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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ALFREDO DURAN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SCOTT CONSTRUCTION SPECIALTIES,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 23STCV05170

*[Assigned for all purposes to the Hon. Timothy
Patrick Dillon, Dept. SSC-15]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: October 15, 2026
Time: 10:00 a.m.
Dept.: SSC-15

Action Filed: March 8, 2023
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 October 15, 2026 at 10:00 a.m. in Department SSC-15 of the above-entitled Court, located at 312 N.
4 Spring Street, Los Angeles, California 90012, Plaintiff Alfredo Duran (“Plaintiff”), individually and on
5 behalf of a class of similarly situated individuals, will and hereby does move this Court for:

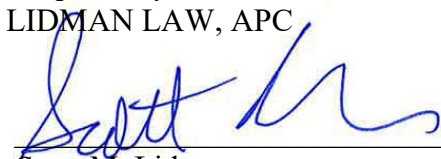
- 6 1. Confirmation of the certification of the Settlement Class for settlement purposes under
7 Section 382 of the California Code of Civil Procedure;
- 8 2. Confirmation of the appointment of Plaintiff Alfredo Duran as Class Representative for
9 settlement purposes;
- 10 3. Confirmation of the appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy
11 of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for
12 settlement purposes;
- 13 4. The granting of final approval of the Class Action and PAGA Settlement Agreement and
14 Class Notice (herein “Settlement”);
- 15 5. Approval of an award of \$166,333.33 in attorneys’ fees to Class Counsel;
- 16 6. Approval of an award of \$12,906.49 in costs to Class Counsel;
- 17 7. Approval of an award of \$9,500.00 in costs to Phoenix Settlement Administrators for its
18 settlement administration services;
- 19 8. Approval of an incentive payment of \$10,000.00 to Plaintiff Alfredo Duran for his services
20 as Class Representative;
- 21 9. Approval of an award of \$40,000.00 to the Labor & Workforce Development Agency
22 (“LWDA”) and Aggrieved Employees; and
- 23 10. The entering of final judgment in the form of the [Proposed] Order of Final Approval of Class
24 Action Settlement and Final Judgment filed concurrently herewith.

25 //

1 This Motion is based on this notice of motion, the attached memorandum of points and authorities
2 attached hereto, the declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines,
3 Plaintiff Alfredo Duran¹, and Lluvia Islas of Phoenix Settlement Administrators, and the exhibits attached
4 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
5 evidence or argument presented at the time of hearing.

6
7 Dated: September 22, 2026

Respectfully submitted,
LIDMAN LAW, APC

8
9 By: 

Scott M. Lidman

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11 Attorney for Plaintiff
ALFREDO DURAN
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28 ¹ The declaration of Plaintiff Alfredo Duran 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.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alfredo Duran (“Plaintiff”) submits this memorandum of points and authorities in
4 support of his motion for final approval of the class action settlement with Defendant Scott Construction
5 Specialties, Inc. (“Defendant”). The Settlement Class is defined as: all current and former non-exempt
6 employees who were employed by Defendant Scott Construction Specialties, Inc. in California during
7 the Class Period. The Class Period is the period from March 8, 2019 to September 6, 2025.

8 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
9 Member is approximately \$697.75. This is a favorable resolution of the highly disputed wage and hour
10 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
11 preliminary approval on February 24, 2026, nothing has changed to impact the propriety, fairness,
12 adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and
13 of their projected Settlement payments, zero (0) Class Members have submitted a written objection to the
14 Settlement and zero (0) Class Members have opted out.

15 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the Class
16 continues to meet the requirements for class certification for settlement purposes under Code of Civil
17 Procedure section 382; (2) the Settlement warrants final approval because it is a fair, adequate, and
18 reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class
19 Counsel’s attorneys’ fees and costs, Class Representative Service Payment, payment to the Labor
20 Workforce Development Agency (“LWDA”) and Aggrieved Employees, and settlement administration
21 costs are all fair, adequate, and reasonable. For these reasons, Plaintiff respectfully requests that this
22 Court enter the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment
23 submitted concurrently herewith.

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 On March 8, 2023, Plaintiff filed the instant putative class action complaint. *See* Declaration of
26 Scott M. Lidman (“Lidman Decl.”), ¶ 10. On March 9, 2023, Plaintiff submitted a letter to the California
27 Labor & Workforce Development Agency (“LWDA”) and Defendant notifying them of his intention of
28 filing a Labor Code Private Attorneys General Act of 2004 (“PAGA”) claim based on the Labor Code

violations alleged in his complaint. *Id.* On June 13, 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.* Plaintiff's primary claims/allegations are that Defendant: (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 indemnify all necessary business expenditures; (6) failed to pay all wages owed upon termination; (7) engaged in unfair competition; and (8) is 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 theories of liability are related to Defendant's alleged failure to pay for all hours worked. Lidman Decl., ¶ 11. Specifically, Plaintiff alleges that he and the Class Members were not fully compensated for all of their time worked because Defendant required its non-exempt employees to work before and after their scheduled work hours. *Id.* Specifically, Defendant required its non-exempt employees to arrive at Defendant's shop to collect the materials for the assigned project and travel to the jobsite to arrive by 8:00 a.m., prepare materials prior to their scheduled work time, and clean after their scheduled work time, but only compensated them for scheduled work hours. *Id.* Further, Defendant rounded and/or shaved non-exempt employees' work time. *Id.*

Plaintiff alleges that he and the Class Members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 13. Specifically, Plaintiff's meal periods began after the fifth hour of his scheduled work time, not the time he actually began performing work duties for Defendant. *Id.* Further, Plaintiff alleges that due to the work demands imposed by Defendant, his meal periods were often interrupted and or missed, all in violation of California law. *Id.*

Plaintiff alleges that he and Class Members were also not authorized and permitted to take all required rest periods due to Defendant's rest period policies and practices. Lidman Decl., ¶ 15. Specifically, Plaintiff alleges that due to work demands and Defendant's practice of combining rest periods with meal periods, non-exempt employees were not authorized and permitted to take duty-free net 10-minute rest periods when they worked shifts in excess of 3.5 hours. *Id.* Plaintiff alleges that he

1 and other non-exempt employees experienced at least one rest period violation on every shift worked in
2 excess of 3.5 hours. *Id.*

3 Plaintiff alleges that Defendant required him and the other Settlement Class Members to use their
4 personal cellular phone for business purposes. Lidman Decl., ¶ 17. Despite knowing that putative class
5 members had incurred necessary business expenses, Defendant failed to reimburse putative class
6 members in violation of Section 2802 and *Cochran. Id.*; See *Cochran v. Schwan's Home Service, Inc.*
7 (2014) 228 Cal. App. 4th 1137, 1144.

8 Plaintiff alleges that Defendant is also liable for waiting time penalties under Labor Code section
9 203 as a result of its failure to timely pay all wages upon separation. Lidman Decl., ¶ 19. Plaintiff also
10 seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. *Id.*

11 As explained *infra* and in Plaintiff's Motion for Preliminary Approval, Defendant denies
12 Plaintiff's claims and asserts several affirmative defenses, both on the merits and with respect to class
13 certification.

14 **B. Mediation and Settlement**

15 In advance of mediation, Defendant produced timekeeping and payroll data for the entire putative
16 class, as well as its wage and hour policies and other relevant documents and information relevant to the
17 claims alleged. Lidman Decl., ¶ 23. The timekeeping and payroll records enabled Plaintiff to create a
18 class-wide exposure model for all the claims at issue, including unpaid wages, meal and rest period
19 premiums, and penalties potentially owed for alleged unpaid minimum and overtime wages, and meal and
20 rest period violations. *Id.* After the detailed review of the documents and data produced by Defendant,
21 Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses
22 of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's
23 claims and Defendant's defenses. *Id.*

24 On July 8, 2025, a mediation was held with Kevin Barnes, Esq., an experienced and well-
25 respected wage and hour class action mediator. Lidman Decl., ¶ 24. During mediation, the parties
26 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and
27 the legal basis for the claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution.
28 *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Class Action

1 and PAGA Settlement Agreement and Class Notice (“Settlement”). *Id.*

2 **C. Preliminary Approval of Settlement**

3 Plaintiff submitted the Settlement to the Court with his Motion for Preliminary Approval on
4 October 29, 2025. Lidman Decl., ¶ 25. On February 24, 2026, the Court granted preliminary approval
5 and signed an Order Granting Preliminary Approval of the Settlement. *Id.*; Exh. A.

6 Plaintiff submitted the Settlement and Motion for Preliminary Approval, and the Court’s Order
7 Granting Preliminary Approval of the Settlement to the LWDA via the LWDA’s website on October 29,
8 2025 and February 26, 2026, respectively. *See* Lidman Decl., ¶ 40; Exhs. C-D. Plaintiff will also provide
9 the LWDA with a copy of the instant motion for final approval and supporting documents after the
10 instant motion is filed and will file a proof of service prior to the hearing. *See* Lidman Decl., ¶ 41.

11 On June 12, 2026, Phoenix mailed the Notice via U.S. first class mail, in English and Spanish, to
12 all 373 Settlement Class members who had until August 11, 2026 to request exclusion, state objections,
13 and/or submit disputes. *See* Declaration of Lluvia Islas of Phoenix Settlement Administrators. (“Islas
14 Decl.”), ¶ 5, 8-10. As of the date of this filing, there have been **no objections**, **no disputes**, and **no**
15 **requests for exclusion** received. *Id.* at ¶¶ 8-10. Plaintiff now respectfully submits the Settlement for
16 this Court’s final approval.

17 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

18 **A. Settlement Class Definition**

19 The Settlement Class encompasses: all current and former non-exempt employees who were
20 employed by Defendant Scott Construction Specialties, Inc. in California during the Class Period.
21 Settlement, ¶ 1.5; Lidman Decl., ¶ 26. The Class Period is the period from March 8, 2019 to September
22 6, 2025. Settlement, ¶ 1.12; Lidman Decl., ¶ 26.

23 The Settlement Class includes Aggrieved Employees, which encompasses all current and former
24 non-exempt employees who were employed by Defendant in California during the PAGA Period.
25 Settlement, ¶ 1.4. The PAGA Period is the period from March 8, 2022 to September 6, 2025. Settlement,
26 ¶ 1.31.

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

2 The Settlement provides for Defendant to pay a Gross Settlement Amount of \$499,000.00. *See*
3 Settlement, ¶ 3.1. The Net Settlement Amount is the amount remaining from the Gross Settlement
4 Amount after deducting requested Class Counsel attorneys' fees (\$166,333.33), and Class Counsel costs
5 (\$12,906.49), requested Class Representative Service Payment to Plaintiff (\$10,000.00), payment to the
6 LWDA and Aggrieved Employees for civil penalties (\$40,000.00), and the requested Settlement
7 Administration Costs (\$9,500.00). Settlement, ¶ 1.28; Islas Decl., ¶ 13. Based on these requested
8 amounts, the Net Settlement Amount is calculated to be approximately **\$260,260.18**. Islas Decl., ¶ 13.

9 The Net Settlement Amount, shall be allocated to Settlement Class Members who worked during
10 the Class Period, as follows: (a) dividing the Net Settlement Amount by the total number of Workweeks
11 worked by all Participating Class Members during the Class Period and (b) multiplying the result by each
12 Participating Class Member's Workweeks. Settlement, ¶ 3.2.4.

13 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
14 the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000.00) by the total number of PAGA Pay
15 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by
16 each Aggrieved Employee's PAGA Period Pay Periods. Settlement, ¶ 3.2.5.1.

17 For purposes of calculating applicable taxes and withholdings, 33% of each Participating Class
18 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion").
19 Settlement, ¶ 3.2.4.1. The Wage Portions are subject to tax withholding and will be reported on an IRS
20 W-2 Form. *Id.* The remaining 67% of each Participating Class Member's Individual Class Payment will
21 be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). *Id.* The Non-
22 Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. *Id.*
23 Participating Class Members and Aggrieved Employees assume full responsibility and liability for any
24 taxes owed on any individual payments received as a part of this Settlement. *Id.*; Settlement, ¶ 3.2.5.1.

25 Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the
26 Gross Settlement Amount. Settlement, ¶ 3.1.

1 **C. Summary of Notice Process**

2 **1. *Mailing of Notice Packets***

3 On March 16, 2026, Defendant provided Phoenix with data files containing the name, last known
4 mailing address, Social Security number, and either start and end dates of employment or number of Class
5 Period Workweeks and PAGA Pay Periods for each Class Member. Islas Decl., ¶ 3. After performing
6 address updates and verifications, Phoenix mailed the Class Notice to 373 Settlement Class Members on
7 June 12, 2026 in English and Spanish. *Id.* at ¶¶ 4-5. Following the initial mailing, 42 Class Notices were
8 returned to Phoenix, 42 Class Members' addresses were traced, 24 updated addresses were obtained, and
9 24 Class Notices were remailed. *Id.* at ¶ 6. As of the date of filing this final approval motion, 18 Class
10 Notices remain undeliverable. *Id.* at ¶ 7.

11 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
12 disputes was August 11, 2026. Islas Decl., ¶¶ 8-10. As of the date of this filing, there were **no requests**
13 **for exclusion, no objections, and no disputes.** *Id.* Accordingly, as of the date of this Motion, the
14 participation rate amongst the Settlement Class Members is 100% and the average estimated settlement
15 payment is \$697.75, with the highest estimated payment to a Settlement Class Member being \$4,524.21,
16 the lowest estimated payment to a Settlement Class Member being \$13.15. Islas Decl. ¶¶ 11, 14.

17 **D. Timing of Payments**

18 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to
19 fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than
20 14 days after the Effective Date. Settlement, ¶ 4.3. The "Effective Date" means the date by when both
21 of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of
22 the Settlement; and (b) the Judgment is final. Settlement, ¶ 1.18. The Judgment is final as of the latest
23 of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the
24 Court enters Judgment; or (b) if one or more Participating Class Members objects to the Settlement, the
25 day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the
26 Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. *Ibid.*

27 After disbursement, Settlement Class Members will have at least 180 days to cash their checks.
28 *See* Settlement ¶ 4.4.1; Lidman Decl., ¶ 27. Funds remaining unclaimed will be distributed to the

1 California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class
2 Member. *See* Settlement ¶ 4.4.3; Lidman Decl., ¶ 27.

3 **E. Notice of Judgment**

4 As stated on the Court Approved Notice of Class Action Settlement and Hearing Date for Final
5 Court Approval mailed to class members, the final judgment entered by the Court and any changes to the
6 Final Approval hearing date or location will be posted on the Settlement Administrator's website at duran-
7 v-scott-construction-specialites.phoenixcases.com. *See* Islas Decl., ¶ 5, Exh. A.

8 **IV. ARGUMENT**

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

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

18 Here, this Court found that the Class meets all the requirements for class certification for
19 settlement purposes when it granted preliminary approval of the Settlement on February 24, 2026. *See*
20 Lidman Decl., ¶ 25; Exh. A. After the Court entered an order granting preliminary approval, no events
21 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
22 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement
23 Class Member has requested exclusion from the Settlement, and no Settlement Class Member has
24 objected to any portion of the Settlement. *See* Islas Decl., ¶¶ 8-9. This Court should therefore confirm
25 its conditional certification of the Settlement Class.

26 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate,**
27 **and Reasonable Compromise of Disputed Wage and Hour Claims**

28 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*

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

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

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

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

26 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
27 to each case. *Id.* "In the context of a settlement agreement, the test is not the maximum amount plaintiffs
28 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

1 of avoiding litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455
2 F.2d 101, 109 (7th Cir. 1972)).

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

8 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
9 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect
10 to Plaintiff’s unpaid wages claim, Defendant contends that non-exempt employees were not permitted
11 onto the worksite until their scheduled work time and the worksite shut down at the end of the scheduled
12 work time. Lidman Decl., ¶ 12. Furthermore, Defendant argues its timekeeping practices were lawful,
13 and any unpaid time was *de minimis* and therefore non-compensable. *Id.* Defendant further asserts that
14 Plaintiff would be unable to certify an unpaid wages class given the individualized inquiries that would
15 be required. *Id.*

16 With respect to Plaintiff’s meal period claims, Defendant counters that it has always maintained a
17 lawful meal period policy and provided non-exempt employees with an opportunity to take legally
18 compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records
19 were solely the result of employee choice, rather than any policy or practice of Defendant. Lidman Decl.,
20 ¶ 14. Defendant points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th
21 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are
22 taken, and that it has always done so. *Id.*; *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard).
23 Defendant further argues that Plaintiff’s maximum exposure is based on a 100 % violation rate, which is
24 unfounded and unfeasible. Lidman Decl., ¶ 14. Finally, Defendant contends Plaintiff’s meal period claim
25 is not suited for class certification given that individual inquiries would be required to assess which
26 employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and
27 the reasons why a particular employee took a non-compliant meal period or missed a meal period during
28 a particular shift. *Id.*

1 As for Plaintiff's rest period claims, Defendant contends it has always maintained and enforced
2 lawful rest period policies and practices, and that Class Members were authorized and permitted to take
3 all off-duty rest periods in compliance with California law, particularly IWC Wage Order No. 16. Lidman
4 Decl., ¶ 16. Defendant also argues that Plaintiff's rest period claim is inherently unsuited for class
5 treatment as it requires an individualized inquiry into whether each Class Member was in fact authorized
6 and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-
7 trials. *Id.*

8 With respect to Plaintiff's failure to reimburse claim, Defendant asserts that, given the wide array
9 of cellular phone plans, any expenses would be *de minimis*. Lidman Decl., ¶ 18.

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

16 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims,
17 Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims
18 will fail. Lidman Decl., ¶ 21; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because
19 the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant also
20 maintains that Plaintiff was not an employee during the PAGA Period and therefore has no standing to
21 bring a claim for PAGA penalties. Lidman Decl., ¶ 21. Defendant contends that given its good faith
22 defenses, should the Court find Plaintiff has standing to pursue a PAGA claim, this Court would exercise
23 its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of
24 Plaintiff's claims. *Id.*; *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
25 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.
26 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
27 \$2.8 million to \$500,000).

1 These considerations not only bore heavily on the negotiations leading to the Settlement, but also
2 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
3 litigation. Lidman Decl., ¶ 22. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted
4 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages
5 figures. *Id.* Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
6 adequate, and reasonable in view of them. *Id.*

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

10 An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total
11 number of Workweeks worked by all Participating Class Members during the Class Period and (b)
12 multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4. This
13 method of distribution compensates Settlement Class Members based on the estimated extent of their
14 injuries, as Settlement Class Members who worked more workweeks, would have been subject to more
15 of the alleged wage and hour violations than those who worked fewer weeks. Thus, the formula for
16 compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages
17 and penalties that could be recovered by them.

18 **3. *The 100% Participation Rate and Absence of Any Objections Further Confirms***
19 ***That the Settlement is Fair, Adequate, and Reasonable***

20 Class members' response to a settlement is relevant in evaluating whether it merits final approval.
21 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
22 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
23 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
24 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion,
25 not a single Settlement Class Member has objected to the Settlement, nor has a single Settlement Class
26 Member elected to opt-out of the Settlement. Islas Decl., ¶¶ 8-9. In addition, only 18 of the 373 Notice
27 Packets were returned undeliverable. Islas Decl., ¶ 7. The extremely favorable response of the Settlement
28 Class further confirms that the Settlement is fair, adequate, and reasonable.

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

3 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
4 their attorneys’ fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
5 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See*,
6 *e.g.*, *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
7 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
8 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,
9 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

10 The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506
11 (2016), that “[t]he percentage of fund method survives in California class action cases.” Specifically, the
12 *Laffitte* Court held:

13 The recognized advantages of the percentage method—including relative ease of
14 calculation, alignment of incentives between counsel and the class, a better
15 approximation of market conditions in a contingency case, and the encouragement it
16 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
17 litigation—convince us the percentage method is a valuable tool that should not be denied
18 our trial courts.

19 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
20 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
21 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
22 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
23 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
24 equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*
25 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
26 attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method
27 and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery;
28 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 is \$166,333.33 (one-third of the Gross Settlement Amount). The fee award will be split between Haines Law Group, APC and Lidman Law, APC. Lidman Decl., ¶ 29. Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman Decl., ¶ 30.

The fee request of \$166,333.33 is fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First, “regardless of 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., ¶ 28. Thus, the percentage sought by Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

Next, as stated, under the lodestar method the court computes the “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty

of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

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

In this case, Class Counsel have a lodestar of \$89,262.50 which results in a multiplier of approximately 1.86 compared to the \$166,333.33 fee request. *See* Lidman Decl., ¶ 34. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (27th Year Attorney)	\$950	42.4	\$40,280.00
Elizabeth Nguyen ² (20th Year Attorney)	\$900	5.6	\$5,040.00
Paul K. Haines (19th Year Attorney)	\$975	11.1	\$10,822.50
Milan Moore (10th Year Attorney)	\$725	17.7	\$12,832.50
Tiara Gose-Hardy	\$625	27.3	\$17,062.50

² Attorney Elizabeth Nguyen worked on the case before she parted with Lidman Law, APC in January 2024.

(7th Year Attorney)			
Paralegals	\$250	12.9	\$3,225.00
Total Lodestar			\$89,262.50

Id.

The fee award 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%, 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. Islas Decl., ¶ 9. Additionally, the *average* settlement payment in this case of approximately \$697.75 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 *18 (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 purely contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation for over three years. Lidman Decl., ¶ 33. During this time, Class Counsel have expended

1 a total of \$12,456.49 in actual costs and have devoted substantial time to this litigation and expect to incur
2 approximately \$450.00 in future costs for filing the final declaration regarding distribution of settlement,
3 Case Anywhere fees, service and messenger fees, postage fees, and/or online fees to retrieve conformed
4 copies of documents for a total of \$12,906.49.³ *Id.*; Exh. B. Class Counsel’s efforts have included
5 conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, propounding
6 written discovery requests, analyzing timekeeping data and payroll records, preparing the Belaire-West
7 notice, drafting the mediation brief, preparing for and attending mediation, negotiating and revising the
8 long-form settlement agreement, preparing the Motion for Preliminary Approval, preparing this Motion,
9 and otherwise litigating the case. Lidman Decl., ¶ 31. Moreover, Class Counsel have expended time,
10 effort, and money that they could have expended on less risky cases instead. Given the considerable
11 potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or
12 merits issues, the contingent risk borne by Class Counsel was great. Lidman Decl., ¶ 33.

13 Class Counsel’s previous experience in litigating wage and hour class actions also supports the
14 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
15 hour class action litigation, with substantial experience litigating claims for meal and rest period
16 violations, and related penalties. *See* Lidman Decl., ¶¶ 2-8; Declaration of Milan Moore (“Moore Decl.”),
17 ¶¶ 2-5; Declaration of Tiara Gose-Hardy (“Gose-Hardy Decl.”), ¶¶ 2-4; Declaration of Paul K. Haines
18 (“Haines Decl.”), ¶¶ 2-8. They have been certified as class counsel in numerous other cases. *Id.* Their
19 experience in similar matters was integral in evaluating the strengths and weaknesses of the case against
20 Defendant and the reasonableness of the Settlement. Lidman Decl., ¶ 32. Practice in the narrow field of
21 wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state
22 and federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to
23 compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-
24 third of the Gross Settlement Amount is reasonable.

25 Other factors also show that the fee amount requested in this case is reasonable under the
26 circumstances. This case involved nuanced legal issues including questions surrounding Defendant’s
27

28 ³ This includes total costs incurred by both law firms.

1 requirement to “provide” meal periods, “authorize and permit” rest periods, and the propriety of statutory
2 penalties, to name just a few. Lidman Decl., ¶ 32. Thus, Class Counsel’s requested fee award is fair,
3 reasonable, and adequate and should be approved.

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

6 Class Counsel seek to be reimbursed a total of \$12,906.49⁴ in litigation costs. Class Counsel’s
7 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
8 See Lidman Decl., ¶ 33; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
9 approved by courts. See, e.g., *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should rec
10 over “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v.*
11 *Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)(“costs of reproducing pleadings,
12 motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable);
13 *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253,
14 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities*
15 *Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert
16 fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
17 Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no
18 Settlement Class Member has objected to them, Plaintiff respectfully requests the Court should grant the
19 request for actual costs incurred.

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

21 Plaintiff also requests that the Court approve \$9,500.00 in administration costs to the Settlement
22 Administrator, Phoenix. As detailed in the Declaration of Lluvia Islas on Behalf of Phoenix Settlement
23 Administrators submitted herewith, Phoenix performed duties in connection with this Settlement that
24 were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix
25 calculated each Settlement Class Member’s individual settlement payment, updated addresses contained
26

27
28 ⁴ Class Counsel have expended a total of \$12,456.49 in actual costs and anticipate incurring costs in the amount
of \$450.00 for filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and
messenger fees, postage fees, and/or online fees to retrieve conformed copies of documents.

1 in the class data supplied by Defendant, formatted Class Notices for mailing, mailed Class Notices to all
2 373 Settlement Class Members in English and Spanish, kept the parties informed of any objections or
3 requests for exclusion, and have otherwise administered the Settlement. *See Islas Decl.*, ¶ 2. For these
4 reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be finally approved.

5 **F. Plaintiff’s Requested Service Award Is Fair, Adequate, and Reasonable in View of**
6 **Plaintiff’s Efforts and the Risks that He Assumed on Behalf of the Class**

7 Courts routinely approve service payments to compensate named plaintiffs for the services they
8 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
9 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in
10 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
11 \$50,000 service payment). In analyzing the requested service payment, courts consider the following
12 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the
13 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has
14 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,
15 and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick’s*
16 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
17 Cal.App.4th 785, 804.

18 Here, analyzing those factors weigh in favor of approving Plaintiff’s requested service award of
19 \$10,000.00 because the request is reasonable given Plaintiff’s efforts in this case and the risks he
20 undertook on behalf of Settlement Class Members. *See Lidman Decl.*, ¶ 39. Plaintiff gathered documents
21 for use in the lawsuit, and worked with Class Counsel on the case, including preparing for mediation and
22 discussing the case, the merits, the defenses, and settlement. *See Lidman Decl.*, ¶ 33; Declaration of
23 Alfredo Duran (“Duran Decl.”), ¶¶ 6-8. The class has benefitted from Plaintiff’s actions as the average
24 settlement amount is \$697.75.

25 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
26 lawsuit could stigmatize him and/or affect future employment. *See Lidman Decl.*, ¶ 39; Duran Decl., ¶ 7.
27 Plaintiff also understood the risk that he could be liable for Defendant’s costs if he lost the case. *Id.*
28 Plaintiff accepted these risks and burdens because he wanted Defendant to compensate its current and

1 former employees for unpaid wages. Duran Decl., ¶ 7. Plaintiff estimates he spent 15-20 hours on
2 activities related to this case. *Id.* at ¶ 8.

3 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
4 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendant
5 and the Released Parties. *See* Settlement ¶ 3.2.1; Lidman Decl., ¶ 39; Duran Decl., ¶ 9. Plaintiff's release
6 includes unknown claims and, as a result, he is waiving all rights and benefits afforded by Section 1542
7 of the California Civil Code.

8 Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff,
9 no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See* Islas
10 Decl., ¶ 9. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and
11 should be finally approved.

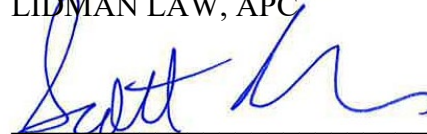
12 **V. CONCLUSION**

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

16
17 Dated: September 22, 2026

Respectfully submitted,
LIDMAN LAW, APC

18
19 By:


Scott M. Lidman

20
21 Attorneys for Plaintiff
ALFREDO DURAN