

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

Attorneys for Plaintiff
GABRIELA OROPEZA

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

Attorneys for Plaintiff
GABRIELA OROPEZA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

GABRIELA OROPEZA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SPECIALTY COATING SYSTEMS, INC., a
Delaware corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CIVSB2314473

*[Assigned for All Purposes to Hon. Christian
Towns, Dept. S-26]*

**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: April 3, 2025
Time: 8:30 a.m.
Dept.: S-26

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

3 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April
4 3, 2025 at 8:30 a.m. in Department S-26 of the above-entitled Court, located at 247 West Third Street,
5 San Bernardino, California 92415, Plaintiff Gabriela Oropeza (“Plaintiff”), individually and on behalf of
6 a class of similarly situated individuals, will and hereby does move this Court for:

- 7 1. Confirming the certification of the Settlement Class for settlement purposes under Section 382
8 of the California Code of Civil Procedure;
- 9 2. Confirming the appointment of Plaintiff Gabriela Oropeza as Class Representative for
10 settlement purposes;
- 11 3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and
12 Paul K. Haines of Haines Law Group as Class Counsel for settlement purposes;
- 13 4. Granting final approval of the Stipulation of Class Action and PAGA Settlement (herein
14 “Settlement”);
- 15 5. Approving an award of \$98,053.00 in attorneys’ fees to Class Counsel;
- 16 6. Approving an award of \$19,181.50 in costs to Class Counsel;
- 17 7. Approving an award of \$6,750.00 in costs to Phoenix Settlement Administrators for its
18 settlement administration services;
- 19 8. Approving an incentive payment of \$7,500.00 to Plaintiff Gabriela Oropeza for her services as
20 Class Representative;
- 21 9. Approving an award of \$15,000.00 to the Labor & Workforce Development Agency
22 (“LWDA”);
- 23 10. Approving an award of \$5,000 to the PAGA Employees; and
- 24 11. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action
25 Settlement and Final Judgment filed concurrently herewith.

26 //

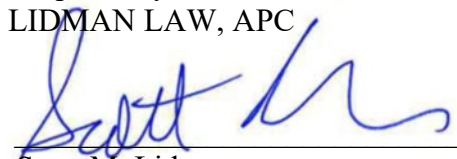
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1 This Motion is based on this notice of motion, the attached memorandum of points and
2 authorities attached hereto, the declarations of Scott M. Lidman, Milan Moore, Plaintiff,¹ and Kevin Lee
3 of Phoenix Settlement Administrators, and the exhibits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

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8 Dated: March 11, 2025

Respectfully submitted,
LIDMAN LAW, APC

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10 By: 

Scott M. Lidman
Attorney for Plaintiff
GABRIELA OROPEZA

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28 ¹ The declaration of Plaintiff was originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed her declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Gabriela Oropeza (“Plaintiff”) submits this memorandum of points and authorities in
4 support of her motion for final approval of the class action settlement (the “Settlement”) with Defendant
5 Specialty Coating Systems, Inc. (hereinafter referred to as “Specialty Coating” or “Defendant”). The
6 Settlement Class is defined as: all current and former non-exempt employees of Specialty Coating
7 Systems, Inc. who worked at any time in California during the Class Period. The Class Period is June 27,
8 2019 through September 8, 2024.

9 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
10 Member is approximately \$1,876.59. This is a favorable resolution of the highly disputed wage and hour
11 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
12 preliminary approval on November 25, 2024, nothing has changed to impact the propriety, fairness,
13 adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and
14 of their projected Settlement payments, and as of the date of this filing, not one single Settlement Class
15 member has opted-out or submitted a written objection to the Settlement.

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

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 On June 27, 2023, Plaintiff filed a putative class action complaint against Defendant in San
26 Bernardino County Superior Court. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On
27 June 28, 2023, Plaintiff submitted a letter to the California Labor and Workforce Development Agency
28 (“LWDA”) and Specialty Coating regarding Defendant’s alleged Labor Code violations and her intent

1 to bring a claim for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). *See*
2 Settlement, Exh. A. On September 5, 2023, Plaintiff filed a First Amended Class and Representative
3 Action Complaint. Lidman Decl., ¶ 10. Plaintiff’s operative complaint alleges that Specialty Coating:
4 (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to
5 provide all legally required meal periods; (4) failed to authorize and permit all legally required rest
6 periods; (5) failed to provide accurate, itemized wage statements; (6) failed to reimburse all necessary
7 business expenditures; (7) engaged in unlawful business practices; and (8) is liable for civil penalties
8 under the PAGA. *Id.*

9 **A. Plaintiff’s Claims**

10 As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of
11 liability are related to Defendants’ alleged failure to pay for all time worked and failure to provide
12 Settlement Class Members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶¶ 11-
13 24. Plaintiff alleges that Defendant failed to compensate its non-exempt employees for all time worked.
14 *Id.* at ¶ 11. Specifically, Plaintiff alleges that Defendant would keep track of Plaintiff’s time worked and
15 would unlawfully round/shave time worked such that Plaintiff would not be fully paid for all time
16 worked. *Id.* This time-shaving and/or rounding practice utilized by Defendant was not even-handed over
17 time and would almost exclusively round and shave in Defendant’s favor such that Plaintiff was routinely
18 underpaid for all her time worked. *Id.*

19 Plaintiff alleges that she and Settlement Class Members were not provided with all legally-
20 required meal periods in compliance with California law due to Defendant’s unlawful meal period
21 policies/practices. Lidman Decl., ¶ 13. Due to work demands, Plaintiff was often prevented from taking
22 meal periods that commenced before the end of the 5th hour of work and/or which were at least 30
23 minutes in length. *Id.*

24 Plaintiff alleges that she and other Settlement Class Members were not authorized and permitted
25 to take all required rest periods due to Specialty Coating’s rest period policies/practices which fail to
26 authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman
27 Decl., ¶ 15. Specifically, Plaintiff worked shifts in excess of 3.5 hours, but was not authorized or
28 permitted to take a ten-minute paid rest period. *Id.*

1 Plaintiff further alleges that Specialty Coating issued inaccurate wage statements in violation of
2 Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages
3 described above. Lidman Decl., ¶ 17. Specifically, Plaintiff contends that this conduct violated Labor
4 Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours
5 worked and the rate at which they were being paid. *Id.*

6 Plaintiff alleges that Specialty Coating required her and the other settlement class members to use
7 their cellular phone for business purposes. Lidman Decl., ¶ 19. Despite knowing that putative class
8 members had incurred necessary business expenses to communicate with supervisors through their own
9 personal electronic devices with access to the internet access, Specialty Coating failed to reimburse
10 putative class members in violation of Section 2802 and *Cochran, supra*, 228 Cal. App. 4th at 1144.

11 Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code
12 violations. Lidman Decl., ¶ 21.

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

16 **B. Mediation and Settlement**

17 After agreeing to participate in early mediation, Specialty Coating informally produced
18 documents and information relevant to the claims alleged in advance of mediation, including without
19 limitation timekeeping and payroll data for a 25% sampling of the putative class. Lidman Decl., ¶ 24.
20 Additionally, Specialty Coating produced information and data points needed for a fruitful mediation,
21 including without limitation, the number of employees, workweeks at issue, pay periods at issue, meal
22 and rest period policies and procedures, and payroll policies. After a review and analysis of the
23 documents and information produced by Specialty Coating, Class Counsel drew on their extensive
24 experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery
25 allowed the parties to assess the merits and value of Plaintiff's claims and Specialty Coating's defenses
26 thereto, if a settlement could not be reached. *Id.*

27 On March 5, 2024, a mediation was held with Steven G. Mehta, Esq., a well-respected mediator.
28 Lidman Decl., ¶ 25. During mediation, the parties vigorously debated their opposing legal positions, the

likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution. In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Class Action and PAGA Settlement ("Settlement"). *Id.*

C. Preliminary Approval of Settlement

Plaintiff submitted the Stipulation of Settlement to the Court with her Motion for Preliminary Approval on August 9, 2024. Lidman Decl., ¶ 26. On November 25, 2024, the Court signed an Order Granting Preliminary Approval of the Settlement. *Id.*; Exh. A.

Plaintiff submitted the Settlement and the Court's Order Granting Preliminary Approval of the Settlement to the LWDA via the LWDA's website on August 9, 2024 and November 25, 2024, respectively. *See* Lidman Decl., ¶ 40; Exhs. D and E. Plaintiff will also provide the LWDA with a copy of the instant motion for final approval and supporting documents after the instant motion is filed and will file a supplemental proof of service prior to the hearing. Lidman Decl., ¶ 41.

On January 10, 2025, the Settlement Administrator mailed the Court-approved Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Settlement Award) in English and Spanish to the 76 Settlement Class Members, who had until March 11, 2025 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Yami Burns of Phoenix Settlement Administrators ("Burns Decl."), ¶ 8. As of the date of this filing, there have been **no disputes, no objections** and **no opt-outs** received. *Id.* at ¶¶ 13-15.

Plaintiff now respectfully submits the Settlement for this Court's final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

After the preliminary approval was granted, the Settlement Administrator advised the total number of workweeks worked is 9,232 during the Class Period confirming the escalator clause was not triggered. Burns Decl., ¶ 3. As a result, the Settlement Class is defined as: all current and former non-exempt employees of Specialty Coating Systems, Inc. who worked at any time in California during the Class Period. The Class Period is June 27, 2019 through September 8, 2024. Lidman Decl., ¶27; Burns Decl., ¶ 2.

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

2 The Settlement provides for Defendant to pay a Gross Settlement Amount of \$294,105.00. Burns
3 Decl., ¶ 12. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount
4 after deducting requested attorneys' fees (\$98,053.00) and verified costs (\$19,181.50), proposed Class
5 Representative Service Award to Plaintiff (\$7,500.00), Settlement Administration costs (\$6,750.00), and
6 PAGA payment to the LWDA and to PAGA Employees (\$20,000.00). *Id.* Based on these requested
7 amounts, the Net Settlement Amount is calculated to be approximately **\$142,620.50**. *Id.*

8 The Individual Settlement Awards shall be determined as follows:

- 9 i. The Net Settlement Amount shall be allocated to Settlement Class members who worked
10 during the Class Period, as follows: each participating Settlement Class member shall
11 receive a proportionate settlement share based upon the number of workweeks worked
12 as a non-exempt employee during the Class Period, the numerator of which is the
13 Settlement Class member's total workweeks worked as a non-exempt employee during
14 the Class Period, and the denominator of which is the total workweeks worked as non-
15 exempt employees by all Settlement Class members (who do not opt out) who worked
16 during the Class Period. *See* Settlement, ¶ 5.B.i.
- 17 ii. PAGA Amount: Five Thousand US Dollars and Zero Cents (\$5,000.00 USD) of the
18 Gross Settlement Amount has been designated as the "PAGA Amount" as described
19 above. Each PAGA Employee shall receive a portion of the PAGA Amount
20 proportionate to the number of pay periods that he or she worked during the PAGA Period
21 which will be calculated by multiplying the PAGA Amount by a fraction, the numerator
22 of which is the PAGA Employee's number of pay periods worked as an employee during
23 this time period, and the denominator of which is the total number of pay periods worked
24 by all PAGA Employees during this time period. *See* Settlement, ¶ 5.C.

19 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
20 allocated as follows: 67% as penalties and interest; and 33% as wages. Settlement, ¶ 5.E.

21 Defendants will pay the employer's share of payroll taxes separately from, and in addition to, the
22 Gross Settlement Amount. *See* Burns Decl., ¶ 15. Defendants agree to deposit the employer's share of
23 payroll taxes with Phoenix Settlement Administrators by the date on which it pays the Gross Settlement
24 Amount.

25 **C. Summary of Notice Process**

26 **1. Mailing of Notice Packets**

27 On December 30, 2024, Defendant provided Phoenix with data files containing the names, last
28 known addresses, social security numbers, and workweeks for each Class Member. Burns Decl., ¶ 4.
After performing address updates and verifications, Phoenix mailed the Notice Packet to the 76

1 Settlement Class Members on January 20, 2025 in English and Spanish. *Id.* at ¶ 8. Following the initial
2 mailing, 6 Notice Packets were returned to Phoenix by the Post Office. *Id.* at ¶ 9. After Phoenix
3 performed a Skip Trace on the six (6) Class Notices that were returned from the Post Office without a
4 forwarding address, of the six (6) Class Notices that were skip traced, six (6) updated addresses were
5 obtained and the Notice was promptly re-mailed to those Settlement Class members via first class mail.
6 *Id.* As of the date of filing this final approval motion, 0 Notice Packets remain undeliverable because no
7 forwarding address was provided and/or no new address could be located through Skip Trace. *Id.*

8 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
9 disputes was March 11, 2025. Burns Decl., ¶ 8.

10 As of the date of this filing, there were no disputes, objections and no opt-outs. *Id.* at ¶¶ 7-9.
11 Accordingly, as of the date of this Motion, the participation rate amongst the 76 Settlement Class
12 Members is 100% and the average estimated payment is \$1,876.59 with the highest estimated payment
13 to a Settlement Class Member being \$4,171.09 and the lowest estimated payment to a Settlement Class
14 Member being \$15.45. *Id.* at ¶¶ 7-13.

15 **D. Timing of Payments**

16 With the exception of the Settlement Administrator's fees, if required by the Settlement
17 Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement
18 fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and
19 PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement
20 Administrator within thirty (30) calendar days after the "Effective Date" which is defined as the latter of:
21 (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class
22 members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal
23 has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. Lidman Decl., ¶
24 13, Exh. 1 Settlement ¶ 4.B.

25 After disbursement, Settlement Class Members will have 180 days to cash their checks. *See*
26 Settlement ¶ 5.E. Funds remaining unclaimed will be distributed to the California State Controller's Office
27 – Unclaimed Property Fund in the name of the Settlement Class Member. *Id.*; Lidman Decl., ¶30.
28

1 **E. Notice of Judgment**

2 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class
3 members, the final judgment entered by the Court and any changes to the Final Approval hearing date or
4 location will be posted on the Settlement Administrator's website at [www.oropeza-v-specialty-](http://www.oropeza-v-specialty-coating.phoenixcases.com)
5 [coating.phoenixcases.com](http://www.oropeza-v-specialty-coating.phoenixcases.com). See Burns Decl., ¶6, Exh A.

6 **IV. ARGUMENT**

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

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

16 Here, this Court found that the Class meets all the requirements for class certification for
17 settlement purposes when it granted preliminary approval of the Settlement on November 25, 2024. See
18 Lidman Decl., ¶ 28; Exh. A. After the Court entered an order granting preliminary approval, no events
19 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
20 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement
21 Class Members have objected to any portion of the Settlement and no Settlement Class Member has
22 elected to opt-out of the Settlement. See Lee Decl., ¶¶ 13-15. This Court should therefore confirm its
23 conditional certification of the Settlement Class.

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

26 California courts have a strong policy in favor of settlement. See, e.g., *Stambaugh v. Superior*
27 *Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a
28 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*

1 *Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval
2 process consists of preliminary settlement approval, notice being given to class members, and a final
3 fairness and approval hearing being held, at which class members have the opportunity to be heard with
4 respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff
5 respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

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

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

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

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

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

6 As detailed in Plaintiff's Preliminary Approval Motion, there is significant risk of non-certification
7 and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example, with respect
8 to Plaintiff's unpaid wages claim, Specialty Coating contends that it compensated Settlement Class
9 members for all of their time worked, that its rounding practices were lawful, and any unpaid time was *de*
10 *minimis* and therefore non-compensable. Lidman Decl., ¶ 12. Specialty Coating further asserts that
11 Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be
12 required, and also that Specialty Coating's rounding mechanism was, according to it, allegedly facially
13 neutral. *Id.*

14 As for Plaintiff's meal period claims, Specialty Coating counters that it has always provided non-
15 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
16 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
17 than any policy or practice of Specialty Coating. Lidman Decl., ¶ 14. Specialty Coating also points out
18 that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to
19 "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have
20 always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Specialty Coating
21 contends there are no second meal period violations because the employee signed valid second meal period
22 waivers. Finally, Specialty Coating contends Plaintiff's meal period claim is not suited for class
23 certification and individual inquiries would be required to assess which employees took non-compliant
24 meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular
25 employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.*

26 As for Plaintiff's rest period claims, Specialty Coating contends it has always maintained and
27 enforced lawful rest period policies and practices, and that Settlement Class Members were authorized
28 and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 16.

1 Specialty Coating argues that Plaintiff's rest period claims are inherently unsuited for class treatment as
2 it requires an individualized inquiry into whether each Settlement Class member was in fact authorized
3 and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-
4 trials. *Id.*

5 As for Plaintiff's claim for wage statement penalties, Specialty Coating argues that its alleged
6 wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot
7 show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement
8 violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 18.

9 As for Plaintiff's unreimbursed expenses claim, Specialty Coating asserts that settlement class
10 members did not have to use their personal cellular phones to discharge their duties. Lidman Decl., ¶ 20.
11 Also given the wide array of cellular phone plans, Defendant contends that any expenses would be *de*
12 *minimis*.

13 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims,
14 Specialty Coating argues that Plaintiff's PAGA claim will fail for the same reasons that her underlying
15 claims will fail. Lidman Decl., ¶ 22. Specialty Coating also maintains that, given its good faith defenses,
16 this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find
17 Specialty Coating liable for any of Plaintiff's claims. *Id.*

18 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also
19 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
20 litigation. Lidman Decl., ¶ 23. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted
21 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages
22 figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
23 adequate, and reasonable in view of them.

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

27 Individual settlement payments will be calculated based on the number of weeks worked by each
28 Settlement Class Member during the Class Period. *See* Settlement, ¶ 5.B. This method of distribution
compensates Settlement Class Members based on the estimated extent of their injuries, as Settlement

Class Members who worked more, would have been subject to more of the alleged wage and hour violations than those who worked fewer weeks. Thus, the formula for compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

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

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, as of the filing of this Motion, not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member have elected to opt-out of the Settlement. In addition, 0 of the 76 Notice Packets were returned undeliverable. Burns Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

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

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

Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl., ¶ 40.

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

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

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

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

28 Here, Class Counsel’s fee request of \$98,053.00 (one-third of the Gross Settlement Amount) is
fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
“regardless 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);

1 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
2 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
3 small” and that in California, “courts usually award attorneys' fees in the 30-40% range in wage and hour
4 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
5 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
6 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
7 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 32. Thus, the percentage sought by
8 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

9 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
10 multiplying the number of hours reasonably expended by each attorney or legal staff member by their
11 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances
12 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
13 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24
14 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
15 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or
16 decrease a lodestar calculation”).

17 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
18 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
19 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
20 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
21 class actions such as this one, where the value of the benefit conferred to the class “can be monetized
22 with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of
23 the common fund to ensure that the fee awarded is reasonable and within the range of fees freely
24 negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th
25 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
26 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in
27 order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte*, 1 Cal.5th at 503-05.

28 In this case, Class Counsel have a lodestar of **\$130,230.50** which results in a multiplier of 1.32

times the \$98,053.00 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. The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. Lidman Decl., ¶ 35, Exh. C. Based on the *Laffey* Matrix, the hourly rate for a 25th year attorney is \$997, the hourly rate for a 17th year attorney is \$829, and the hourly rate for a 7th year attorney is \$508. *Id.*

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (25th Year Attorney)	\$900	61.2	\$55,080
Paul K. Haines (17th Year Attorney)	\$800	17.5	\$14,000
Milan Moore (7th Year Attorney)	\$650	89.9	\$58,435
Paralegals	\$175	15.5	\$2,712.50
Total Lodestar			\$130,230.50

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees).

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class Member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Lee Decl., ¶¶ 13-15. Additionally, the *average* settlement payment in this case of approximately \$1,182.73 is in line with, and 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

1 final approval of class action settlement where average recovery for each class member was
2 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted
3 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the
4 strength of the results achieved.

5 As discussed above, this case presented significant risk as to both class certification and merits
6 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
7 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
8 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
9 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
10 compensation for over two years. Lidman Decl., ¶ 30. During this time, Class Counsel have expended a
11 total of \$18,636.50 in actual costs and have devoted substantial time to this litigation and expect to incur
12 approximately \$545.00 in future costs for filing the instant motion, filing the final declaration regarding
13 distribution of settlement, service and messenger fees, postage fees, and/or court costs for future court
14 appearances for a total of \$19,181.50. Lidman Decl., ¶ 31; Exh. B. Class Counsel's efforts have included
15 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
16 Defendant's documents and policies, analyzing Settlement Class Members' timekeeping data and payroll
17 records, preparing for and attending mediation, negotiating and revising the long-form Settlement,
18 preparing this Motion, and otherwise litigating the case. See Lidman Decl., ¶ 32. Moreover, Class
19 Counsel have expended time, effort, and money that they could have expended on less risky cases instead.
20 Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on
21 class certification and/or merits issues, the contingent risk borne by Class Counsel was great. Lidman
22 Decl., ¶¶ 30-33.

23 Class Counsel's previous experience in litigating wage and hour class actions also supports the
24 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
25 hour class action litigation, with substantial experience litigating claims for meal and rest period
26 violations, and related penalties. See Lidman Decl., ¶¶ 3-8. They have been certified as class counsel in
27 numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the strengths
28 and weaknesses of the case against Defendants and the reasonableness of the Settlement. See Lidman

Decl., ¶ 34. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding Defendant's requirement to "provide" meal periods and "authorize and permit" rest periods, and the propriety of statutory penalties, to name just a few. Lidman Decl., ¶¶ 11-24. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should be approved.

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

Class Counsel seek to be reimbursed a total of \$19,181.50² in litigation costs. Class Counsel's request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Lidman Decl., ¶ 33; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class Member has objected to them, Plaintiff respectfully requests the Court should grant the request for actual costs incurred.

² Class Counsel have expended a total of \$19,167.78 in actual costs and anticipates incurring costs in the amount of \$545.00 for filing fees, service and messenger fees, and/or postage fees.

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

2 Plaintiff also requests that the Court approve \$6,750.00 in administration costs to the Settlement
3 Administrator, Phoenix. As detailed in the declaration of Yami Burns on Behalf of Phoenix submitted
4 herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating
5 the Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class
6 Member's individual settlement payment, updated addresses contained in the class data supplied by
7 Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 76 Settlement Class
8 Members in English and Spanish, kept the parties informed of any objections or requests for exclusion,
9 and have otherwise administered the Settlement. *See Burns Decl.*, ¶¶ 2-16. For these reasons, Phoenix's
10 requested costs are fair, reasonable, and adequate, and should be finally approved.

11 **F. Plaintiff's Requested Service Award Is Fair, Adequate, and Reasonable in View of**
12 **Plaintiff's Efforts and the Risks that She Assumed on Behalf of the Class**

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

24 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
25 \$7,500.00 because the request is reasonable given Plaintiff's efforts in this case and the risks she
26 undertook on behalf of Settlement Class Members. *Lidman Decl.*, ¶ 39; Declaration of Gabriela Oropeza
27 ("Oropeza Decl."), ¶¶ 6-11. Plaintiff provided substantial factual information and documents to Class
28 Counsel, attended multiple meetings with Class Counsel to discuss the claims and theories at issue in the

litigation, and was available during the mediation. *See* Lidman Decl., ¶ 39; Oropeza Decl., ¶¶ 6-10. The class has benefited from Plaintiff's actions as the average settlement amount is \$1,876.59.

Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize her and/or affect future employment. Oropeza Decl., ¶ 8. Plaintiff also understood the risk that she could be liable for Defendant's costs if she lost the case. *Id.* at ¶ 7. Plaintiff accepted these risks and burdens because she wanted Defendant to compensate its current and former employees for unpaid wages. *Id.* at ¶¶ 7-8. Plaintiff estimates she spent between 8-10 hours on activities related to this case. *Id.* at ¶ 10.

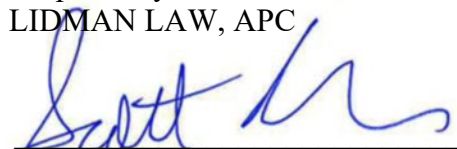
Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff, no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See* Burns Decl., ¶ 15. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved.

V. CONCLUSION

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

Dated: March 11, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: 

Scott M. Lidman
Attorney for Plaintiff
GABRIELA OROPEZA