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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEON GENTRY and DEON GENTRY, JR., as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

PINNACLE DRIVEAWAY, INC., a Wyoming
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. CIVSB2314325

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

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

Date: May 12, 2025
Time: 8:30 a.m.
Dept.: S-26

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 12, 2025 at 8:30 a.m. in Department S-26 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiffs Deon Gentry and Deon Gentry, Jr. (“Plaintiffs”), jointly and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

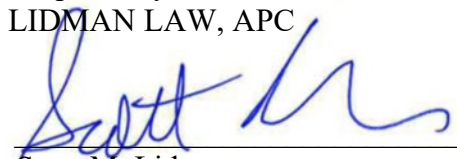
1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiffs Deon Gentry and Deon Gentry, Jr. as Class Representatives for settlement purposes;
3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law Group as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Class Action and PAGA Settlement (herein “Settlement”);
5. Approving an award of \$125,000.00 in attorneys’ fees to Class Counsel;
6. Approving an award of \$10,651.75 in costs to Class Counsel;
7. Approving an award of \$8,500.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving an incentive payment of \$7,500.00 to Plaintiff Deon Gentry for his services as Class Representative;
9. Approving an incentive payment of \$7,500.00 to Plaintiff Deon Gentry, Jr. for his services as Class Representative;
10. Approving an award of \$15,000.00 to the Labor & Workforce Development Agency (“LWDA”);
11. Approving an award of \$5,000 to the PAGA Employees; and
12. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

//

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, Plaintiffs,¹ and Mayra
3 Gonzalez of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and
4 other papers filed in this action, and on any further oral or documentary evidence or argument presented
5 at the time of hearing.

6
7
8 Dated: April 17, 2025

Respectfully submitted,
LIDMAN LAW, APC

9
10 By: 

Scott M. Lidman
Attorney for Plaintiffs
DEON GENTRY and DEON GENTRY JR.

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28 ¹ The declaration of Plaintiffs were originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiffs have re-filed their declarations with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Deon Gentry and Deon Gentry, Jr. (“Plaintiffs”) submit this memorandum of points and
4 authorities in support of their motion for final approval of the class action settlement (the “Settlement”)
5 with Defendant Pinnacle Driveway, Inc. (hereinafter referred to as “Pinnacle” or “Defendant”). The
6 Settlement Class is defined as: all current and former drivers classified by Defendant Pinnacle Driveway,
7 Inc. as independent contractors during the Class Period and: (i) who drove more than 50% of their miles
8 within California; and/or (ii) who did not drive a majority of miles in any single state but were assigned
9 to a California terminal. The Class Period is June 23, 2019 through June 30, 2024.

10 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
11 Member is approximately \$679.41. This is a favorable resolution of the highly disputed wage and hour
12 claims in this case and the significant litigation risks that Plaintiffs faced. Since this Court granted
13 preliminary approval on January 10, 2025, nothing has changed to impact the propriety, fairness,
14 adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and
15 of their projected Settlement payments, and as of the date of this filing, not one single Settlement Class
16 member has opted-out or submitted a written objection to the Settlement.

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

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 On June 23, 2023, Plaintiffs filed the instant putative class action complaint against Defendant
27 in San Bernardino County Superior Court alleging the following class action claims against Defendant:
28 (a) failure to pay all minimum wages owed; (b) failure to provide accurate, itemized wage statements;

(c) unlawful deductions from wages; (d) failure to reimburse all business expenses; (e) failure to pay all wages upon termination of employment; and (f) unfair business practices. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. After having exhausted his administrative remedies with the California Labor & Workforce Development Agency (“LWDA”) by way of a letter submitted to the LWDA on June 22, 2023, on August 28, 2023, Plaintiff filed a First Amended Complaint which added a cause of action seeking civil penalties under the California Labor Code Private Attorney General Act (“PAGA”). *Id.*

A. Plaintiff’s Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiffs’ primary theories of liability are related to Defendant’s alleged failure to pay for all time worked. Lidman Decl., ¶¶ 11-24. Plaintiffs allege that Defendant failed to compensate its non-exempt employees for all time worked. *Id.* at ¶ 11. Specifically, Plaintiff alleges that Defendant failed to account for unproductive time spent not actually driving. *Id.* As a result, Plaintiffs contend that Defendant failed to pay them and other independent contractor drivers for all minimum wages owed. *Id.*

Plaintiffs further allege that Defendant issued inaccurate wage statements in violation of Labor Code § 226. Lidman Decl., ¶ 13. Specifically, Plaintiffs contend that because they were misclassified as independent contractors, the pay statements they received did not fully comply with Labor Code § 226(a). *Id.*

Plaintiffs allege that Defendant is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages upon separation of employment. Lidman Decl., ¶ 15. Based on the data provided by Defendant, there were approximately 255 Settlement Class Members who separated their employment with Defendant during the relevant time period who could be entitled to waiting time penalties. *Id.*

Plaintiffs allege that Defendant required its employees to incur certain business expenses and/or had deductions taken from their pay to cover expenses. Lidman Decl., ¶ 17. Plaintiffs further allege that Defendants knew or should have known that Plaintiffs and the other drivers were necessarily incurring expenses due to their classification as independent contractors. *Id.*

Plaintiffs also seek civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations, including the misclassification itself. Lidman Decl., ¶ 19.

As explained *infra* and in Plaintiffs’ Motion for Preliminary Approval, Defendant denies Plaintiffs’ claims and asserts several affirmative defenses, both on the merits and with respect to class certification.

B. Mediation and Settlement

After agreeing to participate in private mediation, Defendant informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation the relevant independent contractor agreement, data regarding the amount of deductions made from payments to the class members, data regarding miles driven by the class members, data regarding pay rates and amount, the number of settlement statements provided during the relevant class and PAGA periods, as well as financial documents and information regarding Defendant’s financial status. Lidman Decl., ¶ 22. After a review and analysis of the documents and information produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs’ case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiffs’ claims and Defendant’s defenses thereto, if a settlement could not be reached. *Id.*

In light of Defendant’s financial status, the Parties selected former U.S. Bankruptcy Judge and current mediator, Hon. Mitchell Goldberg, as he could assist the Parties in evaluating Defendant’s financial status and ability to pay a settlement and/or eventual judgment. Lidman Decl., ¶ 23. After Defendant shared in advance of mediation various financial documents to Judge Goldberg and participated in several conference calls, on June 14, 2024, a mediation was held. *Id.* During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs’ claims, the legal basis for the claims and defenses, and Defendant’s financial stability. *Id.* Ultimately, through a mediator’s proposal, 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

Plaintiffs submitted the Stipulation of Settlement to the Court with their Motion for Preliminary Approval on August 29, 2024. Lidman Decl., ¶ 24. On January 10, 2025, the Court signed an Order Granting Preliminary Approval of the Settlement. *Id.*; Exh. A.

1 Plaintiffs submitted the Settlement and the Court's Order Granting Preliminary Approval of the
2 Settlement to the LWDA via the LWDA's website on August 29, 2024 and January 10, 2025,
3 respectively. *See* Lidman Decl., ¶ 38; Exhs. D and E. Plaintiffs will also provide the LWDA with a
4 copy of the instant motion for final approval and supporting documents after the instant motion is filed
5 and will file a supplemental proof of service prior to the hearing. Lidman Decl., ¶ 39.

6 On January 27, 2025, the Settlement Administrator mailed the Court-approved Notice Packet
7 (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of
8 Settlement Award) in English and Spanish to the 290 Settlement Class Members, who had until March
9 28, 2025 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Mayra
10 Gonzalez of Phoenix Settlement Administrators ("Gonzalez Decl."), ¶ 8. As of the date of this filing,
11 there have been **no disputes, no objections** and **no opt-outs** received. *Id.* at ¶¶ 13-15.

12 Plaintiffs now respectfully submit the Settlement for this Court's final approval.

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

14 **A. Settlement Class Definition**

15 After the preliminary approval was granted, the Settlement Administrator advised the total number
16 of class members was 290 confirming the escalator clause was not triggered. Gonzalez Decl., ¶ 3. As a
17 result, the Settlement Class is defined as: all current and former drivers classified by Defendant Pinnacle
18 Driveaway, Inc. as independent contractors during the Class Period and: (i) who drove more than 50% of
19 their miles within California; and/or (ii) who did not drive a majority of miles in any single state but were
20 assigned to a California terminal. The Class Period is June 23, 2019 through June 30, 2024. Lidman
21 Decl., ¶25; Gonzalez Decl., ¶ 2.

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

23 The Settlement provides for Defendant to pay a Gross Settlement Amount of \$375,000.00.
24 Gonzalez Decl., ¶ 12. The Net Settlement Amount is the amount remaining from the Gross Settlement
25 Amount after deducting requested attorneys' fees (\$125,000.00) and verified costs (\$10,651.75),
26 proposed Class Representative Service Awards to Plaintiffs (\$15,000.00), Settlement Administration
27 costs (\$8,000.00), and PAGA payment to the LWDA and to PAGA Employees (\$20,000.00). *Id.* Based
28

on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$196,348.25**.

Id.

The Individual Settlement Awards shall be determined as follows:

- i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of trips worked as an independent contractor driver during the Class Period that either began or ended in California, the numerator of which is the Settlement Class member's total trips worked as an independent contractor driver during the Class Period that either began or ended in California, and the denominator of which is the total trips worked as independent contractor drivers by all Settlement Class members (who do not opt out) who worked during the Class Period that either began or ended in California. *See* Settlement, ¶ 5.B.i.
- ii. PAGA Amount: Five Thousand Five Hundred Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of trips that he or she worked during the PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of trips worked as a non-exempt employee during the PAGA Period that either began or ended in California, and the denominator of which is the total number of trips worked by all PAGA Employees that either began or ended in California. The payments to PAGA Employees shall be reported as penalties on a Form 1099. *See* Settlement, ¶ 5.C.

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: 80% as penalties and interest; and 20% as wages. Settlement, ¶ 5.E.

Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. *See* Gonzalez Decl., ¶ 15. Defendant agree to deposits the employer's share of payroll taxes with Phoenix Settlement Administrators by the date on which it pays the Gross Settlement Amount.

C. Summary of Notice Process

1. Mailing of Notice Packets

On January 10, 2025, Defendant provided Phoenix with data files containing the names, last known addresses, social security numbers, and trips for each Class Member. Gonzalez Decl., ¶ 4. After performing address updates and verifications, Phoenix mailed the Notice Packet to the 290 Settlement Class Members on January 27, 2025 in English and Spanish. *Id.* at ¶ 8. Following the initial mailing, 57 Notice Packets were returned to Phoenix by the Post Office. *Id.* at ¶ 9. After Phoenix performed a Skip

Trace on the 57 Class Notices that were returned from the Post Office without a forwarding address, of the 57 Class Notices that were skip traced, 53 updated addresses were obtained and the Notice was promptly re-mailed to those Settlement Class members via first class mail. *Id.* As of the date of filing this final approval motion, 4 Notice Packets remain undeliverable because no forwarding address was provided and/or no new address could be located through Skip Trace. *Id.*

The deadline for Settlement Class Members to submit objections, requests for exclusion, or disputes was March 28, 2025. Gonzalez Decl., ¶ 8. On March 31, 2025, Phoenix was informed of an additional Settlement Class Member, who was inadvertently left off of the class list. Phoenix will mail a Class Notice to the additional Settlement Class Member and provide a supplemental declaration with the mailing date and response deadline prior to the final fairness hearing. *Id.* at ¶ 12.

As of the date of this filing, there were no disputes, objections and only one opt-out. *Id.* at ¶¶ 7-9. Accordingly, as of the date of this Motion, the participation rate amongst the 289 Settlement Class Members is 99.65% and the average estimated payment is \$679.41 with the highest estimated payment to a Settlement Class Member being \$12,754.86 and the lowest estimated payment to a Settlement Class Member being \$25.51. *Id.* at ¶¶ 7-14.

D. Timing of Payments

The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or all appeals have been dismissed; or (c) the final resolution overruling any objection and denying the basis of any appeal that has been filed. Settlement ¶ 4.B.

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

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.gentry-v-pinnacle-](http://www.gentry-v-pinnacle-driveway.phoenixcases.com)
5 [driveway.phoenixcases.com](http://www.gentry-v-pinnacle-driveway.phoenixcases.com). See Gonzalez 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 representatives' claims are typical of the class'
14 claims; and (4) the representatives 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 January 10, 2025. See
18 Lidman Decl., ¶ 26; 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 Gonzalez Decl., ¶¶ 13-15. This Court should therefore confirm
23 its 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, Plaintiffs
5 respectfully request 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 Plaintiffs maintain that their claims are
4 meritorious, Plaintiffs acknowledge that their position includes substantial risks and uncertainty, which
5 justifies a downward departure from the maximum exposure that Plaintiffs' calculated each claim carried.

6 As detailed in Plaintiffs' Preliminary Approval Motion, there is significant risk of non-certification
7 and/or not prevailing on the merits with respect to each of Plaintiffs' claims. For example, with respect
8 to Plaintiffs' unpaid wages claim, Defendant contends that it compensated Settlement Class members for
9 all of their time worked, as they were paid per trip which included each and every activity and minute they
10 spent performing their jobs. Lidman Decl., ¶ 12. Defendant further asserts that Plaintiff would be unable
11 to certify an unpaid wages class given the individualized inquiries that would be required. *Id.*

12 As for Plaintiffs' wage statement claims, Defendant argues that its alleged wage statement
13 violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or
14 any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by
15 Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 14.

16 As for Plaintiffs' claim for waiting time penalties, Defendant asserts it has strong defenses to the
17 waiting time claim because there exist good-faith disputes as to Plaintiffs' underlying claims, precluding
18 imposition of penalties. Lidman Decl., ¶ 16. Defendant also asserts that the exposure is highly inflated
19 because work for the drivers was very intermittent such that they did not regularly work, and that the
20 hourly rate is also highly inflated. *Id.*

21 As for Plaintiffs' claim for unreimbursed business expenses, Defendant contends that despite any
22 deduction, the class members received significantly more than minimum wage such that there can be no
23 liability since it is a matter of contract. Lidman Decl., ¶ 18. Defendant further contends that any
24 purportedly necessary expenses incurred by drivers were minimal. *Id.*

25 As for Plaintiffs' PAGA claim, Defendant argues that Plaintiffs' PAGA claim will fail for the same
26 reasons that his underlying claims will fail. Lidman Decl., ¶ 20. ("Because the underlying causes of action
27 fail, the derivative UCL and PAGA claims also fail."). Defendant also maintains that, given its good faith
28 defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to

find Defendant liable for any of Plaintiff's claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).

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

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

Individual settlement payments will be calculated based on the number of trips made by each 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 had more trips, would have been subject to more of the alleged wage and hour violations than those who had fewer trips. 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, 4 of the 290 Notice Packets were returned undeliverable. Gonzalez Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class

1 further confirms that the Settlement is fair, adequate, and reasonable.

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

4 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
5 their attorneys’ fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
6 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
7 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
8 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
9 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra,*
10 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

11 Plaintiffs have provided written approval of the split of attorneys’ fees in this action. Lidman
12 Decl., ¶ 40.

13 The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506
14 (2016), that “[t]he percentage of fund method survives in California class action cases.” Specifically, the
15 *Laffitte* Court held:

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

22 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
23 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
24 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
25 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
26 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
27 equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*
28 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method
and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery;
and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities*

1 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) (“The percentage-of-recovery method is generally favored
2 in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
3 counsel for success and penalizes it for failure.”) (citation omitted).

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

12 Here, Class Counsel’s fee request of \$125,000.00 (one-third of the Gross Settlement Amount) is
13 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
14 “regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
15 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
16 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
17 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
18 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
19 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
20 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
21 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
22 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 30. Thus, the percentage sought by
23 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

24 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
25 multiplying the number of hours reasonably expended by each attorney or legal staff member by their
26 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances
27 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
28 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24

Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

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

In this case, Class Counsel have a lodestar of **\$129,552.50** which results in a multiplier of 1.03 times the \$125,000.00 fee request. *See* Lidman Decl., ¶ 32. 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., ¶ 33, 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	77.1	\$69,390
Paul K. Haines (17th Year Attorney)	\$800	14.8	\$11,840
Milan Moore (7th Year Attorney)	\$650	69.9	\$45,435
Paralegals	\$175	16.5	\$2,887.50
Total Lodestar			\$129,552.50

The fee award requested here is justified because Class Counsel achieved a significant monetary

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

6 First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a
7 current participation rate of 100%, and not a single Settlement Class Member has objected to the
8 Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Lee Decl., ¶¶ 13-15.
9 Additionally, the *average* settlement payment in this case of approximately \$679.41 is in line with, and
10 above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v.*
11 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action
12 settlement approved where average class member recovery was approximately \$60); *Schiller v. David's*
13 *Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that
14 average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*,
15 Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting
16 final approval of class action settlement where average recovery for each class member was
17 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted
18 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the
19 strength of the results achieved.

20 As discussed above, this case presented significant risk as to both class certification and merits
21 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
22 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
23 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
24 representation of Plaintiffs, Class Counsel have borne all the costs of litigation without receiving any
25 compensation for over two years. Lidman Decl., ¶ 28. During this time, Class Counsel have expended a
26 total of \$10,106.75 in actual costs and have devoted substantial time to this litigation and expect to incur
27 approximately \$545.00 in future costs for filing the instant motion, filing the final declaration regarding
28 distribution of settlement, service and messenger fees, postage fees, and/or court costs for future court

appearances for a total of \$10,651.75. Lidman Decl., ¶ 29; Exh. B. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, reviewing Defendant's documents and policies, analyzing Settlement Class Members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. See Lidman Decl., ¶ 328. Moreover, Class Counsel have expended time, effort, and money that they could have expended on less risky cases instead. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great. Lidman Decl., ¶¶ 28-31.

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with substantial experience litigating claims for meal and rest period violations, and related penalties. See Lidman Decl., ¶¶ 3-8. They have been certified as class counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of the Settlement. See Lidman Decl., ¶ 32. 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 and the propriety of statutory penalties, to name just a few. Lidman Decl., ¶¶ 11-21. 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 \$10,651.75² in litigation costs. Class Counsel's

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.

request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Lidman Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiffs seek 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, Plaintiffs respectfully request the Court should grant the request for actual costs incurred.

E. The Court Should Finally Approve the Requested Administration Costs

Plaintiffs also request that the Court approve \$8,000.00 in administration costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Mayra Gonzalez on Behalf of Phoenix submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class Member’s individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 290 Settlement Class Members in English and Spanish, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Gonzalez Decl., ¶¶ 2-16. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be finally approved.

F. Plaintiffs’ Requested Service Awards Are Fair, Adequate, and Reasonable in View of Plaintiffs’ Efforts and the Risks that They Assumed on Behalf of the Class

Courts routinely approve service payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in

bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 service payment). In analyzing the requested service payment, courts consider the following factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804.

Here, analyzing those factors weigh in favor of approving Plaintiffs' requested service awards of \$7,500.00 each because the request is reasonable given Plaintiffs' efforts in this case and the risks they undertook on behalf of Settlement Class Members. Lidman Decl., ¶ 39; Declaration of Deon Gentry ("Gentry Decl."), ¶¶ 6-11; Declaration of Deon Gentry Jr. ("Gentry Jr Decl."), ¶¶ 6-11. Each of the Plaintiffs provided substantial factual information and documents to Class Counsel, attended multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, and were available during the mediation. *See* Lidman Decl., ¶ 39; Gentry Decl., ¶¶ 6-10; Gentry Jr Decl., ¶¶ 6-10. The class has benefited from Plaintiffs' actions as the average settlement amount is \$679.41.

Further, Plaintiffs understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize them and/or affect future employment. Gentry Decl., ¶ 8; Gentry Jr Decl., ¶ 8. Plaintiffs also understood the risk that they could be liable for Defendant's costs if they lost the case. *Id.* at ¶ 7. Plaintiffs accepted these risks and burdens because they wanted Defendant to compensate its current and former employees for unpaid wages. *Id.* at ¶¶ 7-8. Plaintiffs estimate they each spent between 15-20 hours on activities related to this case. *Id.* at ¶ 10.

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

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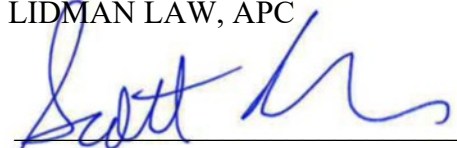
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1 **V. CONCLUSION**

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

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6 Dated: April 17, 2025

Respectfully submitted,
LIDMAN LAW, APC

7
8 By: 

Scott M. Lidman
Attorney for Plaintiffs
DEON GENTRY and DEON GENTRY JR.