LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Tiara Gose-Hardy (SBN 323823)
tgose@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
MATTHEW CRUZ

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
MATTHEW CRUZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MATTHEW CRUZ, as an individual and on behalf of all others similarly situated, Plaintiff, vs. CAT SPEC, LTD. L.P., a Texas limited partnership; STRONGHOLD, LTD. LIMITED PARTNERSHIP, a Texas limited partnership; and DOES 1 through 100, inclusive, Defendants.	Case No.: 23STCV06904 [*Assigned for all purposes to the Hon. Samantha P. Jessner, Dept. SSC-7*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVE SERVICE AWARD, AND ATTORNEYS' FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: July 21, 2025 Time: 10:00 a.m. Dept.: SSC-7

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 July 21, 2025 at 10:00 a.m. in Department 7 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Matthew Cruz ("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 Matthew Cruz 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 Amended Class Action and PAGA Settlement Agreement and Class Notice (hereinafter the "Settlement");
5. Approving an award of $331,953.17 in attorneys' fees to Class Counsel;
6. Approving an award of $21,643.84 in costs to Class Counsel;
7. Approving an award of $11,500.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving a service award of $7,500.00 to Plaintiff Matthew Cruz 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: (l) the Settlement Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested awards of attorneys' fees and costs, service award, LWDA payment, and settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith should be entered so as to give finality to, and allow for disbursements from, the Settlement.

This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the supporting declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Matthew Cruz[1], Yami Burns of Phoenix Settlement Administrators, and the exhibits attached thereto; the Settlement; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: June 26, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman

Attorney for Plaintiff
MATTHEW CRUZ

[1] The declaration of Plaintiff Matthew Cruz was originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant Motion.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Matthew Cruz ("Plaintiff") submits this memorandum of points and authorities in support of his motion for final approval of the class action settlement (the "Settlement") with Defendant CAT Spec, Ltd. L.P. and Defendant Stronghold, Ltd. Limited Partnership (hereinafter collectively referred to as "Defendants") on behalf of the Settlement Class defined as: "All individuals whom Defendants employed as non-exempt employees and who worked in California at any time during the Class Period." The Class Period is the period from March 29, 2019 through March 4, 2025.

In this non-reversionary Settlement, all participating Settlement Class members will receive **automatic** payments without the need to submit a claim form, resulting in an average settlement payment of approximately $2,017.60 to each participating Settlement Class member. This is a favorable resolution of the highly disputed wage and hour claims in this case and the significant litigation risks that Plaintiff faced.

Since this Court granted preliminary approval on March 4, 2025, nothing has changed to impact the propriety, fairness, adequacy and reasonableness of the Settlement. At the time of filing, after receiving notice of the Settlement and of their projected Settlement payments, none of the 299 Settlement Class members have opted out of the Settlement and not a single Settlement Class member filed an objection to any portion of the Settlement.

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

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

II. FACTUAL AND PROCEDURAL BACKGROUND

On March 29, 2023, Plaintiff filed the instant putative class action complaint. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. On March 29, 2023, Plaintiff submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendants advising of his intention of filing a claim under the Private Attorneys General Act of 2004 ("PAGA") based on the Labor Code violations as alleged in his operative complaint. *Id*. On June 16, 2023, after exhausting his administrative remedies, Plaintiff filed a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the PAGA. *Id*. Thus, Plaintiff's primary claims are that Defendants: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide meal periods; (4) failed to authorize and permit all rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to indemnify all necessary business expenditures; (7) failed to pay all wages owed upon termination; (8) engaged in unfair competition; and (9) are liable for civil penalties under the PAGA. *Id*.

A. Plaintiff's Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary theory of liability is related to Defendants' alleged failure to pay Settlement Class members for all time worked. Lidman Decl., ¶¶ 16-29. Specifically, Plaintiff alleges Defendants recorded their employees' scheduled hours and paid wages based thereon, not the actual start and stop work times. Lidman Decl., ¶ 16. Plaintiff also alleges that this time shaving and/or rounding practice utilized by Defendants was not-even handed over time and would almost exclusively round and shave in Defendants' favor such that the employees were routinely underpaid for their time worked. *Id.*

Plaintiff also alleges that he and Settlement Class Members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 18. Additionally, Defendants failed to meet their obligation of recording the actual start and stop time for meal periods and as such, there is a presumption that Plaintiff and Settlement Class members were not relieved of duty and no lawful meal period was provided. *Id*.

Plaintiff further alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to Defendants' rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 20. Specifically, Plaintiff alleges that due to work demands, he and Settlement Class members were not authorized and permitted to take duty-free net 10 minute rest periods. *Id*.

Plaintiff alleges that Defendants failed to reimburse him and Settlement Class Members for all necessary business expenses incurred. Lidman Decl., ¶ 22. Specifically, Defendants required Plaintiff and Settlement Class Members to use their personal cellular phones, computers, and/or tools for work-related purposes but did not reimburse the Settlement Class Members for such usage. *Id*. Despite knowing that Settlement Class Members had incurred necessary business expenses to communicate with team members through their own personal electronic devices with internet access, Defendants failed to reimburse putative class members in violation of Labor Code § 2802. *Id*.

Plaintiff alleges that Defendants issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum wages, overtime wages, and meal and rest period premium wages described above. Lidman Decl., ¶ 24.

Plaintiff alleges that as a result of failing to pay all wages and all meal and rest period premiums at the end of employment, Defendants are liable for waiting time penalties under Labor Code § 203. Lidman Decl., ¶ 26.

Lastly, Plaintiff seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 28.

As explained *infra* and in Plaintiff's Motion for Preliminary Approval, Defendants deny Plaintiff's claims, maintain that they have consistently compensated Settlement Class Members in accordance with all applicable laws, and assert several affirmative defenses, both on the merits and with respect to class certification.

B. <u>Mediation and Settlement</u>

In advance of mediation, Defendants produced a 17 percent sampling of timekeeping and payroll data for the putative class, as well as their wage and hour policies and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 11. In addition to the representative sampling, Defendants produced key data points and all relevant written wage and hour policies in effect during the relevant time periods. *Id*. Specifically, Plaintiff was provided with the following:

- Plaintiff's personnel files and timekeeping and payroll documents;
- Key data points, including total number of employees, workweeks, and pay periods during the relevant time period;
- Exemplars of the wage statements provided during the relevant time period;
- Job descriptions;
- Employee Handbooks; and
- An organizational chart.

Id.

This information, coupled with the representative data sampling, enabled Plaintiff to extrapolate to the entire class and aided in Plaintiff's creation of a class-wide exposure model for all the claims at issue, including unpaid wages and penalties potentially owed for such unpaid wages and meal and rest period violations. Lidman Decl., ¶ 11. Ultimately, this discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendants' defenses thereto. *Id*.

On May 23, 2024, a mediation was held with Katherine J. Edwards, Esq., a well-respected wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*.

C. Preliminary Approval of Settlement

Plaintiff filed with the Court his Motion for Preliminary Approval, along with the Settlement, on November 1, 2024. Lidman Decl., ¶ 13. On November 1, 2024, Plaintiff also submitted the Settlement and Motion for Preliminary Approval to the LWDA. Lidman Decl., ¶ 40, Exh. D.

The Court ordered Plaintiff to include the fee splitting arrangement in the Settlement Agreement, resulting in the Parties having to amend the settlement agreement. Lidman Decl., ¶ 13. The Amended Class Action and PAGA and Settlement Agreement and Class Notice were submitted to the LWDA on February 4, 2025. Lidman Decl., ¶ 40, Exh. E.

On February 2, 2025, Plaintiff provided the court with a Supplemental Preliminary Approval Brief and Amended Proposed Order. Lidman Decl., ¶ 13. These documents were submitted to the LWDA on June 26, 2025. Lidman Decl., ¶ 40, Exh. F.

Subsequently on March 4, 2025, the Court granted preliminary approval of the class action settlement, approving the Settlement. Lidman Decl., ¶ 13, Exh. A (Order Granting Preliminary Approval). Plaintiff submitted to the LWDA the Order Granting Preliminary Approval on March 12, 2025. Lidman Decl., ¶ 40, Exh. G.

On April 29, 2025, the Court-approved Class Notice was sent to 299 Settlement Class members. The Settlement Class members have until June 30, 2025 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Yami Burns of Phoenix Settlement Administrators ("Burns Decl."), ¶ 5. Plaintiff will submit a supplemental declaration with the final Settlement Class Members' responses shortly after June 30, 2025. Lidman Decl., ¶ 42. As of the date of this filing, there have been **no objections, no disputes** and **no opt-outs.** *Id*., ¶¶ 7-10. Plaintiff now respectfully submits the Settlement for this Court's final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class approved at the preliminary approval stage encompassed "all individuals whom Defendants employed as non-exempt employees and who worked in California at any time during the Class Period." Lidman Decl., Exh. A. The Class Period is the period from March 29, 2019 through March 4, 2025. *Id*.

As of the date of Mediation (May 23, 2024), the estimated number of total workweeks at issue in the Settlement was 17,216. Burns Decl., ¶ 11. The actual number of Workweeks worked during the Class Period was 39,834. *Id*. Thus, the escalator clause in Section 8 of the Settlement Agreement was triggered, and the Gross Settlement Amount increased from $430,400.00 to $995,859.52 (an increase to the Gross Settlement Amount by $565,549.52).[2] Burns Decl., ¶¶ 11-12. To clarify, Settlement

[2] The escalator clause in the Settlement Agreement provides as follows: "Based on its records, Defendants estimate that there were approximately 600 Class Members who worked a total of 17,216 Workweeks during the period of March 29, 2019 through May 23, 2024. If the number of workweeks during the Class Period increases by more than 10% above 17,216 (i.e., if there are 18,938 or more workweeks during the Class Period), Defendants agree to increase the Gross Settlement Amount on a proportional percentage basis (i.e., if there was a 11% increase in the number workweeks during the Class Period, Defendants would agree to increase the Gross Settlement Amount by 11%). Settlement, ¶ 8.

Class Members only received notice of the increased amount of $995,859.52. Burns Decl., Exh. A.

B. <u>Monetary Terms of the Settlement</u>

The Settlement requires Defendants to pay a Gross Settlement Amount ("GSA") of $995,859.52. Burns Decl., ¶ 12. The Net Settlement Amount ("NSA") is the amount remaining from the GSA after deducting requested attorneys' fees ($331,953.17) and verified costs ($21,643.84), proposed Class Representative Service Award to Plaintiff ($7,500.00), Settlement Administration costs ($11,500.00), and PAGA Penalties ($20,000.00). Based on these requested amounts, the NSA is calculated to be approximately $603,262.51. Burns Decl., ¶ 12.

The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows:

The Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25 percent share of PAGA Penalties ($5,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Settlement, ¶ 3.2.7.1. Each Aggrieved Employee assumes full responsibility and liability for any taxes owed on his or her Individual PAGA Payment. *Id*.

The Parties agreed that 33 percent of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). Settlement, ¶ 3.2.5. The Wage Portions are subject to tax withholding and will be reported on IRS W-2 Form. *Id*. The remaining 67 percent of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). *Id*. The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS Form 1099. *Id*.

C. **Summary of Notice Process**

1. Mailing of Notice Packets

On April 8, 2025, Defendants provided Phoenix Settlement Administrators ("PSA") with the name, last-known mailing address, and Social Security number of each Class Member, and the number of Class Period Workweeks and PAGA Pay Periods worked by each Settlement Class Member. Burns Decl., ¶ 3. After performing address updates and verifications, PSA mailed the Class Notice to the 299 Settlement Class members on April 29, 2025. *Id*., ¶¶ 4-5. Following the initial mailing, 26 Class Notices were returned to PSA 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, 21 Class Notices were re-mailed. *Id*., ¶ 6. As of the date of filing this final approval motion, five (5) Class Notices remain undeliverable with no forwarding address, and where no new address could be located through skip trace. *Id*.

Settlement Class members have until June 30, 2025 to submit objections, requests for exclusion, or disputes. Burns Decl., ¶¶ 7-9. The administrator will submit a supplemental declaration after the response deadline expires and prior to the hearing on July 21, 2025. Lidman Decl., ¶ 42.

As of the date of this filing, there were no objections, no disputes, and no opt-outs. *Id*., ¶¶ 7-9. Accordingly, as of the date of this Motion, the participation rate amongst the Settlement Class members is 100 percent and the average estimated payment is $2,017.60, with the highest estimated payment to a Settlement Class member being $5,584.02. *Id*., ¶¶ 10,13.

D. **Timing of Payments**

Defendants shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay Defendants' share of payroll taxes, by transmitting such funds to the Administrator no later than thirty (30) days after the Effective Date. Settlement, ¶ 4.3. Effective Date means the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. Settlement, ¶ 1.18. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; or (b) if one or more Participating Class members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues remittitur. *Id*.

E. Uncashed Funds

Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Settlement, ¶ 4.4.1. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member. Settlement, ¶ 4.4.3.

F. Notice of Judgment

As stated in the Notice mailed to Settlement Class members, the final judgment entered by the Court will be posted by the Settlement administrator on the Settlement Administrator's website at cruz-v-cat-spec.phoenixcases.com. See Burns Decl., Exh. A.

IV. ARGUMENT

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

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

Here, this Court found that the Settlement Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on March 4, 2025. *See* Lidman Decl., ¶ 13; Exh. A. Subsequent to the Court's order granting preliminary approval, as of the date of the filing of this Motion, no events have cast doubt on the propriety of this determination and, in fact, the reaction of the Settlement Class members thus far to the Settlement has been strongly in support of the Settlement, with no Settlement Class Members objecting to any portion of the Settlement and no Settlement Class Members electing to opt-out of the Settlement. *See* Burns Decl., ¶¶ 7-9. This Court should therefore confirm its conditional certification of the Settlement Class.

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

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

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

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

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

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

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

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

As detailed in Plaintiff's Motion for Preliminary Approval, there is significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example, with respect to Plaintiff's claim that Defendants failed to pay for all hours worked, Defendants contend that it compensated Settlement Class Members for all of their time worked. Lidman Decl., ¶ 17. Defendants also contend that their rounding practices were lawful, and any unpaid time was *de minimis* (not near the 30 minutes per shift alleged by Plaintiff) and therefore non-compensable. *Id*. Defendants further assert that Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be required, and also that Defendants' rounding mechanism was, according to them, allegedly facially neutral. *Id*.

As for Plaintiff's meal period claim, Defendants counter that they have always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendants. Lidman Decl., ¶ 19. Defendants point out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, they are only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Id*.; *See Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendants contend Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id*.

As for Plaintiff's rest period claim, Defendants contend they have always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. Further, Defendants argue that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id*.

As for Plaintiff's reimbursement claim, Defendants contend that employees did not have to use their personal electronic devices to communicate with team members and would only do so at their own volition. Lidman Decl., ¶ 23. Defendants also argue that this claim is not suitable for class treatment because it would require individualized determinations as to whether each employee used a personal cellular phone and/or devices, how often, and how much of that use was a reasonable percentage of their individual monthly expenses. *Id*.

As for Plaintiff's wage statement claim, Defendants argue that their alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 25.

As for Plaintiff's waiting time penalties claim, Defendants assert they have strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 27; *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed).

As for Plaintiff's PAGA claim, Defendants argue that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 29; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendants also maintain that, given their good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiff's claims. Lidman Decl., ¶ 29; *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000).

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

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

Individual settlement payments will be calculated based on the number of workweeks worked by each Settlement Class member. *See* Settlement ¶ 3.2.4. This method of distribution compensates Settlement Class members based on the estimated extent of their injuries, as Settlement Class members who worked more workweeks, would have been subject to more of the alleged wage and hour violations than those who worked fewer shifts. Thus, the formula for compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

3. The 100 Percent Participation Rate 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 or has elected to opt-out, and only five (5) of the 299 Class Notices were returned undeliverable. Burns Decl., ¶¶ 6-10. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

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

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

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

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

Here, Class Counsel's fee request of $331,953.17 (one-third of the Gross Settlement Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First, "regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008); *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., ¶ 30. 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 can enhance 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.

In this case, Class Counsel have a lodestar of $220,202.50 which results in a multiplier of approximately 1.51 compared to the $331,953.17 fee request. Lidman Decl., ¶ 34. 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, Exh. C.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (27th Year Attorney)	$900	108.5	$97,650.00
Paul K. Haines (18th Year Attorney)	$800	23.5	$18,800.00
Milan Moore (9th Year Attorney)	$650	117.8	$76,570.00
Tiara Gose-Hardy (6th Year Attorney)	$525	41.3	$21,682.50
Paralegals	$200	27.5	$5,500.00
Total Lodestar			**$220,202.50**

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees). First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100 percent, and not a single Settlement Class member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Burns Decl., ¶¶ 7-10. Additionally, the *average* settlement payment in this case of approximately $2,017.60 is well above settlement payments in similar wage and hour class action settlements. *See*, *e.g.*, *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately $60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding that average payment to class members of less than $200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately $108). The fact that Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation for over two years of work. Lidman Decl., ¶ 34. During this time, Class Counsel have expended $21,193.84, in actual costs, have devoted substantial time to this litigation and expect to incur approximately $450.00 in future costs for filing the instant motion, filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and messenger fees, postage fees, and/or costs for future appearances. Lidman Decl., ¶ 32, Exh. B. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendants' documents and policies, analyzing timekeeping data and payroll records, creating a comprehensive damages model, drafting a mediation brief, preparing for and attending mediation, negotiating and preparing the long-form settlement agreement, preparing the Motions for Preliminary and Final Approval, overseeing the settlement administration process, and otherwise litigating this case. *See* Lidman Decl., ¶ 31. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great.

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with substantial experience litigating claims for meal and rest period violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-5; and Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-3. 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 Defendants 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 Class Settlement Amount is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding Defendants' obligation to "provide" meal periods and "authorize and permit" rest periods, and the propriety of statutory penalties, to name just a few. Lidman Decl., ¶¶ 16-29. 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 seek reimbursement of $21,643.84 (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., ¶ 32; 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 as of the date of filing no Settlement Class member has objected to them, Plaintiff respectfully requests the Court should grant the request for actual costs incurred.

E. The Court Should Finally Approve the Requested Administration Costs

Plaintiff also requests that the Court approve $11,500.00 in administration costs to the Settlement Administrator, Phoenix Settlement Administrators ("PSA"). As detailed in the declaration of Yami Burns on Behalf of PSA submitted herewith, PSA performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. *See* Burns Decl., ¶ 2. Among other things, PSA calculated each Settlement Class member's individual settlement payment, updated addresses contained in the class data supplied by Defendants, formatted and the Class Notices for mailing, mailed Class Notices to all 299 Settlement Class members in English and Spanish, maintained an information website, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Burns Decl., ¶¶ 2-16.

For these reasons, PSA's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. <u>This Court Should Finally Approve Plaintiff's Requested Service Award Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that He Assumed on Behalf of the Class</u>

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

Here, Plaintiff seeks a service award of $7,500.00, and believes this request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Settlement Class members. Lidman Decl., ¶ 39; Declaration of Matthew Cruz ("Cruz Decl."), ¶ 7. Plaintiff gathered documents for use in the lawsuit and attended several meetings with Class Counsel discussing the case, the merits, the defenses, and the overall fairness of the settlement reached. *See* Lidman Decl., ¶ 39; Cruz Decl., ¶ 8. Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff, no Settlement Class member has objected to the proposed award, as of the date of this filing. *See* Burns Decl., ¶¶ 7-10. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved. The class has benefited from Plaintiff's actions, as the average settlement amount is $2,017.60.

Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize him and/or affect future employment. *See* Lidman Decl., ¶ 40; Cruz Decl., ¶ 8. Plaintiff also understood the risk that he could be liable for Defendants' costs if he lost the case. *See* Cruz Decl., ¶ 8. Plaintiff accepted these risks and burdens because he wanted Defendants to compensate their current and former employees for unpaid wages. *Id*. Plaintiff estimates he spent eight (8) to twelve (12) hours on activities related to this case. *Id*. at ¶ 12.

Moreover, Plaintiff has agreed to release, in addition to the released claims included within the Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendants and the Released Parties. Plaintiff's release includes unknown claims and, as a result, he is waiving all rights and benefits afforded by Section 1542 of the California Civil Code. Settlement ¶ 5.1.1.

V. <u>CONCLUSION</u>

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

Respectfully submitted,

Dated: June 26, 2025

LIDMAN LAW, APC

By: Scott M. Lidman

Scott M. Lidman
Attorney for Plaintiff
MATTHEW CRUZ