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

VERONICA ESPARZA RODRIGUEZ,
individually, and on behalf of all others similarly
situated,

Plaintiff,

vs.

WELLNESS INNOVATION GROUP
INCORPORATED, a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 23CV001695

COMPLEX CLASS AND REPRESENTATIVE
ACTION

[Hon. Thomas W. Wills Dept. 15]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Filed with the Declaration of Kane Moon, the
Declaration of Plaintiff Veronica Esparza
Rodriguez, Declaration of Lluvia Islas, and
[Proposed] Order and Judgment]*

FINAL APPROVAL HEARING

Date: November 8, 2024
Time: 8:30 a.m.
Dept.: 15

TO THE COURT, TO ALL PARTIES, AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 8, 2024 at 8:30 a.m. in Department 15 of this Court located at 1200 Aguajito Road, Monterey, CA 93940, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, Plaintiff Veronica Esparza Rodriguez will move the Court for an Order granting final approval of the proposed class action settlement between Plaintiff and Defendant Wellness Innovation Group Incorporated.

Plaintiff further moves the Court for an Order:

1. Certifying a Class for settlement purposes;
2. Approving the Settlement as fair, reasonable, and adequate, and directing consummation of the terms and provisions of the First Amended Joint Stipulation of Class Action and PAGA Settlement.
3. Finding Class Members were given, in a reasonable manner under the circumstances, due and adequate notice of the Settlement and advised of their right to participate in, object to, or exclude themselves from the Settlement;
4. Confirming the appointment of Plaintiff as the Class Representative for settlement purposes, and approving a service payment of \$7,500.00;
5. Confirming the appointment of Plaintiff's Counsel Moon Law Group, PC as Class Counsel for settlement purposes, and approving a payment of \$83,333.33 in attorneys' fees and \$18,587.61 for costs actually incurred in litigation expenses;
6. Confirming the appointment of Phoenix Settlement Administrators as the Settlement Administrator, finding the Administrator has fulfilled its initial notice and reporting duties under the Settlement, and approving a payment of \$8,750.00 for the costs of settlement administration;
7. Approving payment of \$7,500.00 to the California Labor and Workforce Development Agency for PAGA penalties, and finding the State's claims for civil penalties pursuant to PAGA are hereby extinguished;
8. Directing the Clerk of the Court to enter a final Judgment, and that the final Judgment be posted on a website maintained by the Settlement Administrator for a period of not less than

1 90 calendar days after entry; and

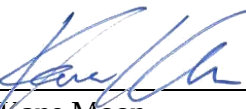
- 2 9. Without affecting the finality of the final Judgment, reserving continued jurisdiction over this
3 matter for the purposes of implementing, enforcing, and/or administering the Settlement or
4 enforcing the terms of the Court's Judgment.

5 The motion will be based upon this notice, the attached memorandum of points and
6 authorities, the declarations filed herewith and exhibits thereto supporting Plaintiff's motion, the
7 records and files in this action, and any other further evidence or argument that the Court may
8 properly receive at or before the hearing.

9 Respectfully submitted,

10 Dated: October 15, 2024

MOON LAW GROUP, PC

11
12 By: 
13 Kane Moon
14 Lilit Ter-Astvatsatryan
Holly Williams

Attorneys for Plaintiff

TABLE OF CONTENTS

NOTICE OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT	i
TABLE OF AUTHORITIES	iv
I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION AND SETTLEMENT	1
A. Plaintiff’s Claims	1
B. Discovery and Investigation.....	3
A. Settlement Negotiations	4
B. Key Terms of the Proposed Settlement.....	4
V. THE SETTLEMENT MERITS FINAL APPROVAL.....	8
A. The Settlement Amount Provides a Realistic Value for the Claims	9
B. The Settlement Reflects a Reasonable Compromise	12
C. Plaintiff’s Counsel Have Substantial Class Action Experience	13
D. The Response to the Settlement is Overwhelmingly Positive	14
VI. THE COURT SHOULD AWARD THE REQUESTED AMOUNTS OF ATTORNEYS’ FEES, COSTS, AND SERVICE PAYMENTS.....	15
A. Class Counsel Request an Award of Fees Based on the “Common Fund” Method ...	16
1. The Requested Fee Award Is in Line with Typical Cases	17
2. This Matter Involves a “Fee-Shifting” Provision of the Labor Code	18
3. The Experience, Reputation, and Ability of Class Counsel Support the Requested Fee Award	18
B. While the Lodestar Method Is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees.....	19
C. Class Counsel’s Costs Are Reasonable.....	20
D. The Court Should Award Plaintiff the Requested Service Payments	20
VII. THE SETTLEMENT SATISFIES CODE OF CIVIL PROCEDURE SECTION 384.....	22
VIII. CONCLUSION	23

TABLE OF AUTHORITIES

CASES

<i>Angeles v. U.S. Airways, Inc.</i> (N.D. Cal. Feb. 19, 2013) No. C 12-05860 CRB, 2013 WL 622032	4
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	21
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105	19, 20
<i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal.App.4th 785	24
<i>Frank v. Eastman Kodak Co.</i> (W.D.N.Y. 2005) 228 F.R.D. 174	25
<i>Gentry v. Super. Ct.</i> (2007) 42 Cal.4th 443	25
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380	25
<i>In re Cont'l Ill. Sec. Litig.</i> (7th Cir. 1992) 962 F.2d 566	24
<i>In re Pacific Enterprises Securities City and County of San Francisco Litigation</i> (9th Cir. 1994) 47 F.3d 373	20
<i>Leyva v. Medline Ind.</i> (9th Cir. 2013) 716 F.3d 510	30
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> (2010) 86 Cal.App.4th 399	24
<i>Pedroza v. PetSmart, Inc.</i> (C.D. Cal. June 14, 2012) No. ED CV 11-298 GHK (DTBx), 2012 WL 9506073	4
<i>Quinn v. State of California</i> (1995) 15 Cal.3d 162	20
<i>Rodriguez v. W. Publ'g Corp.</i> (9th Cir. 2009) 563 F.3d 948	25
<i>Van Vranken v. Atlantic Richfield Company</i> (N.D. Cal. 1995) 901 F.Supp. 294	21

OTHER AUTHORITIES

Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303 (2006)	23
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TREATISES

Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.) § 14.03	18
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STATE CASES

<i>Bowles v. Super. Ct.</i> (1955) 44 Cal.2d 574	25
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	18

1	<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105.....	16
2	<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	26
3	<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987) 191 Cal.App.3d 605.....	25
4	<i>Collins v. Rocha</i> (1972) 7 Cal.3d 232	25
5	<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal. 2d 695.....	23
6	<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	10, 11, 25
7	<i>Gentry v. Super. Ct.</i> (2007) 42 Cal.4th 443.....	22, 27
8	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	10, 14
9	<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429.....	24
10	<i>Mallick v. Super. Ct.</i> (1979) 89 Cal.App.3d 434	10
11	<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442	26
12	<i>Miller v. Woods</i> (1983) 148 Cal. App. 3d 862	24, 26
13	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	10, 22
14	<i>Petrovic v. Amoco Oil Co.</i> (8th Cir. 1999) 200 F.3d 1140	16
15	<i>Progressive West Ins. Co. v. Superior Court</i> (2005) 135 Cal.App.4th 263	16
16	<i>Quinn v. State of California</i> (1995) 15 Cal.3d 162.....	17
17	<i>Richmond v. Dart Indus., Inc.</i> (1981) 29 Cal. 3d 462.....	24
18	<i>Rodriguez v. W. Publ'g Corp.</i> (9th Cir. 2009) 563 F.3d 948	22
19	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	24
20	<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 224.....	15, 16, 19
21	<i>Wilner v. Sunset Life Ins. Co.</i> (2000) 78 Cal.App.4th 952	24
22	STATUTES	
23	Code of Civil Procedure § 382.....	23, 24
24	Labor Code § 90.5	22
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour class action and PAGA representative action. Plaintiff Veronica Esparza Rodriguez (“Plaintiff”) seeks final approval of a proposed \$250,000.00 non-reversionary, settlement with Defendant Wellness Innovation Group Incorporated (“Defendant”) (together, Plaintiff and Defendant are the “Parties”). Plaintiff seeks to represent a class of current and former non-exempt employees who are or were employed by Defendant in the State of California during the Class Period from May 25, 2019, to November 29, 2023. The Settlement will provide substantial monetary payments to 281 Class Members and 142 Aggrieved Employees. As set forth more fully below, the proposed Settlement satisfies all criteria for approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arm’s length and were facilitated by an experienced neutral mediator, Jeffrey Ross, Esq. Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Class.

Plaintiff’s request for attorneys’ fees in the amount of \$83,333.33 and reimbursement of litigation costs in the amount of \$18,587.61 to Class Counsel, an enhancement award in the amount of \$7,500.00 to Plaintiff as the Class Representative, settlement administration costs in the amount of \$8,750.00 to Phoenix Settlement Administrators as the Settlement Administrator, and payment to the California Labor Workforce and Development Agency (the “LWDA”) in the amount of \$7,500.00 are reasonable. Accordingly, Plaintiff requests the Court grant final approval of the proposed Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a complex wage and hour class action and PAGA representative action. (Declaration of Kane Moon in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement (“Moon Decl.”), ¶ 3.) Plaintiff seeks to represent a class of non-exempt, hourly-paid employees who worked for Defendant in California during the period from May 25, 2019, to November 29, 2023, for various violations of the California Labor Code. Defendant is a subsidiary of Lowell Farms Inc., a publicly traded,

1 vertically integrated cannabis company. (*Id.*) Plaintiff was hired as a quality control employee, though
2 Plaintiff helped throughout different departments. (*Id.*) Plaintiff worked from approximately 2019 to
3 March 2023. (*Id.*) Plaintiff was paid on an hourly basis, and during her employment, Plaintiff and other
4 class members typically worked 5 days per workweek, and sometimes in excess of 8 hours each workday.
5 (*Id.*) Plaintiff was classified as non-exempt during the entirety of her employment and was subjected to the
6 same unlawful labor practices as her coworkers. (*Id.*)

7 Plaintiff's claim for unpaid wages stems from Defendant's failure to pay Plaintiff and the putative
8 class for off-the-clock work. (Moon Decl. ¶ 4.) Additionally, Plaintiff alleges that Defendant failed to
9 maintain any meal period and rest break policies. (*Id.*) Furthermore, Plaintiff alleged that Defendant failed
10 to reimburse employees for their purchase of protective gear. (*Id.*) In addition to the foregoing claims,
11 Plaintiff brings derivative claims against Defendant for waiting time penalties, wage statement violations,
12 unfair business practices, and PAGA (*Id.*)

13 Because of Defendant's alleged violations of various provisions of the Labor Code,
14 Plaintiff filed this class and representative action on May 25, 2023, which, in its amended form,
15 alleges that Defendant systematically: (1) failed to pay minimum and straight time wages, (2)
16 failed to pay overtime compensation, (3) failed to provide meal periods and pay meal period
17 premiums, (4) failed to authorize and permit rest periods and pay rest period premiums, (5)
18 failed to indemnify necessary business expenses (6) failed to timely pay wages at termination,
19 (7) failed to provide accurate itemized wage statements, (8) engaged in unfair business practices,
20 and (9) violated civil penalty provisions recoverable as PAGA penalties pursuant to Labor Code
21 section 2698 *et seq.* (*Id.* at ¶ 5.)

22 Defendant ardently opposes the merits of this case and denies Plaintiff's factual
23 allegations. (Moon Decl., ¶ 6.) Defendant maintained that it complied with all of its meal and
24 rest period obligations. (*Id.*) Defendant argued that everyone in fact had an opportunity to take
25 uninterrupted meal and rest periods to which they were entitled, and any violation was the
26 product of employees' choice to take a late or short meal or rest break. (*Id.*) Defendant argued
27 that Plaintiff and the putative class members were paid all wages owed, and that the alleged
28 necessary business expenses were not reasonably incurred. (*Id.*) As for off the clock work,

1 Defendant maintained that employees were not required to wait in line to clock-in, COVID
2 screenings lasted seconds and any time spent undergoing a screening or trying to clock-in was
3 not reasonably compensable. (*Id.*) Moreover, to the extent that Plaintiff received wage
4 statements that were allegedly inaccurate, Defendant asserted that Plaintiff suffered no actual
5 damage or harm as a result. (*See, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013)
6 No. C 12-05860 CRB, 2013 WL 622032, at *10 [“A plaintiff must adequately plead an injury
7 arising from an employer’s failure to provide full and accurate wage statements, and the
8 omission of the required information alone is not sufficient.”].) With respect to Plaintiff’s claim
9 for waiting time penalties, Defendant alleged that their good-faith belief that they paid all wages
10 precluded the imposition of waiting time penalties since Plaintiff could not prove that Defendant
11 alleged failure to pay all final wages at the time of separation was “willful.” (*See, e.g., Pedroza*
12 *v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL
13 9506073, *5.) For these reasons, Defendant claimed that they did not engage in any unfair
14 business practices and denied liability under PAGA. Defendant also maintained that Plaintiff’s
15 claims were improper for class treatment. (Moon Decl., ¶ 6.)

16 **B. Discovery and Investigation**

17 Plaintiff and Defendant (the “Parties”) agreed to mediate the instant action and
18 participated in private mediation with Jeffrey Ross, Esq., on November 29, 2023. (Moon Decl.,
19 ¶ 7.) To facilitate an effective mediation, the Parties agreed on and adhered to a protocol for
20 exchanging documents and information before the mediation. (*Id.*) Defendant produced a
21 sample of time and pay records for Class Members, as well as policy manuals in effect during
22 the statutory period, and additional documents. (*Id.*) Defendant also provided information
23 regarding the total number of current and former employees in their informal discovery
24 responses. (*Id.*)

25 After reviewing the time and pay records, and policies related to Defendant’s wage and
26 hour policies and practices, Plaintiff’s expert analyzed the time and pay records, and Class
27 Counsel was able to evaluate the probability of class certification, success on the merits, and
28 Defendant’s maximum monetary exposure for all claims. (Moon Decl., ¶8.) Class Counsel
reviewed these records and prepared a damage analysis prior to mediation. (*Id.*) Class Counsel

1 also investigated the applicable law regarding the claims and defenses asserted in the litigation.
2 (*Id.*) Moreover, Class Counsel retained an expert to analyze the records produced. (*Id.*) Thus,
3 Plaintiff and her counsel’s familiarity with the facts of the case and the legal issues raised by
4 the pleadings allowed me to act intelligently in negotiating the settlement. (*Id.*)

5 **C. Settlement Negotiations**

6 On November 29, 2023, the Parties participated in private mediation with professional
7 neutral mediator Jeffrey Ross Esq. (Moon Dec., ¶9.) The settlement negotiations were at arm’s
8 length and, although conducted in a professional manner, were adversarial. (*Id.*) The parties
9 went into the mediation willing to explore the potential for a settlement of the dispute, but each
10 side was also prepared to litigate their position through trial and appeal if a settlement had not
11 been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and
12 weaknesses of Plaintiff’s claims and Defendant’s defenses, a settlement was reached by the
13 parties, the material terms of which are encompassed within are encompassed within the First
14 Amended Joint Stipulation of Class Action and PAGA Settlement. (*Id.*, Exh. 1 [the “Settlement
15 Agreement”].)

16 Class Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at
17 ¶ 16.) Based on the foregoing discovery and independent investigation and evaluation, Class
18 Counsel are of the opinion that the Settlement is fair, reasonable, and adequate. (*Id.*)
19 Furthermore, in light of all known facts and circumstances, the risk of significant delay, trial
20 risk, appellate risk, the defenses that could be asserted by Defendants both to certification and
21 on the merits, settlement is in the best interests of Class Members. (*Id.*; *see also id.* at ¶¶ 17–
22 29.) **Indeed, the \$250,000.00 settlement figure represents approximately 54.05% of**
23 **Plaintiff’s predicted realistic (*risk-adjusted*) maximum recovery of \$462,471.07.** (*Id.* at ¶

24 **D. Key Terms of the Proposed Settlement**

25 Under the Settlement Agreement, Defendants will pay a non-reversionary, all-inclusive
26 amount of \$250,000.00 to resolve this litigation. This amount is all-inclusive. The Settlement’s
27 key terms include:
28

1 1. Action: means and refers to *Veronica Esparza Rodriguez v. Wellness Innovation Group*
2 *Incorporated*, Case No. 23CV001695, which is currently pending in the Monterey County Superior
3 Court of the State of California. (Settlement, ¶ 1.)

4 2. Class or Class Members: All current and former non-exempt employees who are or were
5 employed by Defendant in the State of California during the Class Period (the “Settlement Class” or
6 “Settlement Class Members”). (Settlement, ¶ 4.)

7 3. Class Period: is May 25, 2019, to November 29, 2023. (Settlement, ¶ 3.)

8 4. Covered Workweeks: means the number of weeks a Class Member worked at Defendant’s
9 locations in California during the Class Period. (Settlement, ¶ 6.)

10 5. No Reversion: This is a non-reversionary settlement meaning no portion of the Gross
11 Settlement Amount will revert to Defendant. (Settlement, ¶ 26(e))

12 6. Gross Settlement Amount: Defendant’s maximum total payment under the Settlement,
13 including all attorney’s fees and costs, the Service Payment to the named Plaintiff, the costs of settlement
14 administration, the PAGA Allocation, and any other payments provided by this Settlement, is
15 \$250,000.00 (“Gross Settlement Amount”), subject to the Escalator Clause and except that, to the extent
16 that any portions of the Class Members’ Settlement Payments constitute wages, Defendant will be
17 separately responsible for any employer payroll taxes required by law, including the employer FICA,
18 FUTA, and SDI contributions. (Settlement, ¶ 26(c))

19 7. Release: The class release is limited to actions or causes of action which are alleged, or
20 reasonably could have been alleged based on the facts and claims asserted in the action. (Settlement, ¶
21 37(c)(1))

22 8. PAGA Allocation: The Parties have agreed that the PAGA Allocation will be \$10,000.00
23 from the Gross Settlement Amount. Pursuant to PAGA, seventy five percent (75%), or \$7,500.00, of
24 the PAGA Allocation will be paid to the Labor and Workforce Development Agency (“LWDA”)
25 (“PAGA Penalty Payment”), and twenty five percent (25%) or \$2,500.00, of the PAGA allocation will
26 be included in the Net Settlement Amount for aggrieved employees (“PAGA Settlement Payment”).
27 (Settlement, ¶ 10.)
28

1 9. Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from
2 the Gross Settlement Amount (\$250,000.00) the following sums, subject to approval by the Court: (1)
3 attorney's fees (not to exceed one-third of the Gross Settlement Amount, or \$83,333.33); (2) reasonable
4 litigation costs; (3) the Service Payment (not to exceed \$7,500.00 to the named Plaintiff); (4) the PAGA
5 Penalty Payment in the amount of \$10,000.00 (which is 75% of the PAGA Allocation); and (5) costs of
6 settlement administration. (Settlement, ¶ 26 (g))

7 10. Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will
8 be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share
9 of the Net Settlement Amount (less the PAGA Settlement Payments to the LWDA), as calculated by
10 the Settlement Administrator. The pro-rata share will be determined by comparing the individual
11 Settlement Class Member's Covered Workweeks employed during the Class Period in California to the
12 total Covered Workweeks of all the Settlement Class Members during the Class Period. Settlement
13 Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail
14 to the Settlement Class Members. (Settlement, ¶ 26(i))

15 11. PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement
16 Amount. Each Aggrieved Employee will be paid a pro-rata share of the Aggrieved Employees' PAGA
17 Settlement Payment, as calculated by the Settlement Administrator minus PAGA Settlement Payments
18 to the LWDA. Class Members will not be permitted to exclude themselves from this portion of the
19 Settlement. The pro-rata share will be determined by comparing the individual Aggrieved Employee's
20 PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the Aggrieved
21 Employees during the PAGA Period. PAGA Settlement Payments to Aggrieved Employees in the
22 appropriate amounts will be distributed by the Settlement Administrator by mail to the Aggrieved
23 Employees at the same time Settlement Class Payments issue to the Settlement Class. (Settlement, ¶
24 26(j))

25 12. Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments
26 will be allocated as follows: 10% to wages and 90% to penalties and interest. The PAGA Settlement
27 Payment shares to Aggrieved Employees will be entirely allocated to penalties. Appropriate federal,
28 state and local withholding taxes will be taken out of the wage allocations, and each Class Member will

1 receive an IRS Form W-2 with respect to this portion of the Settlement Payment. The employer's share
2 of payroll taxes and other required withholdings will be paid as set forth above, including but not limited
3 to the Defendant's FICA and FUTA contributions, based on the payment of claims to the Class
4 Members. IRS Forms 1099 will be issued to each Class Member reflecting the payments for penalties
5 and interest. Class Members are responsible to pay appropriate taxes due on the Settlement Payments
6 they receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each Class
7 Member with respect to such payments. (Settlement, ¶ 26(k))

8 13. Service Payment: Subject to Court approval, and in exchange for a general release,
9 Defendant will not object to Class Counsel's application for an additional payment of up to \$7,500.00
10 to Plaintiff for service as Class Representative ("Service Payment"). It is understood that the Service
11 Payment is in addition to the individual Settlement Payment to which Plaintiff is entitled to along with
12 the other Class Members. In exchange, Plaintiff has agreed to release all claims, whether known or
13 unknown, under federal law or state law against the Releasees, to the extent permitted by law, through
14 the Class Period ("Plaintiff's Released Claims"). (Settlement, ¶ 26(n))

15 14. Attorneys' Fees and Costs: Attorneys' Fees and Costs: Subject to approval by the Court,
16 Defendant will not object to Class Counsel's application for attorney's fees not to exceed thirty-three
17 and one third percent (33.33%) of the Gross Settlement Amount and reimbursement of litigation costs
18 and expenses. (Settlement, ¶ 26(m)) At this time, Plaintiff's costs are \$18,587.61. (Moon Decl., ¶ 14,
19 Exh. 4.)

20 15. Notice of Proposed Settlement: Class Members were notified by first class mail of the
21 proposed Settlement. (Settlement Agreement, ¶ 26(s); Declaration of Lluvia Islas of Phoenix Settlement
22 Administrators in Support of Motion for Final Approval of Class Action Settlement ["Lluvia Decl.,"] ¶
23 5.) The Notice set forth, in plain terms in both English and Spanish, a statement of case, the terms of the
24 Settlement Agreement, the approximate amount of penalties, attorneys' fees, costs, and service awards
25 being sought, and an explanation of how the settlement allocations are calculated. (Settlement
26 Agreement, Exh. A; Islas Decl., ¶ 5, Exh. A.) Phoenix, the appointed Settlement Administrator,
27 undertook its best efforts to ensure that Notice was provided to the current addresses of Class Members,
28 including conducting a national change of address search and re-mailing the notice to updated addresses.

(Islas Decl., ¶4.) Of the 282 Notices mailed, 20 Notices were returned to Phoenix by the post office. (*Id.* at ¶ 6.) For the twenty (20) Notices returned from the Post Office, without a forwarding address, Phoenix attempted to locate a current mailing address using idiCORE, one of the most comprehensive address databases available for skip tracing. (*Id.*) Of the twenty (20) Notices that were skip traced, eighteen (18) updated addresses were obtained and the Notice was promptly re-mailed to those Class Members via first class mail. (*Id.*)

16. Procedure for Disputing Workweeks, Opting-Out, or Objecting: The Notice set forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the proposed class action Settlement and instructions on how to dispute the number of individual workweeks pre-printed in each Notice Packet by the Response Deadline. (Settlement Agreement, ¶ 26(v), Ex. A.) For each Class Member, there was pre-printed information on the mailed Notice, based on Defendant’s records, stating the Class Member’s Covered Workweeks during the Class Period and the estimated Settlement Class Payment. (Settlement Agreement, ¶ 26(s); Islas Decl., ¶ 2, Exh. A.) Class Members had an opportunity to dispute the pre-printed information on the Notice as to his or her Covered Workweeks during the Class Period by submitting a dispute within the Response Deadline. (Settlement Agreement, ¶ 26(s).) Unless a disputing Class Member submitted documentary evidence in support of his or her dispute, the records of the Defendants will be determinative. (*Id.*) The Response Deadline was July 22, 2024, and there were zero written objections, one request for exclusion, and zero workweek disputes received. (Islas Decl., ¶¶ 8-10.)

III. THE SETTLEMENT MERITS FINAL APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See, e.g., Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277–81.) To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800–01 [citing authority omitted].) To approve a settlement, the Court must find “the settlement is fair, adequate, and reasonable.” (*Id.*) The Court has wide discretion in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness, adequacy, and reasonableness are presumed, as here, when: “(1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act

intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”
(*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.41].)

In evaluating a settlement, the trial court considers the following factors: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of discovery completed and the stage of the proceedings; (6) counsel’s experience and views; (7) the presence of a governmental participant; and (8) the class members’ reaction to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) In order to approve a class action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

As discussed below, Class Counsel have provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed Settlement is fair, adequate, and reasonable.

A. The Settlement Amount Provides a Realistic Value for the Claims

17. There can be no doubt that this Settlement is the result of vigorous, adversarial, non- collusive, and arms-length negotiations between the Parties. (Moon Decl., ¶¶ 7–8.) Plaintiff and Defendant (the “Parties”) agreed to mediate the instant action and participated in private mediation with Jeffrey Ross, Esq., on November 29, 2023. (*Id.*) To facilitate an effective mediation, the Parties agreed on and adhered to a protocol for exchanging documents and information before the mediation. (*Id.*) Defendant produced a sample of time and pay records for Class Members, as well as policy manuals in effect during the statutory period, and additional documents. (*Id.*) Defendant also provided information regarding the total number of current and former employees in their informal discovery responses. (*Id.*)

1 18. After reviewing the time and pay records, and policies related to Defendant’s wage and hour
2 policies and practices, Plaintiff’s expert analyzed the time and pay records, and Class Counsel was able
3 to evaluate the probability of class certification, success on the merits, and Defendant’s maximum
4 monetary exposure for all claims. (*Id.* at 8.) Class Counsel reviewed these records and prepared a
5 damage analysis prior to mediation. (*Id.*) Class Counsel also investigated the applicable law regarding
6 the claims and defenses asserted in the litigation. (*Id.*) Moreover, Class Counsel retained an expert to
7 analyze the records produced. (*Id.*) Thus, Plaintiff and her counsel’s familiarity with the facts of the case
8 and the legal issues raised by the pleadings allowed me to act intelligently in negotiating the settlement.
9 (*Id.*; *see also id.* at ¶¶ 16–29.)

10 According to the data Defendant provided at the time of mediation, there were an
11 estimated 289 Class Members and 23,827 workweeks, and a weighted average hourly rate of
12 \$20.45.¹ (*Id.* at ¶ 17.) With the assistance of a statistics expert, Class Counsel estimated as
13 follows: the risk-inclusive exposure (90% discount) for the unpaid wages due to off-the-clock
14 work to be **\$26,380.30**; the risk-inclusive exposure (75% discount) for meal period violations
15 to be **\$138,119.30**; the risk-inclusive exposure (95% discount) for the rest break violations to
16 be **\$102,375.77**; the risk-inclusive exposure (90% discount) for unreimbursed business expenses
17 to be **\$4,929.00**; the risk-inclusive exposure (90% discount) for the wage statement violation
18 claim to be **\$54,395.00**; the risk-inclusive exposure (90% discount) for the waiting time penalty
19 claim to be **\$81,161.70**; and the risk-inclusive exposure (90% discount) for the PAGA penalties
20 claim to be **\$55,110.00**. (*Id.*; *see also id.* at ¶¶ 17–22.)

21 Using these figures, **Plaintiff predicted the realistic maximum recovery for all**
22 **claims, including penalties, to be \$462,471.07.** (*Id.* at ¶ 23.) **This means that the \$250,000.00**
23 **gross settlement figure represents approximately 54.05% of the realistic (*risk-adjusted*)**
24 **maximum recovery.** (*Id.* at ¶ 23.) This is an excellent result for the Class. Indeed, because of
25

26 ¹ Following the Preliminary Approval Order, Phoenix Settlement Administrators processed the Class
27 Data and determined there are actually 281 Class Members who cumulatively worked 23,750.71
28 workweeks. (Declaration of Lluvia Islas of Phoenix Settlement Administrators in Support of Motion for
Final Approval of Class Action Settlement (“Islas Decl.”) ¶ 13.)

1 the proposed Settlement Agreement, Class Members will receive timely, guaranteed relief and
2 will avoid the risk of an unfavorable judgment. (*Id.*) **The Net Settlement Amount** currently
3 available for Settlement Payments to Participating Class Members and Aggrieved Employees is
4 **estimated to be \$124,329.06.**² (Islas Decl., ¶ 12.) Phoenix has reviewed the Class Data and
5 determined there are **282 Class Members** who cumulatively worked **23,750.71 workweeks**, and
6 **142 Aggrieved Employees** who cumulatively worked **3,816.86 pay periods.** (*Id.* at ¶¶ 14.) As
7 a result, **each Participating Settlement Class Member** is eligible to receive **an average**
8 **benefit of approximately \$433.56**, subject to wage-related tax withholdings, and **each**
9 **Aggrieved Employee** is eligible to receive **an average benefit of approximately \$17.61.**
10 (Moon Decl., ¶ 28.) Considering Class Members’ average hourly rate is \$20.45, the **average**
11 **Class benefit is approximately 21 hours of work.** (*Id.*) The percentage of liability exposure
12 recovered in this case exceeds percentages routinely approved by courts. (*See, e.g., Vical v.*
13 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL 5907869, *7–8
14 [approving wage and hour class action settlement amounting to 8.1% of potential damages]);
15 *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 [approving settlement which represented
16 “roughly one-sixth of the potential recovery”].) Given the litigation risks involved, the proposed
17 Settlement is well within the realm of being fair, reasonable, and adequate.

18 Among those matters considered during the course of settlement negotiations were the
19 strength of Plaintiff’s case versus the amounts offered in settlement; the risks, expenses, and
20 length of further litigation, including class certification and the appeals process; the present
21 state of the law as it applies to wage and hour class actions; the present value of a settlement
22 versus the long wait necessitated by any potential judgment in Class Members’ favor; the
23 burdens of proof necessary to establish liability against Defendant; and Defendant’s defenses to
24 the action. (Moon Decl., ¶¶ 6, 18–27.) These factors each indicated that the interests of Class
25

26
27 ² The Net Settlement Amount is \$250,000.00 minus: \$83,333.33 for Class Counsel attorneys’ fees,
28 \$17,587.61 for Class Counsel costs, \$7,500.00 for the Service Payment to the named Plaintiff, \$10,000.00
for the PAGA Amount, and \$8,750 for the requested Settlement Administration Costs. (*Id.*)

1 Members are best served by a settlement of this action in the manner and upon the terms set
2 forth in the Settlement Agreement.

3 The Settlement Agreement confers a gross benefit on the Class of \$250,000.00.
4 (Settlement Agreement, ¶ 26(c).) Moreover, the amounts to Class Members and Aggrieved
5 Employees will vary based on the duration of employment during the Class Period. (Settlement
6 Agreement, ¶¶ 26(i)–(j).) Thus, Class Members and Aggrieved Employees who worked longer
7 for Defendant during the Class Period will receive a benefit greater than the average amount.
8 (Moon Decl., ¶ 28.) According to Phoenix, the *highest* individual Settlement Class Payment
9 share to be paid is approximately \$1,208.36 and the *lowest* individual Settlement Class Payment
10 share to be paid is approximately \$0.72; and the *highest* individual PAGA Settlement Payment
11 share to be paid is approximately \$26.11 and the *lowest* individual PAGA Settlement Payment
12 share to be paid is approximately \$0.47. (Islas Decl., ¶¶ 13, 14.)

13 **B. The Settlement Reflects a Reasonable Compromise**

14 The Gross Settlement Amount represents a significant percentage of the maximum
15 realistic damages that may have been awarded to the Class if they had prevailed at trial. (Moon
16 Decl., ¶ 23.) **The \$250,000.00 gross settlement amount represents approximately 54.05%**
17 **of the \$462,471.07 realistic (*risk-adjusted*) maximum recovery for Class Members.** (*Id.* at ¶
18 23.) The Settlement, of course, reflects a compromise—the amount of settlement benefits takes
19 into account all the litigation risks related to obtaining class certification, proving Defendant’s
20 liability, and proving Class Members’ damages as well as the fact that continued litigation
21 would be expensive and substantially delay and reduce any recovery by the Class. (*Id.* at ¶¶ 18–
22 27.) In light of all the defenses asserted by Defendant which posed substantial litigation risks,
23 a compromise effectively awarding Class Members a significant percentage of the realistic
24 maximum value of their claims is eminently fair and reasonable.

25 Notably, the assigned certification probabilities far exceed the rate of certification in
26 contested motions in California over the past five years, based upon data available through the
27 California Courts website. (See Hilary Hehman, Findings of the Study of California Class
28 Action Litigation, 2000-2006, at C11 (March 2009), *available at*

1 <https://www.courts.ca.gov/documents/class-action-lit-study.pdf> [finding that only 21.4% of all
2 class actions were certified either as part of a settlement or as part of a contested certification
3 motion].) In other words, well under 20% of all class actions are certified by way of contested
4 motion.

5 To be sure, Defendants ultimately must pay less under the Settlement than they would
6 have had to pay if Plaintiff had achieved a judgment through trial. But an ideal settlement
7 requiring a defendant to pay the full amount of its potential damages is rarely achieved. As the
8 Ninth Circuit has observed, “the very essence of a settlement is compromise, ‘a yielding of
9 absolutes and an abandoning of highest hopes.’” (*Officers for Justice v. Civil Serv. Comm’n of*
10 *City & Cty. of S.F.* (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed settlement “is not to
11 be judged against a hypothetical or speculative measure of what might have been achieved by
12 the negotiators.” (*Id.* at p. 625.) A court’s “intrusion upon what is otherwise a private consensual
13 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
14 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
15 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
16 reasonable and adequate to all concerned.” (*Id.*)

17 **C. Plaintiff’s Counsel Have Substantial Class Action Experience**

18 Class Counsel have considerable experience and have demonstrated competence with litigating
19 wage and hour class actions. (Moon Decl., ¶¶ 34–48.) Class Counsel have substantial experience in all
20 facets of litigation in state and federal court, including discovery, law and motion, trial, appeals,
21 arbitration, and mediation. (Moon Decl., ¶¶ 34–48.) Class Counsel have litigated numerous class actions
22 on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling
23 responsibilities in numerous cases resulting in millions of dollars in class action settlements. (Moon Decl.,
24 ¶¶ 34–48.)

25 Based on Class Counsel’s experience as employment and class action attorneys, Class Counsel
26 are eminently qualified to evaluate the strength of Plaintiff’s claims, the strength of Defendant’s defenses
27 against certification and on the merits, and the fairness of the proposed Settlement Agreement. (Moon
28 Decl., ¶¶ 34–48.) Class Counsel’s opinion that final approval of the proposed Settlement Agreement,

1 which was reached after private mediation with professional neutral mediator Jeffrey Ross, is in the best
2 interests of Class Members in light of the significant risks of litigation is entitled to great weight. (*See*
3 *Kullar, supra*, 168 Cal.App.4th at p. 129 [“The court undoubtedly should give considerable weight to the
4 competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a
5 settlement agreement represents an arm’s length transaction entered without self-dealing or other
6 potential misconduct”].)

7 **D. The Response to the Settlement is Overwhelmingly Positive**

8 The deadline to opt-out from or submit a written objection to the proposed Settlement was July
9 22, 2024. (Islas Decl., ¶¶ 8-10.) According to Phoenix, the appointed Settlement Administrator, there
10 were zero written objections, and one opt-out request received. (*Id.*) Further, Phoenix had employed
11 reasonable methods to ensure the majority of the total 282 Class Members—whose identifies were
12 known—received the Notice by processing their addresses that were on file in Defendant’s employment
13 records against a National Change of Address (“NCOA”) database maintained by the U.S. Postal Service,
14 for purposes of updating and confirming their mailing addresses. (*Id.* at ¶ 4.) Of the 282 Notices mailed,
15 20 Notices were returned to Phoenix by the post office. (*Id.* at ¶ 6.) For the twenty (20) Notices returned
16 from the Post Office without a forwarding address, Phoenix attempted to locate a current mailing address
17 using idiCORE, one of the most comprehensive address databases available for skip tracing. (*Id.*) Of the
18 twenty (20) Notices that were skip traced, eighteen (18) updated addresses were obtained and the Notice
19 was promptly re-mailed to those Class Members via first class mail. (*Id.*) Thus, out of a total Settlement
20 Class size of 282, there is an overwhelmingly positive response from the Class, which strongly supports
21 final approval of the Settlement. (*See, e.g., In re Lifelock, Inc. Mktg. & Sales Practices Litig.* (D. Ariz.
22 Aug. 31, 2010, No. 08–1977–MHM) 2010 WL 3715138, *6 [finding relatively few objections and
23 requests for exclusion support approval of proposed settlement].)

24 Factors to be considered in evaluating a class action settlement include “the reaction of the class
25 members to the proposed settlement.” (*Kullar, supra*, 168 Cal.App.4th at p. 128.) Here, the reaction has
26 been overwhelmingly positive as out of the 282 Notices mailed, no written objections, and one opt-out
27 was received. (Islas Decl., ¶¶ 7-10.) Courts have approved class action settlements in lesser
28 circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D. Wash. March 26, 2001, No. C98–1646C,

C93–0178C) 2001 WL 34089697, *8 [finding “class members overwhelmingly support[ed] the settlement” where over 37,000 notices were sent out, 2,745 class members participated in the settlement, 9 objections were submitted, and there were 68 timely opt-outs (less than 1%) and over 20 additional defective or untimely opt-outs, and that “these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23”] [citing *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by objectors, considering “fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness,” court did not abuse its discretion in approving settlement]].)

Here, 99.65% of the total 282 Class Members remain in the Class. (Islas Decl., ¶13.) Because there were minimal issues with mailing Notice Packets to Class Members and the large majority (280 out of 282 = 99.29%) received notice, and no written objections, and one request for exclusion were received, the Court should find there is overwhelming support for the proposed Settlement by the Class.

IV. THE COURT SHOULD AWARD THE REQUESTED AMOUNTS OF ATTORNEYS’ FEES, COSTS, AND SERVICE PAYMENTS

Under the proposed Settlement Agreement, subject to the Court’s approval, Defendant agrees to pay Class Counsel their reasonable attorneys’ fees in an amount of up to \$83,333.33, which is 33 1/3% of the Gross Settlement Amount, and up to \$20,000.00 reimbursement for actual litigation costs. (Settlement Agreement, ¶ 26(m).) At this time, Class Counsel have incurred \$18,587.61 in actual costs. In addition, Defendant agrees not to oppose the payment of Settlement Administration Costs of up to \$8,750.00 and an Enhancement Payment of up to \$7,500.00 to Plaintiff from the Gross Settlement Amount. (Settlement Agreement, ¶¶ 26(n), (p).) Settlement Administration Costs have been billed for \$8,750.00, and Plaintiff hereby requests a service payment in the amount of \$7,500.00 for her time and effort, exposure to substantial risk in bringing and presenting the action, and for her general release of claims, both known and unknown, and waiver of section 1542 rights. (Moon Decl., ¶¶ 13, 15, Exh. 5.) The foregoing attorneys’ fees, costs, and service payments were disclosed to Class Members in the Notice. (Islas Decl., Exh. A.)

“In general, questions whether a settlement was fair and reasonable, . . . whether certification of

the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion.” (*Wershba v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 234–35.) “Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (*Id.* at p. 254; *see also Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)

A. Class Counsel Request an Award of Fees Based on the “Common Fund” Method

California courts have long awarded attorneys’ fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, “when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.” (*Id.* at p. 34.)

Class Counsel seek an award of attorneys’ fees on the “percentage of recovery/common fund” theory. The purpose of this approach is to “spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent, supra*, 557 F.2d at p. 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying the common fund doctrine include:

fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

(*Id.* at p. 111.)

Several courts have expressed frustration with the alternative “lodestar” approach for deciding

1 fee awards, which usually involves wading through voluminous and often indecipherable time records.
2 Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities*
3 *Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

4 **This court is compelled to ask, “Is this process necessary?” Under a**
5 **cost-benefit analysis, the answer would be a resounding, “No!”** Not
6 only do the *Lindy* and *Kerr–Johnson* analyses consume an undue amount
7 of court time with little resulting advantage to anyone, but, in fact, it may
8 be to the detriment of the class members.

9 (*Id.* at p. 1375 [emphasis added].) The percentage approach is preferable to the lodestar because: (1) it
10 aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of
11 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
12 demands on judicial resources. (*Id.* at pp. 1378–79.) California Courts now routinely use the percentage
13 of the common fund approach to determine the award of attorney’s fees. (*See, e.g., In re Pac. Enter. Sec.*
14 *Litig.* (2nd Cir. 1995) 47 F.3d 373, 378–79 [approving attorneys’ fee award of 33%].)

14 **1. The Requested Fee Award Is in Line with Typical Cases**

15 According to a leading treatise on class actions: “No general rule can be articulated on what is a
16 reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee
17 award from a common fund in order to assure that the fees do not consume a disproportionate part of the
18 recovery obtained for the class, although somewhat larger percentages are not unprecedented.”
19 (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 14.03.) Attorneys’ fees that are 50% of the fund
20 are typically considered the upper limit, with 30–40% commonly awarded in cases where the settlement
21 is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294,
22 297 [stating that most cases where 30–50% was awarded involved “smaller” settlement funds of under
23 \$10 million].)

24 Here, Plaintiff requests attorneys’ fees of 33 1/3% of the Gross Settlement Amount, which is in
25 line with the prevailing guidelines established under California case law and in academic literature and
26 is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11
27 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used,
28 fee awards in class actions average around one-third of the recovery.”].) Plaintiff respectfully requests

the Court approve the attorneys' fees payment as negotiated by the Parties and requested herein.

2. This Matter Involves a "Fee-Shifting" Provision of the Labor Code

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover their actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. (Moon Decl., ¶¶ 23–27.) In fact, prosecution of this action involved significant financial risk for Class Counsel. (*Id.* at ¶¶ 56–64.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 60–64.) Moreover, once Class Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns.

3. The Experience, Reputation, and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Moon Decl., ¶¶ 34–51.) Class Counsel have been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (Moon Decl., ¶¶ 34–48.) Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the proposed Settlement. (Moon Decl., ¶ 52.) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See, e.g.*, Moon Decl., ¶¶ 37, 43.) Therefore, the requested fee award is reasonable and fair.

1 **B. While the Lodestar Method Is Not Necessary in Common Fund Cases, Courts May**
2 **Perform a Cross-Check to Award Fees**

3 “Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.”
4 (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method
5 as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases.
6 (*Id.* at p. 29.) Indeed, the lodestar approach: “(1) ‘increases the workload of an already overtaxed judicial
7 system,’ (2) is ‘insufficiently objective and produce[s] results that are far from homogenous,’ (3) ‘creates
8 a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,’ (4)
9 ‘is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement
10 fund or the amounts recovered by the plaintiffs or of an overall dollar amount,’ (5) ‘encourages lawyers
11 to expend excessive hours, and . . . engage in duplicative and unjustified work,’ (6) ‘creates a disincentive
12 for the early settlement of cases,’ (7) deprives trial courts of ‘flexibility to reward or deter lawyers so that
13 desirable objectives, such as early settlement, will be fostered,’ (8) ‘works to the particular disadvantage
14 of the public interest bar,’ and (9) results in ‘confusion and lack of predictability.’” (*Id.* [quoting Third
15 Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

16 Although California Courts support the common fund doctrine, the lodestar method can be used
17 to cross-check fee awards. “It may be appropriate in some cases, assuming the class benefit can be
18 monetized with a reasonable degree of certainty, to ‘cross-check’ or adjust the lodestar in comparison to
19 a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of
20 fees freely negotiated in the legal marketplace in comparable litigation.” (*In re Consumer Privacy Cases*
21 (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao, supra*, 82 Cal.App.4th at pp. 49–50].)

22 Applying the lodestar method is a two-step process. The first step is to multiply the number of
23 hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the
24 lodestar to account for various factors. (*Id.* at p. 556.) “The purpose of such adjustment is to fix a fee at
25 the fair market value for the particular action. In effect, the court determines, retrospectively, whether the
26 litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the
27 unadorned lodestar in order to approximate the fair market rate for such services.” (*Id.*) “Under certain
28 circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit

analysis.” (*Id.* at pp. 556–57.) Further, “California case law permits fee awards in the absence of detailed time sheets.” (*Wershba, supra*, 91 Cal.App.4th at p. 255.)

Here, Moon Law Group’s current lodestar is no less than \$91,040.00, which is based on approximately 139.3 hours of attorney time at their customary hourly rates. (Moon Decl., ¶ 55.) Additionally, Class Counsel estimate they will devote a minimum of 10 hours additional to this litigation that are not reflected in the foregoing lodestar, including time to obtain and monitor final approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to Class Member inquiries, and communicate with Plaintiff regarding the case. (Moon Decl., ¶ 57.) In comparison to the requested amount of \$83,333.33 to Moon Law Group for attorneys’ fees, its lodestar represents a negative multiplier. (Moon Decl., ¶ 58.) Applying a multiplier here to Class Counsel is reasonable and appropriate, although not requested, based on the contingent risk that Class Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Class and State of California as a result of the proposed Settlement Agreement, and the skill displayed by Class Counsel. (Moon Decl., ¶ 59.) Accordingly, Plaintiff’s total request for \$83,333.33 in attorneys’ fees is reasonable under the lodestar method.

C. Class Counsel’s Costs Are Reasonable

Class Counsel are entitled to recover the out-of-pocket costs and litigation expenses they reasonably incurred in investigating, prosecuting, and settling this case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.) Accordingly, the proposed Settlement Agreement provides for reimbursement of costs up to \$20,000.00. As of the drafting of this motion, Class Counsel seek reimbursement of actual costs in the cumulative amount of \$18,587.61. (Moon Decl., ¶ 14, Exh. 4.) These costs were reasonably and actually incurred in prosecuting this action on behalf of the Class, are below the maximum allocation under the Settlement Agreement, and thus should be reimbursed in full. (Moon Decl., ¶¶ 14, 62.)

D. The Court Should Award Plaintiff the Requested Service Payments

Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412; *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 806; *see In re Cont’l Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d

566, 571 [“Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit could be thought the equivalent of the lawyers’ nonlegal but essential case-specific expenses, such as long-distance phone calls, which are reimbursable.”].) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958–59.) “[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 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 (or lack thereof) enjoyed by the class representative as a result of the litigation.” (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394–95 [holding that trial court did not abuse its discretion in awarding enhancements of \$10,000 to each of the four named plaintiffs].)

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides that “[i]t is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless, the California Supreme Court has noted that “retaliation against employees for asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the Settlement Agreement here, subject to the Court’s approval, Defendants agree to pay Enhancement Payment in the amount of \$7,500.00 to Plaintiff. (Settlement Agreement, ¶ 26(n).) Class Counsel represent Plaintiff has devoted a great deal of time and work assisting counsel in the case and communicated with counsel very frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶

30–33.) The requested amounts are reasonable, particularly in light of the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶¶ 23–33.)

Indeed, when compared with the amounts awarded in typical class action cases, the amounts requested here are particularly reasonable. A 2006 study examining the average incentive award given to class action plaintiffs from 1993 to 2002 found that the “average award per class representative was \$15,992 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.) The same study found that named plaintiffs in employment discrimination class actions received an average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1333.) The authors of the study found that higher awards in employment cases reflected the “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

V. THE SETTLEMENT SATISFIES CODE OF CIVIL PROCEDURE SECTION 384

In pertinent part, the Code of Civil Procedure section 384 requires a court to amend judgment:

to direct the defendant to pay the sum of the unpaid residue or unclaimed or abandoned class member funds, plus any interest that has accrued thereon, to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.

(Civ. Proc. Code § 384(b).)

Here, the Settlement Agreement provides that Settlement Payment checks will remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member within that time, and the Class Member’s relevant claims will remain released by the Settlement. Settlement Payment checks which have expired will not be reissued. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void date,

1 shall be transmitted to a *cy pres* recipient, approved by the Court. (Settlement Agreement, ¶¶
2 34-35.) This Court preliminarily approved Legal Aid at Work as the *cy pres* recipient, and
3 should order and adjudge that any unpaid residue be disbursed to the same.

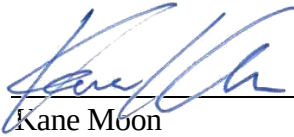
4 **VI. CONCLUSION**

5 For the foregoing reasons, Plaintiff respectfully requests the Court grant Final Approval of the
6 proposed Settlement Agreement.

7
8 Respectfully submitted,

9 Dated: October 15, 2024

MOON LAW GROUP, PC

10
11 By:  _____

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