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

SARAI CORADO, an individual; on behalf of
herself and all others similarly situated and the
general public,

Plaintiff,

v.

HARKINS ADMINISTRATIVE SERVICES,
INC., a corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CVRI2302159

[Assigned For All Purposes To the Hon.
Harold W. Hopp, Dept. 1]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION AND
REPRESENTATIVE PAGA ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: April 28, 2025
Time: 8:30 a.m.
Dept: 1

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

2 **PLEASE TAKE NOTICE** that on April 28, 2025, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard in Department 1 of the above-entitled court, located at the Riverside
4 Historic Courthouse, 4050 Main Street, Riverside, California 92501, Plaintiff Sarai Corado
5 (“Plaintiff”) will hereby move the Court for final approval of a class action and representative
6 PAGA action settlement, entry of a final Order and Judgment, approval of Plaintiff’s
7 enhancement award, approval of Plaintiff’s attorneys’ fees and costs, and approval of the
8 settlement administration expenses.

9 This Motion is based upon this Notice, the attached Memorandum of Points and
10 Authorities, the Declarations of Aaron Bartz, Walter Haines, Sarai Corado, and Taylor Mitzner,
11 all documents and records on file in this action, and on such other further oral and documentary
12 evidence as may be given at the hearing on this Motion.

13 Dated: April 3, 2025

BARTZ LAW GROUP, APC

16 //Aaron Bartz//

17 Aaron A. Bartz

18 Attorneys for Plaintiff SARAI CORADO and
19 all others similarly situated
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1 **I. INTRODUCTION**

2 This class action and PAGA settlement is sought on behalf of approximately 1,285
3 current and former employees who worked in California for Defendant Harkins Administrative
4 Services, Inc. (“Defendant”) between June 5, 2020 to August 1, 2024.

5 Pursuant to the preliminary approval order, the Notice Packet was mailed to the Class
6 Members on January 21, 2025.¹ (See Exhibit A to Declaration of Taylor Mitzner (“Mitzner
7 Decl.”), ¶ 6). One Class Member has opted out of the Settlement. (Mitzner Decl., ¶ 9, Ex. B).
8 No Class Members objected to the Settlement.

9 The case arises out of Plaintiff’s allegations that Defendant violated California’s wage
10 and hour laws, including failing to pay all wages owed and overtime, failing to authorize and
11 permit meal and rest periods, failing to pay meal and rest period premiums at the regular rate of
12 pay, failing to reimburse Class Members for necessary business expenses, failing to provide
13 accurate wage statements, unfair competition in violation of the California Business and
14 Professions Code, and waiting time penalties.

15 There is no claim form requirement, and each member of the class is entitled to receive
16 compensation, with no reversion to the Defendant. The Gross Settlement Amount is \$525,000.
17 The net amount to be paid to class members (after payment of Class Counsel’s attorney fees and
18 expenses, settlement administration costs, Private Attorneys General Act (“PAGA”) penalties,
19 and Plaintiff’s enhancement award), is approximately \$279,195. Each Class Member’s share of
20 the Settlement is based on each of their eligible number of Workweeks, and they shall receive,
21 on average, approximately \$217.44. The minimum payout is approximately \$4.23, and the
22 maximum is approximately \$918.60. (Mitzner Decl., ¶ 15).
23
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27 ¹ All capitalized terms herein shall have the meaning ascribed to them in the Class Action and
28 PAGA Settlement Agreement, and Amendment to Class Action and PAGA Settlement
Agreement (together, the “Settlement Agreement” or “Settlement”), unless otherwise defined
herein.

1
2 **II. THE SETTLEMENT**

3 The Class Members entitled to a share of the Net Settlement Amount are all current and
4 former non-exempt employees who worked for Defendant between June 5, 2020 to August 1,
5 2024. Based upon current estimates, there are approximately 1,285 class members.²

6 The Gross Settlement Amount is all in (except for the employer's share of payroll taxes,
7 which Defendant shall pay in addition to the \$525,000 Settlement), there is no claim form
8 requirement, and no residual will revert to Defendant. Only one Class Member has opted out
9 and no Class Members have objected to the Settlement, so settlement checks will be distributed
10 to all Class Members except the one who opted out. In the event a Class Member does not
11 negotiate his or her settlement check, the Administrator will transmit the funds represented by
12 such checks to the California State Controller Unclaimed Property Fund.

13
14 The payment to the Settlement Class Members will be characterized ninety percent
15 interest and penalties, and ten percent wages. The Administrator will issue W-2 statements for
16 the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and
17 interest.

18 Based upon Class Counsel's independent analysis and investigation in this matter, the
19 Settlement Class Members will be compensated based on each member's respective number of
20 Workweeks worked during the Class Period. The total number of workweeks is 65,975.

21 Based on the Settlement terms, there will be an approximate net settlement fund of
22 **\$279,195**. In exchange for their individual payments, the Settlement Class Members will release
23 Defendant from any and all claims, known or unknown, contingent or accrued, related to or
24 arising out of the operative facts alleged in the lawsuit and in Plaintiff's PAGA notices. The

25
26
27
28 ² At preliminary approval, Defendant estimated that there were 1,277 class members as of the
May 15, 2024 mediation date. Because the Class Period had not yet ended at that time and the
data was incomplete, the number of Class Members rose slightly.

1 named Plaintiff will, in addition to releasing claims alleged in the lawsuit, give a general release
2 of all claims pursuant to Civil Code section 1542.

3 The all-in Gross Settlement Amount will also include all of the attorneys' fees and costs
4 allowed by this Court. Class Counsel's attorneys' fees shall not exceed one-third of the
5 \$525,000 Gross Settlement Amount, or \$175,000. Defendant will also pay Class Counsel's
6 costs, which are \$15,805 as well as an Administrative Expenses Payment of \$15,000, out of the
7 common fund.

8 The PAGA allocation of the settlement is \$30,000, of which \$22,500 (75%) will be
9 distributed to the Labor Workforce and Development Agency ("LWDA"), with the remaining
10 portion - \$7,500 (25%) - going to Aggrieved Employees (all current and former non-exempt
11 employees who worked for Defendant in California at any time from March 23, 2022, through
12 August 1, 2024).

13 The settlement also includes Plaintiff's Class Representative Service Payment. Based on
14 Plaintiff's work in connection with this case, including connecting Class Counsel with other
15 witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting
16 with developing the claims and theories in this case, and attending mediation, Plaintiff seeks
17 \$10,000.
18

19 **In summary, the settlement fund is allocated as follows:**

- 20 (1) Net Settlement Amount: \$279,195;
21 (2) Class Counsel's attorney's fees and costs: \$175,000 in attorneys' fees and
22 \$15,805 in costs;
23 (3) Administration Expenses Payment of \$15,000;
24 (4) PAGA Penalties payment: \$30,000 (\$22,500 to the LWDA, and \$7,500 to
25 Aggrieved Employees);
26 (5) Class Representative Service Payment: \$10,000.
27
28

1 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE IN THIS CASE**

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

6 To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
7 class action requires court approval. (*See Malibu Outrigger Bd. of Governors v. Superior Court*
8 (1980) 103 Cal. App. 3d 573, 578-579.) The purpose of the requirement is the protection of
9 those class members, including the named plaintiffs, whose rights may not have been given due
10 regard by the negotiating parties. (*See Officers for Justice v. Civil Service Comm.* (9th Cir. 1982)
11 688 F.2d 615, 625, cert. denied 459 U.S. 1217.) To determine whether to grant final approval to
12 a proposed class action under Civil Code section 382, the Court’s overriding concern is whether
13 the proposed settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Company*
14 (1996) 48 Cal. App. 4th 1794, 1801 (quoting *Officers of Justice, supra*, 688 F.2d at 623-624).)
15 The settlement of a class action follows in three stages: (1) preliminary approval of the proposed
16 settlement; (2) notice to class members; and (3) final approval or fairness hearing at which
17 evidence and argument may be heard on the fairness of the settlement. Here, this Court already
18 preliminarily approved the Settlement, notice was provided to all Class Members, no Class
19 Members have objected, and one Class Member has opted out.

21 **A. The Settlement is Presumed Fair**

22 A presumption of fairness exists where: (1) the settlement is reached through arm’s
23 length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to
24 act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of
25 objectors is small. (*See Dunk, supra*, 48 Cal. App. 4th at 1802.) A court may also consider
26 relevant factors such as the strength of the plaintiffs’ case, the risk, expense, complexity and
27 likely duration of further litigation, the risk of maintaining class action status through trial, the
28 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,

1 the experience and views of counsel, the presence of a governmental participant and the reaction
2 of the class members to the proposed settlement. (*See Officers of Justice, supra*, 688 F.2d at
3 624.) “This list is not exhaustive and should be tailored to each case. Due regard should be
4 given to what is otherwise a private consensual agreement between the parties.” (*Dunk, supra*,
5 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a
6 proposed class action settlement is fair. (*See Mallick v. Superior Court* (1979) 89 Cal. App. 3d
7 434.)

8 **B. The Settlement Was Reached Through Arm’s Length Negotiations**

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

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

18 **C. Plaintiff Conducted Sufficient Investigation and Discovery To Warrant**
19 **Settlement**

20 The stage of the proceedings and the amount of discovery completed are important
21 factors for courts to consider in determining whether a settlement is fair, adequate and
22 reasonable. (*See In re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741,
23 *affd.*, 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
24 15, 18, *affd.*, 661 F.2d 939 (9th Cir. 1981).)

25 The agreement to settle did not occur until Class Counsel possessed sufficient
26 information to make an informed judgment regarding the likelihood of success on the merits and
27 the results that could be obtained through further litigation. Class Counsel obtained substantial
28

1 informal discovery from Defendant, including personnel records and time and pay data for
2 Plaintiff, applicable policies, and thousands of lines of payroll and time data on Excel
3 spreadsheets for the class.

4 Based on the foregoing data and their own independent investigation and evaluation,
5 Class Counsel is of the opinion that the settlement with Defendant for the consideration and on
6 the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the
7 best interest of the class in light of all known facts and circumstances, including the risk of
8 significant delay, defenses asserted by Defendant, and numerous issues raised on appeal and
9 potential appeals down the road. Defendant and its counsel also agree that the settlement is fair
10 and in the best interest of the Settlement Class Members. There can be no doubt that counsel for
11 both parties possessed sufficient information to make an informed judgment regarding the
12 likelihood of success on the merits and the results that could be obtained through further
13 litigation.
14

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

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

24 **E. There Are No Objectors To The Settlement**

25 Significantly, there has not been a single objection to the settlement, and only one class
26 member has asked to be excluded from the settlement. This alone is a testament to the fairness
27 and adequacy of the settlement.
28

1 **F. The Strength of Plaintiff’s Case, The Amount Offered In Settlement, and**
2 **The Risk, Expense, Complexity, and Duration of Further Litigation Favors**
3 **Settlement**

4 Where both sides face significant uncertainty, the attendant risks favor settlement.
5 (*Hanlon v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, “[t]he expense and
6 possible duration of the litigation should be considered in evaluating the reasonableness of [a]
7 settlement.” (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454,
8 458.)

9 Plaintiff Sarai Corado is a former employee who worked for Defendant in California.
10 Defendant is a leasing company that leases employees to theater operator affiliates, some of
11 which own theaters located and operating in California. The Operative Complaint alleges claims
12 for 1) Unfair Business Practices; 2) Failure to Pay All Wages; 3) Waiting Time Penalties; 4)
13 Failure to Pay Meal and Rest Period Premiums at the Regular Rate of Pay; 5) Failure to Provide
14 Accurate Itemized Wage Statements; 6) Failure to Provide Meal Periods; 7) Failure to Authorize
15 and Permit Rest Periods; 8) Failure to Reimburse Expenses; and 9) Violation of Labor Code §
16 2699 (PAGA). Plaintiff further alleges that she and the Class are entitled to damages, restitution,
17 wages, attorneys’ fees, and interest, among other remedies.
18

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

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

CLAIM	TOTAL EXPOSURE	SETTLEMENT VALUE
Failure to Pay Wages	\$380,000	\$38,000
Meal	\$1,000,000	\$100,000
Rest	\$1,000,000	\$100,000
Paystub	\$1,920,000	\$192,000
Waiting time	\$5,600,000	\$560,000
Reimbursement	\$140,000	\$14,000
PAGA	\$4,906,290	\$245,314
TOTAL	\$14,906,290	\$1,249,314

(Declaration of Aaron Bartz (“Bartz Decl.”), ¶ 12).

1. Overtime/Minimum Wage Violations

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

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

Plaintiff contends that Defendant failed to pay all wages due in numerous respects. *First*, Plaintiff alleges that she and other managerial employees frequently worked off-the-clock running errands and responding to phone calls and text messages for work related issues. Plaintiff alleges that she and other Class Members also underwent temperature checks and other Covid-19 prerequisites before clocking in throughout 2021. Time spent in Covid-19 screening is compensable hours worked under California law. *See Boone v. Amazon.com Services, LLC*, 562 F.Supp.3d 1103, 1114 (E.D. Cal. 2022). *Second*, Plaintiff alleges that Defendant failed to

1 incorporate bonuses and incentive pay in the “regular rate,” resulting in underpaid overtime and
2 sick time hours during the Class Period.

3 Defendant contends that its regular and overtime payment policies were lawful, and that
4 it paid for all time worked, including any overtime worked by Class Members. Defendant also
5 contends that it properly calculated Class Members’ overtime at the regular rate of pay.

6 Plaintiff and her expert analyzed payroll and time records for the class members and
7 calculated that the total verdict value for this claim is approximately \$380,000. Plaintiff and her
8 expert assumed 30 minutes per week of unpaid hours, based on discussions with the Plaintiff and
9 other class members. Plaintiff’s expert reviewed payroll records for the class, including pay
10 period counts per year, and a weighted average rate of pay. Based on the defenses alleged, as
11 well as fact that the failure to pay wage claims will rest on testimony from Plaintiff and class
12 members, and documented evidence of such violations is scant, Plaintiff placed a reasonable
13 settlement value of the overtime/minimum wage claim at ten percent of the total verdict value, or
14 **\$38,000**. This valuation takes into consideration Class Counsel’s analysis of the law, and
15 evidence produced by the Defendant. (Bartz Decl., ¶ 12.a).

17 **2. Meal and Rest Period Claims**

18 a. Meal period liability and damages

19 Plaintiff contends that Defendant failed to provide Plaintiff and Class Members with a
20 duty-free 30-minute meal period for every five hours of work as is required by Labor Code § 512
21 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant Corp. v. Superior*
22 *Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with the applicable
23 Wage Order(s) results in payment by the employer of one additional hour of pay at the
24 employee’s regular rate of pay for each workday that the meal period is not provided. (Labor
25 Code § 226.7.)

26 In *Brinker, supra*, the California Supreme Court held that “under ... Labor Code § 512,
27 subdivision (a), an employer must relieve the employee of all duty for the designated period, but
28 need not ensure that the employee does no work” during the meal period. *Id.* at 1034. However,

1 “...an employer may not undermine a formal policy of providing meal breaks by pressuring
2 employees to perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*,
3 133 Cal.App.4th 949, 962–63 (2005); *see also Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th
4 1286, 1304–05 (2010) [proof of common scheduling policy that made taking breaks extremely
5 difficult would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638
6 (S.D.Cal.2010) [indicating informal anti-meal-break policy "enforced through 'ridicule' or
7 'reprimand'" would be illegal].) Defendant also cannot create “incentives to forego, or otherwise
8 encourage[] the skipping of legally protected breaks.” *Brinker, supra*, 53 Cal.4th at 1040.

9
10 Moreover, when time records show short, missed, and late meal periods, there is a
11 presumption that an employer violated California’s meal period requirements. *See Donohue v.*
12 *AMN Services, LLC*, 11 Cal.5th 58, 78 (2021) (“If time records show noncompliant meal periods,
13 then a rebuttable presumption of liability arises.”)

14 Plaintiff contends that Defendant’s meal period practices are unlawful under California
15 law. **First**, Plaintiff alleges that manager-level employees were required to wear ear pieces and
16 carry communications devices with them during their work hours and therefore alleges that none
17 of their meal periods were off-duty. **Second**, Plaintiff alleges that because of these on-duty meal
18 periods, Defendant was required to pay meal period premiums and an analysis of the managers’
19 pay records show that very few meal period premiums were paid to managers during the class
20 period. **Third**, Plaintiff and the Class Members aver that they were never provided
21 uninterrupted, duty-free meal periods, because of the time constraints Defendant placed upon
22 Plaintiff and class members’ work.

23 Defendant contends that Plaintiff and Class Members had the ability and in fact did take
24 meal periods, and that if they did not, it was their own choice, and therefore not actionable.
25 Defendant further contends that it has time records showing such meal periods. Defendant also
26 contends that manager-level employees were not required to carry communication devices with
27 them while they were on their meal periods.

28 Class Counsel and Plaintiff’s expert calculated the maximum verdict value of the

1 meal break claim to be approximately \$1,000,000. This calculation is based on the assumption
2 that each late, missed or short meal period was the result of Defendant's interference with
3 Plaintiff's and the class members abilities to take duty-free meal periods. Accordingly, Class
4 Counsel and her expert determined a total violation rate for the class members, and average rate
5 of pay based on the payroll data for the class. Based on discussions with Plaintiff and interviews
6 of other Class Members, and the defenses raised, Plaintiff believes she had a ten percent
7 probability of recovering all of these damages. Accordingly, Plaintiff contends the reasonable
8 exposure of the meal break claim is approximately **\$100,000**. (Bartz Decl., ¶ 12.b.i).

9
10 b. Rest period liability and damages

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

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

1 1040.

2 Here, Plaintiff contends that Defendant did not authorize or permit Plaintiff or the Class
3 Members duty-free rest periods for multiple reasons. **First**, Plaintiff contends that team leaders
4 and managers were provided with communication devices that were required to be on-call at all
5 times, including during their rest periods. *See Augustus, supra*, 2 Cal.5th at 270-273 (holding that
6 security guards who were on-call with radios during their rest periods were not freed from the
7 employer's control). **Second**, Plaintiff contends the rest periods were interrupted with work
8 inquiries and other duties, which is "irreconcilable with employees' retention of freedom to use
9 rest periods for their own purposes." *See Augustus*, 2 Cal.5th at 270.

10 Defendant contends that its rest period policies were lawful and appropriate, and that all
11 class members were afforded ample time to take duty-free rest periods throughout their workday.
12 Defendant further contends that no Class Members were required to carry communication devices
13 while on their rest periods.

14 Based on discussions with Plaintiff and interviews of other Class Members, Class Counsel
15 assumed a 50% violation rate for all shifts by class members of 3.5 hours or more. Based on that
16 assumption, Plaintiff's expert calculated total violations across the class, multiplied by an average
17 rate of pay for the class members. As such, Class Counsel and the expert calculated the maximum
18 verdict value of the rest period claims to be approximately \$1,000,000. Based on the difficulty of
19 proving rest period violations on a class-wide basis, and the lack of objective evidence proving
20 such violations, Plaintiff believes they had a ten percent chance of recovering all of the rest period
21 damages. As such, Plaintiff believes the reasonable exposure of the rest break claim is
22 approximately **\$100,000**. (Bartz Decl., ¶ 12.b.ii).

23 **3. Waiting Time Penalty**

24 The waiting time penalty claim is purely derivative. Plaintiff and her expert analyzed the
25 data to find that there are approximately 1,074 former employees included in the putative class
26 that would be eligible for the Labor Code §203 penalties. Plaintiff and her expert calculated the
27 reasonable exposure of this claim at approximately \$5,600,000. Plaintiff further discounted the
28

1 waiting time penalty claim based on risk and the fact that waiting time penalties are not awarded
2 if a good faith dispute exists as to whether the wages were owing. Further, the Class would have
3 the burden of proving a “willful” withholding of wages. Plaintiff considered that under *Labor*
4 *Code* §203 there is only a penalty if "an employer willfully fails to pay" all wages due to an
5 employee upon separation. Willfulness does not exist if there is a "good faith dispute," in fact or
6 law that wages were due, even if the employer's reasoning ultimately proves incorrect. *Amaral v.*
7 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1204; 8 Cal. Code Regs. § 13520 ("A 'good
8 faith dispute' that any wages are due occurs when an employer presents a defense, based in law
9 or fact which, if successful, would preclude any recover on the part of the employee. The fact
10 that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did
11 exist.")

12
13 Once Plaintiff determined the maximum reasonable exposure of the claim, Plaintiff
14 placed a settlement value of **\$560,000** or approximately ten percent of the reasonable exposure
15 value, based upon the above discounts applied to the reasonable value of the claim. (Bartz Decl.,
16 ¶ 12.c).

17 **4. Paystub**

18 As to the paystub penalty, which is derivative of the other claims identified above,
19 Plaintiff and her expert arrived at a maximum reasonable exposure of this claim of
20 approximately \$1,920,000. This figure was arrived at by assuming that each wage statement that
21 was provided to the class members violated Labor Code §226.

22 Defendant argues that, even assuming there are any violations, which they deny, the fact
23 that derivative violations were minor and that the Defendant had presented evidence of a good
24 faith dispute as to any violation rendered the violations meritless. *Hurst v. Buczek Enters., LLC*
25 (N.D. Cal. 2012) 870 F.Supp.2d 810, 829 (no section 226 violation where the employer "makes a
26 good faith claim" in its defense); *Harris v. Vector Mktg. Corp.* (2009) 656 F.Supp.2d 1128, 1146
27 (N.D. Cal. 2009) (the "employer did not knowingly and intentionally fail to provide itemized
28 wage statements" where there was a "good faith dispute").

1 Based on the raised defenses, as well as the risk of certification and related risks of
2 proving all violations, Plaintiff has placed a reasonable settlement value of **\$192,000** or ten
3 percent of the reasonable exposure of the pay stub claim. (Bartz Decl., ¶ 12.d).

4 **5. PAGA**

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

11 Significantly, moreover, there is a very real possibility that a court would substantially
12 reduce the penalties, even if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL
13 7563047, *3-4 (C.D. Cal. 2011) (reducing penalties from \$2.8 million to \$500,000 based on
14 wage statement violations because to assess full penalties would be unjust and arbitrary);
15 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1134 (2012) (reduction of
16 PAGA penalties by 30% affirmed on appeal).

17 Plaintiff and her expert calculated the reasonable PAGA penalties to be valued at
18 \$4,906,290 based on this being an initial violation against Defendant. Plaintiff believes the few
19 cases that reported a PAGA trial that the discretionary penalties are discounted by approximately
20 75%-85%. Based on the uncertainty of recovery, Plaintiff believes the PAGA claim’s reasonable
21 value is five percent of the total value, or approximately **\$245,314**. (Bartz Decl., ¶ 12.e).

23 **6. Reimbursement Claim**

24 California Labor Code section 2802(a) provides:

25 An employer shall indemnify his or her employee for all necessary expenditures
26 or losses incurred by the employee in direct consequence of the discharge of his
27 or her duties, or of his or her obedience to the directions of the employer, even
28

1 though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful.

3 Plaintiff contends that Defendant failed to comply with California's reimbursement
4 requirements by failing to adequately reimburse Plaintiff and the class members for using their
5 personal cell phones while working for Defendant and were not reimbursed for such usage. *See*
6 *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137 (2014).

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

15 Defendant denies that it required Plaintiff and the Class Members to use their personal
16 cell phones while working for Defendant. Defendant contends that it paid for all reasonable and
17 necessary expenses incurred by Plaintiff and Class Members, and that the reimbursement claim
18 has little to no value.

19 Plaintiff contends that this claim is valued at \$140,000.00 based upon average cell phone
20 usage and failure by Defendant to reimburse class members for their monthly usage while at
21 work. Given the fact that there are individualized issues in proving reimbursement violations
22 and damages, Plaintiff believes this claim's reasonable value is **\$14,000**, or ten percent of the
23 total value. (Bartz Decl., ¶ 12.f).
24
25
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27
28

1 **7. Total Damage Exposure³**

2 Plaintiff believes that the \$525,000 settlement achieved in this case is very good for the
3 class members. Based upon a reasonable exposure value of \$1,249,314, the Settlement
4 represents approximately 42% of that total value. Given the many defenses raised, the
5 uncertainty of the certifiability of any class, and the risks of going to trial, Class Counsel believe
6 this Settlement is a good result for all of the Class Members. (Bartz Decl., ¶ 12.g).

7 **G. All Available Class Members Have Received Proper Notice of the Settlement**

8 Pursuant to the Court’s Preliminary Approval Order dated December 12, 2024, the Court
9 Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval,
10 Objection Form, and Exclusion Form, were sent out to all 1,285 Class Members via first-class
11 mail by Administrator Phoenix Settlement Advisors (“Phoenix”) on January 21, 2025 (*See*
12 *Mitzner Decl., ¶ 6, and Ex. A thereto.*) Prior to this date, the name, last known address, and
13 social security number of each Class Member were provided by Defendant through a review of
14 its files. Upon its receipt of the Class Member contact information, Phoenix accessed the
15 National Change of Address (“NCOA”) database and updated the addresses provided by
16 Defendant. (*Mitzner Decl. ¶ 5.*)

17
18 As of the date of the filing of this motion, thirty-one (31) Notices have been returned to
19 Phoenix. None were returned with a forwarding address. For the thirty-one (31) Notices
20 returned from the Post Office without a forwarding address, Phoenix attempted to locate a
21 current mailing address using TransUnion TLOxp, one of the most comprehensive address
22 databases available for skip tracing. Of the thirty-one (31) Notices that were skip traced, twenty-
23 four (24) updated addresses were obtained and the Notice was promptly re-mailed to those
24

25
26
27 ³ The Unfair Competition claim is subsumed into the Kullar analysis above. The
28 Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of
damages, and is included within the above analysis.

twenty-four (24) Class Members via first class mail and seven (7) Notices remain undeliverable since an updated address could not be obtained via skip trace. (Mitzner Decl., ¶¶ 7-8.) One Class Member has requested exclusion from the settlement. (Mitzner Decl., ¶ 9, Ex. B.)

IV. PLAINTIFF’S REQUESTED ATTORNEYS’ FEES ARE APPROPRIATE AND JUSTIFIED

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

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

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

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

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

7 Class counsel seeks an attorneys’ fees award of \$175,000, or one-third of the settlement.
8 Class counsel’s fee is eminently reasonable here. Class counsel achieved a very good result for
9 all class members, who will all be entitled to receive their share of the settlement according to
10 their workweeks during the class period.

11 **B. Plaintiff’s Attorneys’ Fees Are Also Recoverable Under The Lodestar**
12 **Approach**

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

25
26 Class Counsel have worked more than 181 hours to date on this case at rates reflecting
27 those currently earned in the market place, which have been approved by numerous state and
28 federal Courts in California, and calculated the lodestar fee on those hours at more than

1 \$133,169. (Bartz Decl., ¶ 22, and Ex. 5; Haines Decl., ¶¶ 6-10). To that end, Class Counsel
2 respectfully requests the Court apply a modest lodestar multiplier of 1.31 resulting in the
3 requested fee of \$175,000. A multiplier is appropriate when “(1) attorneys take a case with the
4 expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not
5 reflect that risk, and (3) there is evidence the case was risky.” *Stetson v. Grissom*, 821 F.3d
6 1157, 1166 (9th Cir. 2016). Here, Plaintiffs’ counsel took this case on a full contingency basis,
7 and there a risk that the class may not be certified based on Defendant’s defenses and recent pre-
8 filing policy revisions. Plaintiffs’ hourly rates are also lower than market rates for hourly
9 defense counsel and do not reflect the risk with this being a contingency case. (Bartz Decl.,
10 ¶22).

11
12 California law also embraces the application of fee multipliers. *See Wershba v. Apple*
13 *Computer*, 91 Cal.App.4th 224, 255 (2001) (under California law, “[m]ultipliers can range from
14 2 to 4 or even higher.”). The multiplier requested here is also well below those granted in other
15 complex class actions involving a common fund. *See Uschold v. NSMG Shared Servs., LLC*,
16 2020 WL 3035776, at *16 (N.D. Cal. June 5, 2020) (applying multiplier of 4 in wage and hour
17 class action); *Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230 (N.D. Cal. Dec. 8, 2021)
18 (multiplier of 5.49 granted after lodestar cross-check in wage and hour class action); *Steiner v.*
19 *Am. Broadcasting Co.*, 248 Fed. App’x 780, 783 (9th Cir. 2007) (awarding cross-check
20 multiplier of 6.85); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274, at *7 (N.D. Cal.,
21 May 21, 2015) (applying 5.5 lodestar multiplier in UCL class action).

22 The multiplier also does not reflect additional work that will need to be performed in this
23 case. PAGA Counsel estimate that they will spend at least 15 hours preparing for and attending
24 the final approval hearing, conferring with the settlement administrator, and assisting in
25 administering the settlement. (Bartz Decl., ¶ 23). Accounting for such future incurred fees is
26 permissible when performing a lodestar cross-check. *See In re Volkswagen “Clean Diesel”*
27 *Marketing, Sales Practices, and Products Liability Litig.*, 746 Fed.Appx. 655, 659 (9th Cir.
28 2018); *Reyes v. Bakery and Confectionary Union and Ind. Int’l Pension Fund*, 281 F.Supp.3d

833, 856 (N.D. Cal. 2017) (finding that 125 anticipated future hours included in lodestar to manage “class members’ claims” appropriate and reasonable). When such future hours are included in the lodestar, the multiplier is reduced to approximately 1.18 (Bartz Decl., ¶ 23).

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

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

Class counsel are experienced employment lawyers, and have extensive experience in the specific subcategory of wage and hour claims. (*See* Bartz Decl., ¶¶ 13-16; Haines Decl., ¶ 3.) Class counsel’s rates are all within reasonable market rates in Southern California, and wage and hour class action attorneys. (*See* Bartz Decl., ¶ 22; Haines Decl., ¶ 7.)

2. Each Class Counsel’s Lodestar Is Well Documented

A properly supported motion for attorney's fees is prima facie evidence that the expenses and services were necessarily incurred. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.) Class counsel here provide appropriately detailed declarations and detailed, contemporaneous billing statements in support of the lodestar amounts which total \$133,169. (Bartz Decl., ¶ 22, and Ex. 5; Haines Decl., ¶¶ 7-10).

3. Novelty And Difficulty Of The Case

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

1 **4. Class Counsel Worked Efficiently And Skillfully**

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

5 **5. Class Counsel Worked Entirely On A Contingency Basis**

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

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

15
16 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, *Economic Analysis of*
17 *Law* (4th ed. 1992) pp. 534, 567.)

18 **6. Class Counsel Achieved Very Good Results**

19 Class Counsel obtained a \$525,000 settlement, whereby every one of the class members
20 will receive a check, with no reversion to the Defendant. Not one class member objected to the
21 settlement, and only one class members has excluded themselves from the class. Those numbers
22 are a testament to the strength of the settlement achieved in this case.

23 Because Plaintiff's attorneys achieved a very good result for the class members in this
24 case, Class counsel respectfully requests attorneys' fees of \$175,000.

25 **V. PLAINTIFF'S COSTS AND THE CLASS ADMINISTRATOR EXPENSES**
26 **SHOULD BE APPROVED**

27 Moreover, Class Counsel seeks costs of \$15,805, plus an Administration Expenses
28 Payment for Phoenix of \$15,000 (which includes costs incurred to date and also the estimated

costs of distributing payments), which Defendant has agreed to pay out of the Gross Settlement Amount. All such costs are reasonably necessary in prosecuting this action. (Bartz Decl. ¶ 25, and Ex. 6 thereto.)

VI. THE ENHANCEMENT AWARD FOR THE CLASS REPRESENTATIVE IS FAIR AND REASONABLE

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

In this litigation, the class representative testifies to her risks, her time and effort incurred, the adverse consequences suffered, and the benefits received in this case. (*See generally*, Corado Decl.) In addition, the class representative is required to execute a general release of all claims against Defendant, which includes a waiver of unknown claims and her rights under California Civil Code § 1542. For all of these reasons, the requested service payment of \$10,000 for Plaintiff is appropriate and justified.

1 **VII. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests that this Court issue an Order and
3 Judgment approving the Settlement, and grant Plaintiff's attorneys' fees and costs, Phoenix's
4 administrative expenses, and Plaintiff's enhancement award.

5
6 Dated: April 3, 2025

BARTZ LAW GROUP, APC

7
8 //Aaron Bartz//

9 Aaron A. Bartz

10 Attorneys for Plaintiff SARAI CORADO and
11 all others similarly situated
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