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Attorneys for Plaintiff Eva Lopez
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

EVA LOPEZ, on behalf of herself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

QUALITY BUILT, LLC, a Delaware limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 23CU0207

Assigned to the Hon. Valerie Chrissakis, Dept. 8

CLASS ACTION

**PLAINTIFF’S UNOPPOSED APPLICATION
FOR APPROVAL OF ATTORNEYS’ FEES
AND COSTS, CLAIMS ADMINISTRATION
FEES, AND CLASS REPRESENTATIVE’S
SERVICE PAYMENT**

Date: October 30, 2024

Time: 8:15 a.m.

Dept.: 8

Complaint Filed: June 5, 2023

1 **PLEASE TAKE NOTICE THAT** on October 30, 2024 at 8:15 A.M., or as soon thereafter
2 as the matter may be heard, in Department 8 of the above-entitled Court, located at 1640 Kings
3 County Drive, Hanford, California 93230, Plaintiff Eva Lopez will and hereby does move
4 unopposed for an Order (1) awarding Class Counsel attorneys' fees in the total amount of \$70,000,
5 (2) awarding Class Counsel litigation costs in the total amount of \$11,881.10, (3) approving a
6 service payment in the amount of \$12,000 to Plaintiff and Class Representative Eva Lopez, and (4)
7 approving claims administration fees of \$5,000. This application is made pursuant to California
8 Rules of Court, Rule 3.769, which requires court approval of the settlement of class actions and
9 Labor Code section 2699. This application is unopposed by Defendant Quality Built, LLC and will
10 be based on the Memorandum of Points and Authorities, the Settlement Agreement and Release, the
11 Declarations of Daniel F. Gaines and Alex P. Katofsky, the Declaration of Jarrod Salinas of
12 Phoenix Settlement Administrators, the Declaration of Plaintiff Eva Lopez, such evidence or oral
13 argument as may be presented at the hearing, and on the complete records and file herein.¹

14 Dated: October 9, 2024

GAINES & GAINES, APLC

15
16 By: Daniel Gaines
DANIEL F. GAINES
ALEX P. KATOFSKY
Attorneys for Plaintiff Eva Lopez and Proposed
Class Counsel

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27 ¹ This application should not be construed as a waiver of any attorney-client or attorney work-
28 product privileges.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eva Lopez (“Lopez” or “Plaintiff”) moves for an award of attorneys’ fees and
4 costs, approval of the claims administrator’s fees, as well as approval of a service payment to the
5 Class Representative in connection with the final approval of the class and PAGA action
6 settlement of this action. As discussed in the Motion for Final Approval submitted concurrently
7 herewith, Plaintiff and Defendant Quality Built, LLC (“Defendant”) have settled the Released
8 Class and PAGA Claims, as defined in the parties’ Settlement Agreement and Release
9 (“Settlement” or “Stipulation”) for a Gross Settlement Amount of \$200,000. This class action and
10 PAGA settlement (“Settlement”) resolves and releases the claims of the named Plaintiff, the
11 Settlement Class Members, and the Aggrieved Employees against Defendant.

12 The Parties have agreed upon a Settlement Class: All current and former non-exempt
13 employees of Defendant, who were employed by Defendant in California at any time during the
14 Class Period [June 5, 2019 through February 27, 2024]. The Aggrieved Employees are defined as
15 all current and former non-exempt employees of Defendant, who were employed by Defendant in
16 California at any time during the PAGA Period [March 28, 2022 through February 27, 2024].

17 The Settlement is “direct distribution” – there is no claims process, and all Participating
18 Settlement Class Members who did not submit an opt-out request and all Aggrieved Employees
19 will automatically be mailed a settlement check when the Settlement is granted final approval.

20 The Net Settlement Amount is the amount remaining from the Gross Settlement Amount
21 (from which Individual Settlement Payments are to be made) after payment of all of the following:
22 Attorneys’ Fees and Costs, with Attorneys’ Fees not to exceed thirty-five percent of the Gross
23 Settlement Amount; actual Costs incurred; Settlement Administration Costs; the Class
24 Representative Enhancement Payment to the Named Plaintiff Eva Lopez; and the PAGA
25 Allocation. Stip. at ¶ I(T). Each Participating Class Member who does not opt out will receive an
26 Individual Payment Amount. Based upon the calculations stipulated in the Settlement, the highest
27 Individual Payment Amount to be paid to Class Members is approximately \$4,052.23, the lowest
28 Individual Payment Amount to be paid to Class Members is approximately \$16.42, while the

1 average Individual Payment Amount to be paid to Class Members is approximately \$1,071.99.
2 Declaration of Jarrod Salinas of Phoenix Settlement Administrators (“Phoenix”) (“Salinas Decl.”)
3 ¶ 13.

4 There are 85 Participating Settlement Class Members. One (1) Settlement Class Member
5 has requested exclusion from the Settlement, and no Settlement Class Members have submitted an
6 objection to the Settlement. *See id.* ¶¶ 8, 9, 11.

7 The Labor & Workforce Development Agency (“LWDA”) shall be paid \$7,500 (75%) of
8 the \$10,000 total allocated to settle the LWDA’s claims brought pursuant to Labor Code § 2698 *et*
9 *seq.*, the Private Attorneys General Act of 2004 (“PAGA”), and the remaining 25%, or \$2,500,
10 shall be paid to Aggrieved Employees. Stip. at ¶ I(Y). There are 61 Aggrieved Employees who
11 worked a total of 3,192 Workweeks during the PAGA Period. The highest Individual PAGA
12 Payment to be paid is approximately \$78.44, and the average Individual PAGA Payment to be paid
13 is approximately \$41.67. Salinas Decl. ¶ 14.

14 Plaintiff seeks the Court’s approval of an attorneys’ fee award of \$70,000, plus the
15 reimbursement of \$11,881.10 in litigation costs. The attorney fee request equals 35% of the Gross
16 Settlement Amount of \$200,000. Class Counsel’s request for an award of attorneys’ fees and costs
17 is reasonable and appropriate in light of the outstanding work performed by Class Counsel in the
18 case, the contingent nature of this action, and the results achieved under the Settlement. *Lealao v.*
19 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19.

20 Plaintiff also requests the Court confirm the amount of the service payment award agreed to
21 be paid to the named Plaintiff in the amount of \$12,000. The amount proposed to be awarded to
22 the representative Plaintiff is fair and reasonable. Courts approve incentive awards to plaintiffs
23 when justified and appropriate to compensate plaintiffs for their time, effort, and inconvenience.
24 *See e.g., Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299.

25 Finally, Plaintiff requests that the Court approve the payment of \$5,000 to Phoenix as
26 compensation for the claims administration services it has and will provide in connection with this
27 settlement. Salinas Decl. at ¶ 16.

1 Because the Settlement achieves outstanding results for the Settlement Class, Plaintiff
2 respectfully requests that the Court approve her request for attorneys' fees and costs, a service
3 payment for serving as the class representative, and the Settlement Administrator's fees.

4 II. STATEMENT OF FACTS

5 A. Case Summary and Procedural History

6 On March 8, 2023, Plaintiff Lopez exhausted the pre-filing requirements of the PAGA. On
7 June 5, 2023, Plaintiff Lopez initiated her Action in the Kings County Superior Court by filing a
8 PAGA complaint. Declaration of Daniel F. Gaines ("Gaines Decl.") at ¶ 8.

9 On September 25, 2023, Plaintiff filed a First Amended Complaint Class Action Complaint
10 (the "FAC"). The FAC asserts claims against Defendant for (1) Failure to Pay All Minimum and
11 Overtime Wages Due (Labor Code §§ 510, 1194, and 1194.2); (2) Failure to Provide Rest Periods
12 Or Compensation In Lieu Thereof (Labor Code § 226.7; IWC Wage Order 4-2001); (3) Failure to
13 Provide Meal Periods Or Compensation In Lieu Thereof (Labor Code §§ 226.7 and 512; IWC
14 Wage Order 4-2001); (4) Failure to Reimburse All Business-Related Expenses (Labor Code §
15 2802); (5) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement
16 Provisions (Labor Code § 226(a), (e)); (6) Failure to Timely Pay Wages Due at Separation of
17 Employment (Labor Code §§ 201-203); (7) Violation of Business and Professions Code § 17200;
18 and (8) Penalties Pursuant to Labor Code § 2699(f) for Violations of Labor Code §§ 201, 202,
19 226(a), 226.7, 246, 510, 512, 1194, and 2802, and Pursuant To Labor Code § 2699(a) for
20 Violations of Labor Code §§ 226.3 and 558. Gaines Decl. at ¶ 9.

21 Defendant disputes all claims alleged in the Action and does not by the Settlement admit
22 any liability or wrongdoing whatsoever. Gaines Decl. at ¶ 10.

23 The Class Representative contends that Defendant violated the California Labor Code and
24 Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
25 certification. Gaines Decl. at ¶ 11.

26 B. Investigation and Settlement Discussions

27 Class Counsel have conducted a thorough investigation into the facts and law during the
28 prosecution of this class action case, including the exchange of extensive informal discovery and

1 the review and verification of statistical data and other facts and information provided by
2 Defendant. Counsel for the Parties also represent that they have investigated the applicable law as
3 applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses
4 thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at ¶ 12.

5 On February 27, 2024, following their exchange of information and documents regarding
6 the Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in
7 arm's-length negotiations with the assistance of an experienced wage and hour mediator, Hon.
8 Dickran M. Tevrizian (Ret.), where the Parties were able to reach the resolution of the Action.
9 Gaines Decl. at ¶ 13.

10 Based on their own independent investigation and evaluation, Class Counsel are of the
11 opinion (and will so represent to the Court) that settlement for the consideration and on the terms
12 set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
13 the Settlement Class in light of all known facts and circumstances, including the risk of significant
14 delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by
15 Defendant. Defendant and its counsel also agree (and will so represent to the Court) that this
16 settlement is fair and in the best interest of the Settlement Class. Gaines Decl. at ¶ 14.

17 The Parties agree that the Settlement Class may be certified for settlement purposes only
18 and that any motion for approval seeking, *inter alia*, certification of the Settlement Class is for
19 purposes of the settlement only. If for any reason the settlement is not approved, the certification
20 will have no force or effect and will immediately be revoked. The Parties further agree that
21 certification for purposes of the settlement is in no way an admission that class certification is
22 proper under the more stringent standard applied for litigation and that evidence of this limited
23 Settlement Agreement for settlement purposes only will not be admissible for any purpose in this
24 or any other proceeding. Gaines Decl. at ¶ 15.

25 **C. Summary of Settlement Terms**

26 **1. Benefits to the Settlement Class and the Public**

27 The Settlement provides that (a) the Court may certify the Settlement Class as described in
28 the Stipulation on a provisional, non-mandatory basis for the purposes of this settlement only,

1 conditioned upon the Court granting final approval of the Settlement; and (b) Defendant shall pay
2 the total, non-reversionary sum of \$200,000 (the “Gross Settlement Amount”). All payments
3 associated with the Settlement shall be paid by the Settlement Administrator from the Gross
4 Settlement Amount, including all payments to Participating Settlement Class Members, the Named
5 Plaintiff, the Class Representative Enhancement Payment, Class Counsel (for Attorneys’ Fees and
6 Costs), the LWDA pursuant to the PAGA claim, all taxes (except Defendant’s share of employer-
7 side payroll taxes, which include FICA (Social Security and Medicare) and unemployment
8 insurance (FUTA and SUTA/SUI) on the amount allocated as wages to be paid to Participating
9 Settlement Class Members), and all payments to the Settlement Administrator. The Gross
10 Settlement Amount does not include Defendant’s share of “employer-side payroll taxes,” which
11 Defendant shall be responsible for paying separately. Stip. at ¶ I(Q).

12 The State of California and the public will receive a benefit in the allocation of \$7,500 to
13 the LWDA. The amount payable to the LWDA is required to go to education of employers and
14 employees about their obligations and rights under the Labor Code, the enforcement of the State’s
15 labor laws, and as supplementary funds to operate the LWDA. Cal. Lab. Code § 2699(i). This is a
16 significant value to the State of California and its employers and employees. The remaining
17 amount allocated to PAGA – \$2,500, shall be paid to Aggrieved Employees. Stip. at ¶ I(Y).

18 **2. Preliminary Approval, Notice, and the Claims Process**

19 On July 8, 2024, this Court granted Plaintiff’s unopposed motion for preliminary approval
20 of the Settlement and provisionally certified the Settlement Class, finding that the Settlement
21 appeared to be within the range of reasonableness of settlements that could ultimately be given
22 final approval. See Exhibit C. The Court approved the distribution of the Notice of Proposed
23 Class Action Settlement and set the Final Fairness and Approval Hearing. *Id.*

24 Pursuant to the Court’s Order, on August 2, 2024, Phoenix mailed Notice packets
25 containing the notice of the terms of the Settlement — including the terms relating to attorneys’
26 fees and costs — to 86 Settlement Class Members. Salinas Decl. at ¶ 5, Salinas Decl., Ex. A. As
27 the Court required, Settlement Class Members were given 45 days after the Notice was mailed to
28 submit their opt out form or objection to the Settlement. As of the date of this motion, 85

1 Settlement Class Members will be issued their share of the class settlement. Based upon the
2 methodology stipulated in the Settlement, the highest Individual Payment Amount to be paid to
3 Settlement Class Members is approximately \$4,052.23, the lowest Individual Payment Amount to
4 be paid to Settlement Class Members is approximately \$16.42, while the average Individual
5 Payment Amount to be paid to Settlement Class Members is approximately \$1,071.99. Salinas
6 Decl. at ¶ 13. No Settlement Class Members have objected to the Settlement, and one (1)
7 Settlement Class Members has opted out; there were no untimely objections or requests to opt-out.
8 *Id.* at ¶¶ 8, 9.

9 **D. Compliance with Procedural Requirements of PAGA**

10 On June 7, 2024, in compliance with Labor Code § 2699(1)(2), Plaintiff's counsel
11 submitted a copy of the Settlement Agreement and Release of Claims to the LWDA through its
12 online submission interface. The LWDA has not objected or otherwise responded to the
13 submission. Gaines Decl. at ¶ 59; Exhibit D.

14 **III. ARGUMENT**

15 **A. Class Counsel Request an Award Under the Common Benefit Doctrine**

16 **1. A 35% Fee Award Is Reasonable Here**

17 Class Counsel respectfully requests that this Court approve the fees and costs to be paid in
18 this action. This Application is made pursuant to California Rules of Court, Rule 3.769 which
19 requires court approval of the fees paid through settlement in a class action.

20 Class Counsel seeks attorneys' fees of \$70,000, representing 35% of the settlement
21 consideration under the "common fund" doctrine. Courts have long recognized the "common
22 fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit
23 for a group of persons may be awarded their fees and costs to be paid out of the fund. *Serrano v.*
24 *Priest* ("Serrano III") (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical Examiners*
25 (1974) 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d
26 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *see also Boeing Co. v. Van*
27 *Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

1 The California Supreme Court has held that, “when a number of persons are entitled in
2 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all
3 results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded
4 attorneys’ fees out of the fund.” *Serrano III*, *supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d 1;
5 *see also Boeing*, *supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the benefit
6 of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as
7 a whole.”); *Mills*, *supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
8 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
9 Group) at § 17:172.3 explains the common fund doctrine as follows:

10 Where the lawsuit results in the recovery of a fund or property
11 benefiting others as well as plaintiff (e.g., a class action), the court has
12 inherent equitable power to order plaintiff’s attorney fees paid out of
13 the common fund or property [citations]. Such fee spreading assures
that all of those benefited by the litigation pay their fair share of
obtaining the recovery.

14 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
15 in traditional common fund cases, such as this case. Where the settlement amount is a “certain or
16 easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate.
17 *Serrano III*, 20 Cal. 3d at 35.

18 In *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
19 fn.19, the California Supreme Court upheld an attorneys’ fee award based on a percentage of the
20 common benefit obtained in a lawsuit by a city employees’ association for retroactive wages:

21 It is not necessary to find this suit a proper class action in order to
22 uphold the portion of the judgment awarding counsel for plaintiffs 25
23 percent of all retroactive salaries and wages received. That award may
24 be sustained under the rule that a litigant who creates a fund in which
25 others enjoy beneficial rights may require those beneficiaries to pay
their fair share of the expense of litigation. (*See Sprague v. Ticonic*
National Bank (1939) 307 U.S. 161, 159; *Estate of Stauffer* (1959) 53
Cal.2d 124, 132).

26 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
27 stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which
28 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation

costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme Court recognized that the common benefit doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.”

Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and expenses properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property in an inverse condemnation action).

Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* (S.D.N.Y. 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal authority in favor of the percentage fee method); *see also, Lealao, supra*, 82 Cal.App.4th at 30-31 (describing same).

Attorneys’ fees awards in line with the amount sought here are frequently upheld. *See e.g., In re Activision Sec. Litig.* (9th Cir. 1989) 723 F. Supp. 1373, 1375.

The requested fee falls well within – even below – the percentages awarded in other class action litigation by this Court and numerous California trial courts. As the cases cited above demonstrate, attorneys’ fee awards in the amount sought here are well-established by California law and practice. Accordingly, Class Counsel’s fee request is fair and reasonable and is consistent with the awards in California and the Ninth Circuit. It is also reasonable given the history of this action and the results obtained by Class Counsel.

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1 settlement that provides an outstanding result for Settlement Class Members. Gaines Decl. at ¶¶
2 6-7, 12-15.

3 **c. The Results Achieved**

4 The excellent results achieved by the Settlement support Class Counsel's request for
5 attorneys' fees. Settlement Class Members' support for the results achieved by Class Counsel is
6 demonstrated by the absence of any objections to either the Settlement or to Class Counsel's
7 request for fees, both of which were described clearly in the Notice. As of the date of this
8 application, participating Settlement Class Members will be paid, on average, approximately
9 \$1,071.99 each, which is intended to compensate them for a host of alleged wage and hour
10 violations. This is a significant benefit for the Settlement Class Members here – it represents a
11 recovery for highly disputed claims. Gaines Decl. at ¶ 16. Equally important is the fact that the
12 State of California will receive \$7,500 for enforcement of labor laws and education of employers.
13 Gaines Decl. at ¶ 17.

14 Furthermore, the efficiency with which this litigation was conducted and resolved should
15 be rewarded. After preparing and investigating the case prior to filing the complaint, Class
16 Counsel litigated and resolved the case in an efficient manner. The Settlement Class Members
17 directly benefited from the prompt and fair resolution of their claims. They will be receiving a
18 significant award in a short period of time as opposed to waiting years to recover some
19 undetermined amount if they succeeded at trial, which is an uncertainty in itself.

20 **d. Preclusion of Other Employment**

21 As California law recognizes, Class Counsel's commitment to this litigation should not be
22 assessed in a vacuum. *See Serrano, supra*, 20 Cal.3d at 49. A relevant factor in determining
23 attorneys' fees is whether the litigation required Class Counsel to forego other employment. *See id.*
24 Additional work was available that Class Counsel had to forego to devote the time necessary to
25 pursue this litigation. *See* Gaines Decl. at ¶ 64.

26 **B. No Settlement Class Member Objected to the Attorney Fee Award**

27 Counsel's intention to request payment of attorneys' fees was clearly disclosed to each
28 Settlement Class Member in the Court-approved Notice of Class Action Settlement. *See* Exhibit C;

1 *see also*, Salinas Decl., Ex. A. As of the filing of this brief, there has been not one single objection
2 to the request for attorneys' fees. Salinas Decl. at ¶ 9. Clearly, the Class approves of the award of
3 attorneys' fees. Class Counsel request \$70,000 in attorneys' fees – representing 35% of the
4 \$200,000 Gross Settlement Amount.

5 **C. Class Counsel's Request for Costs is Reasonable**

6 In the course of this litigation, Class Counsel had to (and will) incur substantial out-of-
7 pocket costs of approximately \$11,881.10. *See* Gaines Decl. at ¶ 66, Exhibit E. Pursuant to the
8 terms of the Stipulation and the class notice, the requested cost award would not exceed \$15,000,
9 which it does not.

10 As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included
11 among other things filing fees, photocopy charges, mediation expenses, expert fees, service of
12 process fees, and mailing charges. *See* Gaines Decl. at ¶ 66, Exhibit E. Such costs are appropriate
13 for cost reimbursement in these types of cases. *See e.g., In re United Energy Corp. Sec. Litig.* (C.D.
14 Cal. 1989) 1989 WL 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *see also*,
15 *In re GNC Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

16 The costs incurred by Class Counsel in this litigation benefited Settlement Class Members.
17 In light of the litigation costs that Class Counsel needed to incur to prosecute this action and the
18 positive reaction of Settlement Class Members, Plaintiff's cost request is reasonable and should be
19 granted.

20 **D. The Class Representative's Service Payment is also Reasonable**

21 Plaintiff seeks a service payment in the amount of \$12,000. Gaines Decl. ¶ 54.

22 The service payment is intended to recognize the time and efforts that the named Plaintiff
23 spent on behalf of the Class. Gaines Decl. at ¶¶ 54-57, Declaration of Eva Lopez, submitted
24 herewith. It also compensates her for a full general release of all claims, a release far broader than
25 that of other Class Members.

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1 When determining whether incentive awards are appropriate, courts consider a variety of
2 non-exclusive factors such as:

3 [T]he actions the plaintiff has taken to protect the interests of the class,
4 the degree to which the class has benefitted from those actions, and the
5 amount of time and effort the plaintiff expended in pursuing the
6 litigation . . . the risk to the class representative in commencing suit,
7 both financial and otherwise, the notoriety and personal difficulties
8 encountered by the class representative, the duration of the litigation,
9 and the personal benefit (or lack thereof) enjoyed by the class
10 representative as a result of the litigation.

11 *Clark v. American Residential Services LLC* (2009)175 Cal.App.4th 785, 804 (internal quotations
12 omitted), *citing Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 and *Van Vranken, supra*, 901
13 F.Supp. at 299.

14 Plaintiff's proposed \$12,000 incentive award falls within a range deemed acceptable by
15 California courts. An award of \$12,000 actually falls *below* the average enhancement award,
16 according to one study. *See Theodore Eisenberg & Geoffrey P. Miller, Incentive Awards to Class*
17 *Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1308 (concluding the
18 average award per class representative was \$15,992).

19 As a result of the named Plaintiff's efforts, Settlement Class Members will receive
20 significant monetary settlement payments – approximately \$1,071.99, on average, per Settlement
21 Class Member. The State of California will receive \$7,500, to be put toward education about and
22 enforcement of California's labor laws.

23 In this case, the named Plaintiff performed the following tasks, among others: (1) assisted
24 Counsel in investigating and substantiating the claims alleged in this action, including multiple
25 interviews with counsel to review facts, documents, and Defendant's policies; (2) assisted in the
26 preparation of the complaint; (3) produced evidentiary documents to Counsel; and (4) participated
27 in settlement negotiations and mediation. Gaines Decl. at ¶¶ 54-57; *see generally*, Declaration of
28 Eva Lopez. Moreover, as with any plaintiff who files a civil action, the named Plaintiff undertook
the financial risk that, in the event of a judgment in favor of Defendant in this action, she could
have been personally responsible for any attorneys' fees and costs awarded in its favor.

1 The award of a service payment to the named Plaintiff is especially warranted in a case like
2 this one. Service payments are necessary to ensure that employees, like Plaintiff, continue to bring
3 claims like those brought here to enforce the rights of employees. Individuals like the named
4 Plaintiff (and most Settlement Class Members) would have little, if any, recourse without the class
5 action device. Most Settlement Class Members – like the named Plaintiff – would be fearful of
6 retaliation in response to filing any lawsuit, much less a class action one. Plaintiff must be
7 commended for pursuing her claims; modest service payments like those sought here are an
8 appropriate means of doing so.

9 Not a single Settlement Class Member objected to the service payment requested on behalf
10 of the named Plaintiff, who brought this litigation on their behalf and who secured a benefit for
11 them worth \$200,000. In light of the work that the named Plaintiff performed on behalf of
12 Settlement Class Members, and the Settlement Class Members' response to the Settlement, the
13 requested service payment is reasonable and appropriate. Gaines Decl. at ¶ 54.

14 **E. Approval of the Fees Incurred by the Claims Administrator**

15 As part of the preliminary approval process, the Court approved the hiring of Phoenix
16 Settlement Administrators as the Claims Administrator. Exhibit C. In preliminarily approving the
17 Stipulation, the Court also tentatively approved a payment of up to \$5,000 to Phoenix to perform
18 all of the duties required to administer the Settlement. *Id.* Phoenix has performed all of its
19 required duties to date and is committed to completing the claims administration process. *See*
20 *generally*, Declaration of Jarrod Salinas. Phoenix's fees are \$5,000. Salinas Decl. at ¶ 16.
21 Plaintiff requests that the Court approve the payment of \$5,000 to Phoenix to account for the costs
22 of administration as part of its final order approving the Settlement.

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1 **IV. CONCLUSION**

2 For all the foregoing reasons, Plaintiff requests that the Court (1) approve Class Counsel's
3 request of \$70,000 as an award of attorneys' fees, (2) approve the requested award of \$11,881.10
4 in litigation costs to Class Counsel, (3) approve the request of \$12,000 as a service payment to the
5 named Plaintiff, and (4) approve payment of \$5,000 in administration costs to Phoenix Settlement
6 Administrators.

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8 Dated: October 9, 2024

GAINES & GAINES, APLC

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10 By: Daniel Gaines
11 DANIEL F. GAINES
12 ALEX P. KATOFISKY
13 Attorneys for Plaintiff Eva Lopez and Proposed
14 Class Counsel
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