by Defendant, there were approximately 95 Settlement Class Members who have
23 separated their employment with Defendant during the relevant time period who could be entitled to
24 waiting time penalties. *Id.*

25 Plaintiff further alleges that Defendant required its employees to use their personal cellular phones
26 and tools to discharge their duties but did not reimburse them for the cell phones and/or the data usage.
27 Lidman Decl., ¶ 21. Plaintiff alleges that Defendant knew or should have known that Plaintiff and the
28 other employees were necessarily incurring expenses due to the use of their personal cellular phone and/or

1 tools in the direct discharge of their duties. *Id.* Yet, despite the necessity of Plaintiff and the other drivers
2 using their cellular phone for work activities and Defendant knowing or having should have known about
3 same, Plaintiff and the other drivers were never reimbursed for a reasonable portion of their cellular phone
4 expenses by Defendant, as mandated by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th
5 1137. *Id.*

6 Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code
7 violations. Lidman Decl., ¶ 23.

8 As explained *infra* and in Plaintiff's Motion for Preliminary Approval, Defendant denies
9 Plaintiff's claims and asserts several affirmative defenses, both on the merits and with respect to class
10 certification. Lidman Decl., ¶¶ 12-24.

11 **B. Mediation and Settlement**

12 After agreeing to participate in private mediation, Defendant informally produced documents and
13 information relevant to the claims alleged in advance of mediation, including without
14 limitation timekeeping and payroll data for an approximate 15 percent sampling of the putative class.
15 Lidman Decl., ¶ 26. Additionally, Defendant produced information and data points needed for a
16 fruitful mediation, including without limitation, the number of employees, workweeks at issue, pay
17 periods at issue, meal and rest period policies and procedures, and payroll policies. *Id.* After the
18 detailed review and analysis of the records and information produced by Defendant, Class Counsel drew
19 on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case.
20 *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's
21 defenses thereto, if a settlement could not be reached. *Id.*

22 On April 10, 2024, after extensive research and analysis, a full-day mediation was held with
23 Michael Ludwig, Esq., a well-respected mediator. Lidman Decl., ¶ 27. During mediation, the parties
24 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and
25 the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed on a class-wide resolution.
26 *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation
27 of Class Action and PAGA Settlement ("Settlement"). *Id.*

1 **C. Preliminary Approval of Settlement**

2 Plaintiff submitted the Settlement to the Court with his Motion for Preliminary Approval on June
3 14, 2024. Lidman Decl., ¶ 28. Plaintiff also submitted the Settlement to the Cal. Labor Workforce
4 Development Agency (“LWDA”) as required under the PAGA. Lidman Decl., ¶ 41, Exh. D.

5 On July 15, 2024, the Court granted preliminary approval of the class action settlement. Lidman
6 Decl., ¶ 10. Plaintiff submitted the Order Granting Preliminary Approval on July 16, 2024 to the LWDA.
7 Lidman Decl., ¶ 41, Exh. E.

8 On August 12, 2024, the Court-approved Notice Packet (consisting of the Notice of Pendency of
9 Class Action and Proposed Settlement and Notice of Settlement Award) was sent to 232 Settlement Class
10 members. *See* Declaration of Mayra Gonzalez of Phoenix Settlement Administrators (“Gonzalez Decl.”),
11 ¶ 5. The Settlement Class members had until October 11, 2024 to submit disputes, objections, and/or
12 requests for exclusion. Gonzalez Decl., ¶¶ 8-10. As of the date of this filing, there have been **no**
13 **objections, no disputes and no opt-outs.** *Id.* Plaintiff now respectfully submits the Settlement for this
14 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 employees of Defendant
18 Superior Tank Co., Inc. who worked for Defendant in California during the Class Period.” Lidman Decl.,
19 ¶ 29. The “Class Period” shall mean the time period of January 17, 2019 through the date the Court issues
20 an order preliminarily approving the Settlement Agreement, which is July 15, 2024. *Id.*

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

22 The Settlement requires Defendant to pay a Gross Settlement Amount (“GSA”) of \$550,000.00.
23 See Settlement, ¶ 4. The Net Settlement Amount (“NSA”) is the amount remaining from the GSA after
24 deducting requested attorneys’ fees (\$183,333.33) and verified costs (\$10,027.62), proposed Class
25 Representative Service Award to Plaintiff (\$7,500.00), Settlement Administration costs (\$8,250.00), and
26 PAGA payment to the LWDA (\$15,000.00). Gonzalez Decl., ¶ 12. Based on these requested amounts,
27 the NSA is calculated to be approximately \$305,916.67. *Id.*
28

Each Settlement Class member will receive his or her settlement share based on the following formula: Each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked as a non-exempt employee during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period. *See* Settlement, ¶ 5.B.

Five Thousand Dollars and Zero Cents (\$5,000.00) of the Net Settlement Amount has been designated as the "PAGA Amount" as described above. *See* Settlement, ¶ 5.C. Each PAGA Employee who was employed by Defendant at any time from January 17, 2022 through July 15, 2024, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the period of January 17, 2022 through July 15, 2024, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. *Id.*

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Any portion of each Settlement Award that is provided for the PAGA Amount shall be allocated as penalties. *See* Settlement, ¶ 5.E. For the remainder of each Settlement Award, twenty percent (20%) of each Settlement Award shall be allocated as wages, seventy percent (70%) of each Settlement Award shall be allocated as penalties, and ten percent (10%) of each Settlement Award shall be allocated as expense reimbursements. *Id.*²

C. Summary of Notice Process

1. Mailing of Notice Packets

On July 31, 2024, Defendant provided Phoenix Settlement Administrators ("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. Gonzalez

² Defendant will pay the employer's share of payroll taxes separately and apart from the Gross Settlement Amount. *See* Settlement, ¶ 4.D; Gonzalez Decl., ¶ 15.

Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Class Notice to the 232 Settlement Class members on August 12, 2024. *Id.*, ¶¶ 4-5. Following the initial mailing, seven (7) 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, six (6) Notice Packets were re-mailed. *Id.* As of the date of filing this final approval motion, one (1) Notice Packet remains undeliverable with no forwarding address, and where no new address could be located through skip trace. *Id.*, ¶ 7.

Settlement Class members had until October 11, 2024 to submit objections, requests for exclusion, or disputes. Gonzalez 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. Gonzalez Decl., ¶¶ 8-10. Accordingly, as of the date of this Motion, the participation rate amongst the Settlement Class members is 99.5% and the average estimated payment is \$1,297.05, with the highest estimated payment to a Settlement Class member being \$3,135.83, and the lowest estimated payment to a Settlement Class Member being \$0.77. *Id.*, ¶ 13.

D. Timing of Payments

The Gross Settlement Amount (and employer-side taxes separate from the Gross Settlement Amount) shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class Members. *See* Settlement, ¶ 4.B. Defendant shall fund the Gross Settlement Payment within sixty (60) calendar days after 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. *Id.*

Within ten (10) calendar days following Defendant’s deposit of the Gross Settlement Amount and with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. *See* Settlement, ¶ 4.D. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will

//

1 prepare and mail Settlement Awards, less applicable taxes and withholdings, to Participating Settlement
2 Class members. *Id.*

3 **E. Uncashed Funds**

4 The Settlement provides that Settlement Class members have 180 days from the date the
5 Settlement Administrator mails the checks to cash his or her check. Settlement ¶ 5.F. Any funds
6 remaining after 180 days will escheat to the California Secretary of State – Unclaimed Property Fund in
7 the name of the Settlement Class member. *Id.*

8 As all settlement funds will be distributed to the Settlement Class members, there will be no
9 residue and it is unnecessary to designate *cy pres* recipients. *See* Settlement ¶ 4.C.

10 **IV. ARGUMENT**

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

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

20 Here, this Court found that the Settlement Class meets all the requirements for class certification
21 for settlement purposes when it granted preliminary approval of the Settlement on July 15, 2024. *See*
22 *Lidman Decl.*, ¶10; Exh. A. Subsequent to the Court’s order granting preliminary approval, no events
23 have cast doubt on the propriety of this determination, and in fact, the reaction of the Settlement Class
24 members thus far to the Settlement has been strongly in support of the Settlement, with no Settlement
25 Class members objecting to any portion of the Settlement and no Settlement Class members electing to
26 opt-out of the Settlement. *Lidman Decl.*, ¶10; *See Gonzalez Decl.*, ¶¶ 8-10. This Court should therefore
27 confirm its conditional certification of the Settlement Class.

28 //

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, Defendant contends that it compensated Settlement Class
21 members for all of their time worked, that its rounding practices were lawful, and any unpaid time was
22 de minimis and therefore non-compensable. Lidman Decl., ¶ 12. Defendant further asserts that Plaintiff
23 would be unable to certify an unpaid wages class given the individualized inquiries that would be
24 required, and also that Defendant’s rounding mechanism was, according to it, allegedly facially neutral.
25 *Id.* Further, Defendant contends that Plaintiff’s assessment of the claim at the overtime rate is inflated
26 and incorrect. *Id.*

27 As for Plaintiff’s meal period claim, Defendant counters that it has always provided non-exempt
28 employees with an opportunity to take legally compliant meal periods, and any non-compliant meal

1 periods reflected in employee timekeeping records were solely the result of employee choice, rather than
2 any policy or practice of Defendant. Lidman Decl., ¶ 14. Defendant also points out that under *Brinker*
3 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the
4 opportunity to take meal periods, not “ensure” meal periods are taken, and that they have always done so.
5 *Brinker*, supra, 53 Cal.4th at 1038 (rejecting “ensure” standard). *Id.* Defendant further contends there
6 are no second meal period violations because the employees signed valid second meal period waivers.
7 *Id.* Finally, Defendant contends Plaintiff’s meal period claim is not suited for class certification and
8 individual inquiries would be required to assess which employees took non-compliant meal periods, how
9 many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-
10 compliant meal period or missed a meal period during a particular shift. *Id.*

11 As for Plaintiff’s rest period claim, Defendant contends it has always maintained and enforced
12 lawful rest period policies and practices, and that Settlement Class Members were authorized and
13 permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 16.
14 Defendant argues that Plaintiff’s rest period claim is inherently unsuited for class treatment as it requires
15 an individualized inquiry into whether each Settlement Class member was in fact authorized and
16 permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-
17 trials. *Id.*

18 As for Plaintiff’s wage statement claim, Defendant argues that its alleged wage statement
19 violations could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or
20 any other employee “suffer[ed] injury” as a result of the alleged wage statement violations as required by
21 Lab. Code § 226(e) for imposition of penalties. Lidman Decl. ¶ 18.

22 As for Plaintiff’s waiting time penalties, Defendant asserts that it has strong defenses to the
23 waiting time claim because there exists good-faith disputes as to Plaintiff’s underlying claims, precluding
24 imposition of penalties. Lidman Decl., ¶ 20. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute
25 that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12
26 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was exempt
27 precluded imposition of waiting time penalties over contested wages owed).

28 As for Plaintiff’s unreimbursed business expenses claim, Defendant contends that it never

1 required its employees to purchase or use their own tools and provided everything the employees needed.
2 It further contends it did not require the employees to use their cell phones for any business reasons.
3 Lidman Decl., ¶ 22. Defendant further contends that any purportedly necessary expenses incurred by
4 drivers were minimal. *Id.*

5 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims,
6 Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims
7 will fail. Lidman Decl., ¶ 24; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because
8 the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant also
9 maintains that, given its good faith defenses, this Court would exercise its discretion to substantially
10 reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. *Id.*; See Lab.
11 Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
12 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-
13 01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).

14 These considerations not only bore heavily on the negotiations leading to the Settlement, but also
15 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
16 litigation. Lidman Decl., ¶ 25. As detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff
17 carefully vetted the claims at issue and conducted a detailed statistical analysis of class-wide data to arrive
18 at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate that
19 the Settlement is fair, adequate, and reasonable in view of them. *Id.*

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

23 Individual settlement payments will be calculated based on the number of Actual Workweeks
24 worked by each Settlement Class member. See Settlement ¶ 5.B. This method of distribution
25 compensates Settlement Class members based on the estimated extent of their injuries, as Settlement
26 Class members who worked more shifts, would have been subject to more of the alleged wage and hour
27 violations than those who worked fewer shifts. Thus, the formula for compensating Settlement Class
28

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 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion, not a single Settlement Class member has objected to the Settlement, no Settlement Class members have elected to opt-out, and only one (1) of the 232 Class Notices remains undeliverable as of the date of this Motion. Gonzalez Decl., ¶¶ 6-10. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

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

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

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the

1 litigation—convince us the percentage method is a valuable tool that should not be denied
2 our trial courts.”

3 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
4 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
5 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
6 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
7 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
8 equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*
9 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
10 attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method
11 and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery;
12 and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities*
13 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) (“The percentage-of-recovery method is generally favored
14 in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
15 counsel for success and penalizes it for failure.’”) (citation omitted).

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

24 Here, Class Counsel’s fee request of \$183,333.33 (one-third of the Gross Settlement Amount) is
25 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
26 “regardless whether the percentage method or the lodestar method is used, fee awards in class actions
27 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
28 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,

2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively small” and that in California, “courts usually award attorneys' fees in the 30-40% range in wage and hour class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience in similar wage and hour class action matters. *See* Lidman Decl., ¶ 31. Thus, the percentage sought by Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

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

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In this case, Class Counsel have a lodestar of \$176,227.50 without the use of any multiplier. Lidman Decl., ¶ 35. A summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. *Id.*, at ¶¶ 35-36, Exh. C.

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 an approximate and minor 1.04 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 99.5%, 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* Gonzalez Decl., ¶¶ 8-10. Additionally, the *average* settlement payment in this case of approximately \$1,297.05 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

1 average class member recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-
2 00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding that average payment to class
3 members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC,
4 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action
5 settlement where average recovery for each class member was approximately \$108). The fact that Class
6 Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense
7 challenges and an uncertain legal landscape, confirms the strength of the results achieved.

8 As discussed above, this case presented significant risk as to both class certification and merits
9 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
10 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
11 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
12 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
13 compensation for over one year of work. Lidman Decl., ¶ 36. During this time, Class Counsel have
14 expended \$9,577.62, in actual costs, have devoted substantial time to this litigation and expect to incur
15 approximately \$450.00 in future costs for filing the instant motion, filing the final declaration regarding
16 distribution of settlement, service and messenger fees, postage fees, parking, mileage, and/or CourtCall
17 costs for future appearances. Lidman Decl., ¶ 34, Exh. B. Class Counsel's efforts have included
18 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
19 Defendant's documents and policies, analyzing Settlement Class Members' timekeeping data and payroll
20 records, preparing for and attending mediation, negotiating and revising the long-form settlement
21 agreement, preparing the Motion for Preliminary Approval, preparing this Motion, and otherwise
22 litigating the case. See Lidman Decl., ¶ 32. Given the considerable potential for adverse outcomes in
23 this case, including, but not limited to losing on class certification and/or merits issues, the contingent
24 risk borne by Class Counsel was great. Lidman Decl., ¶ 34.

25 Class Counsel's previous experience in litigating wage and hour class actions also supports the
26 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
27 hour class action litigation, with substantial experience litigating claims for meal and rest period
28 violations, and related penalties. See Lidman Decl., ¶¶ 3-8; Declaration Milan Moore ("Moore Decl."),

¶¶ 3-5; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 3-8. They have been certified as class counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 33. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the GSA is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding Defendant’s obligation to “provide” meal periods and “authorize and permit” rest periods, and the propriety of statutory penalties, to name just a few. Lidman Decl., ¶¶ 11-24, 33. Thus, Class Counsel’s requested fee award is fair, reasonable, and adequate and should be approved.

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

Class Counsel have incurred \$10,027.62 (including anticipatory fees and expenses related to the instant motion and other future activity in this case) in litigation costs. Class Counsel’s request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Lidman Decl., ¶ 34; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)(“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class

1 member has objected to them, Plaintiff respectfully requests the Court grant the request for actual costs
2 incurred.

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

4 Plaintiff also requests that the Court approve \$8,250.00 in administration costs to the Settlement
5 Administrator, Phoenix Settlement Administrators (“Phoenix”). As detailed in the declaration of Mayra
6 Gonzalez on behalf of Phoenix submitted herewith, Phoenix performed duties in connection with this
7 Settlement that were integral in effectuating the Settlement and the Notice process. Among other things,
8 Phoenix calculated each Settlement Class member’s individual settlement payment, updated addresses
9 contained in the class data supplied by Defendant, formatted and translated the Notice Packets for mailing,
10 mailed Class Notices to all 232 Settlement Class members, kept the parties informed of any objections or
11 requests for exclusion, and have otherwise administered the Settlement. *See* Gonzalez Decl., ¶¶ 2. For
12 these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be finally
13 approved.

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

17 Courts routinely approve service payments to compensate named plaintiffs for the services they
18 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
19 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in
20 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
21 \$50,000 service payment).

22 Here, Plaintiff seeks an enhancement payment of \$7,500.00, and believes this request is
23 reasonable given Plaintiff’s efforts in this case, the risks he undertook on behalf of Settlement Class
24 members and the exceptional results obtained in the Settlement. Lidman Decl., ¶ 40; Declaration of
25 Sergio Rodriguez (“Rodriguez Decl.”), ¶ 8. Plaintiff gathered documents for use in the lawsuit and
26 attended several meetings with Class Counsel discussing the case, the merits, the defenses, and the overall
27 fairness of the settlement reached. *See* Lidman Decl., ¶ 40; Rodriguez Decl., ¶¶ 7, 9. Moreover, after
28

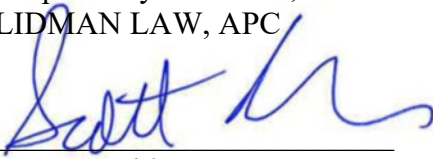
1 receiving notice of the proposed Class Representative Service Award for Plaintiff, no Settlement Class
2 member has objected to the proposed award, as of the date of this filing. *See* Gonzalez Decl., ¶ 9. Thus,
3 the enhancement payment to Plaintiff is appropriate and justified as part of the Settlement and should be
4 finally approved.

5 **V. CONCLUSION**

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

9 Based on the terms of the agreement, Plaintiff proposes the deadline for the Settlement
10 Administrator declaration regarding the disbursement be set for August 23, 2025.

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12 Dated: October 25, 2024

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14 By: 
15 Respectfully submitted,
16 LIDMAN LAW, APC
17 Scott M. Lidman
18 Attorney for Plaintiff
19 SERGIO RODRIGUEZ
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