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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ANA MARIA MENDOZA-HERNANDEZ, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

PACIFIC SNOW VALLEY RESORT, LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVSB2314151

[*Assigned for all purposes to the Hon. Joseph T. Ortiz, Dept. S-17*]

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: November 17, 2025
Time: 1:00 p.m.
Dept.: S-17

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 November 17, 2025 at 1:00 p.m. in Department S-17 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Ana Maria Mendoza-Hernandez ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Confirmation of the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirmation of the appointment of Plaintiff Ana Maria Mendoza-Hernandez as Class Representative for settlement purposes;
3. Confirmation of the appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC and Paul K. Haines of Haines Law Group as Class Counsel for settlement purposes;
4. The granting of final approval of the Stipulation of Settlement (herein "Settlement");
5. Approval of an award of $106,666.66 in attorneys' fees to Class Counsel;
6. Approval of an award of $8,695.28 in costs to Class Counsel;
7. Approval of an award of $7,950.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approval of an incentive payment of $10,000.00 to Plaintiff Ana Maria Mendoza-Hernandez for her services as Class Representative; and
9. The entering of final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is based on this notice of motion, the attached memorandum of points and authorities attached hereto, the declarations of Milan Moore, Scott M. Lidman, Tiara Gose-Hardy, Paul K. Haines, Plaintiff Ana Maria Mendoza-Hernandez,[1] and Lluvia Islas of Phoenix Settlement Administrators, and

[1] The declaration of Plaintiff Ana Maria Mendoza-Hernandez 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.

the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: October 20, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Milan Moore

Attorney for Plaintiff
ANA MARIA MENDOZA-HERNANDEZ

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Ana Maria Mendoza-Hernandez ("Plaintiff") submits this memorandum of points and authorities in support of her motion for final approval of the class action settlement (the "Settlement") with Defendant Pacific Snow Valley Resort, LLC ("Defendant"). The Settlement Class is defined as: all current and former non-exempt employees employed by Defendant in California during the period of June 21, 2019 to February 24, 2025.

In this non-reversionary Settlement, the average settlement payment to each Settlement Class Member is approximately $763.37. This is a favorable resolution of the highly disputed wage and hour claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted preliminary approval on June 12, 2025, nothing has changed to impact the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their projected Settlement payments, and as of the date of this filing, not a single Class Member has opted-out or submitted a written objection to the Settlement.

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

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 21, 2023, Plaintiff filed a class action Complaint against Defendant in San Bernardino County Superior Court in the matter entitled *Ana Maria Mendoza-Hernandez v. Pacific Snow Valley Resort, LLC*, Case No. CIVSB2314151 (the "Action") alleging the following class action claims: (1) failure to provide meal periods; (2) failure to authorize and permit rest periods; (3) failure to provide accurate, itemized wage statements; (4) failure to timely pay all wages upon termination; (5) failure to pay all vacation wages; and (6) unfair competition. *See* Declaration of Milan Moore ("Moore Decl."), ¶ 7. On March 25, 2025, to effectuate the terms of the Settlement, Plaintiff filed a First Amended Complaint adding a claim for civil penalties under the Private Attorneys General Act ("PAGA"). *Id*.

A. <u>**Plaintiff's Claims**</u>

As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary theories of liability are related to Defendant's alleged failure to provide meal periods, rest periods, and accurate, itemized wage statements. Moore Decl., ¶¶ 8-16. Plaintiff alleges that Defendant failed to provide its non-exempt employees all required meal periods. Moore Decl., ¶ 8. Specifically, Plaintiff alleges that Defendant failed to provide 30-minute meal periods before the end of the fifth hour of work and/or failed to provide a meal period at all. *Id*.

Plaintiff further alleges that Defendant failed to provide any rest periods on shifts worked in excess of 3.5 hours due to the work demands imposed. Moore Decl., ¶ 10.

Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor Code section 226 as a result of the alleged unpaid meal and rest period premium wages described above. Moore Decl., ¶ 12.

Plaintiff also alleges that Defendant is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages, i.e., meal and rest period premiums, upon the separation of employment. Moore Decl., ¶ 14.

As a result of the foregoing alleged Labor Code violations, Plaintiff seeks civil penalties under the PAGA. Moore Decl., ¶ 16.

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

B. <u>**Mediation and Settlement**</u>

After agreeing to participate in mediation, Defendant informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for the putative class, as well as written wage and hour policies. Moore Decl., ¶ 19. Additionally, Defendant produced information and data points needed for a productive mediation, including without limitation, the number of putative class members, workweeks at issue, pay periods at issue, and compensation policies. *Id*. 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 Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id*.

On November 26, 2024, a mediation was held with Jeffrey Fuchsman, Esq., a well-respected mediator. Moore Decl., ¶ 20. 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 accepted the mediator's proposal and agreed in principle on a class-wide resolution. *Id*. In the months that followed, the Parties finalized the terms of settlement and executed the Stipulation of Settlement ("Settlement"). *Id*.

C. <u>Preliminary Approval of Settlement</u>

Plaintiff submitted the Stipulation of Settlement to the Court with her Motion for Preliminary Approval on April 8, 2025. Moore Decl., ¶ 21. On June 12, 2025, the Court signed an Order Granting Preliminary Approval of the Settlement. *Id*.; Exh. A.

On August 6, 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 197 Settlement Class Members, who had until October 5, 2025 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Lluvia Islas of Phoenix Settlement Administrators ("Islas Decl."), ¶ 5. As of the date of this filing, there have been **<u>no objections</u>** and **<u>no opt-outs</u>** received. *Id*. at ¶¶ 8-10.

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

III. <u>SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS</u>

A. <u>Settlement Class Definition</u>

After the preliminary approval was granted, the Settlement Administrator advised the total number of workweeks worked was 12,464 confirming the escalator clause was not triggered. Islas Decl., ¶ 12.

As a result, the Settlement Class is defined as: all current and former non-exempt employees employed by Defendant in California during the period of June 21, 2019 to February 24, 2025. Moore Decl., ¶22.

B. Monetary Terms of the Settlement

The Settlement provides for Defendant to pay a Gross Settlement Amount of $320,000.00. Settlement, ¶ 4. The Net Settlement Fund is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees ($106,666.66) and verified costs ($8,695.28), proposed Class Representative Service Award to Plaintiff ($10,000.00), proposed payment to the LWDA for its share of civil penalties ($22,500.00), proposed payment to Aggrieved Employees for their share of civil penalties ($7,500.00), and requested Settlement Administration costs ($7,950.00). Islas Decl., ¶ 13. Based on these requested amounts, the Net Settlement Fund ("NSF") is calculated to be approximately **$156,688.06**. *Id*.

The Individual Settlement Awards from the NSF shall be determined as follows:

> Each participating Settlement Class member shall receive a proportionate settlement share based upon the number of actual number of workweeks worked during the Class Period, the numerator of which is the Settlement Class member's total actual workweeks worked during the Class Period, and the denominator of which is the total actual workweeks worked by all Settlement Class members who worked during the Class Period. *See* Settlement, ¶ 5.B.i.

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: 20 percent as wages, 40 percent as penalties, and 40 percent as interest. Settlement, ¶ 5.D.

Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. Settlement, ¶ 4.D. Defendant agrees to deposit the employer's share of payroll taxes with Phoenix Settlement Administrators by no later than the deadline for the ninth installment payment. Settlement, ¶ 4.B.

C. Summary of Notice Process

1. Mailing of Notice Packets

On July 23, 2025, Defendant provided Phoenix with data files containing names, last known addresses, Social Security numbers, the dates of employment and the number of workweeks worked by each Settlement Class Member, and the number of pay periods worked while employed in a position covered by the Settlement Class definition during the Class Period and PAGA Period ("Class Information"). Islas Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Notice Packet in English and Spanish to the 197 Settlement Class Members on August 6, 2025. *Id*. at ¶ 5. Following the initial mailing, 110 Notice Packets were returned to Phoenix by the Post Office. *Id*. at ¶ 6. After Phoenix performed a Skip Trace, 59 Notice Packets were re-mailed. *Id*. As of the date of filing this final approval motion, 51 Notice Packets remain undeliverable because no forwarding address was provided and/or no new address could be located through Skip Trace. *Id*. at ¶ 7.

The deadline for Settlement Class Members to submit objections, requests for exclusion, or disputes was October 5, 2025. Islas Decl., ¶¶ 8-10.

As of the date of this filing, there were no objections and no opt-outs. *Id*. at ¶¶ 8-10. Accordingly, the participation rate amongst the Settlement Class Members who received notice is 100 % and the average estimated payment is $763.37 with the highest estimated payment to a Settlement Class Member being $3,583.43 and the lowest estimated payment to a Settlement Class Member being $12.07. *Id*. at ¶ 14.

D. <u>Timing of Payments</u>

Defendant shall deposit with the Settlement Administrator the Gross Settlement Amount. Settlement ¶ 4.B. Defendant agrees to deposit the Gross Settlement Amount in nine (9) monthly equal installments of $35,555.56 each, with the first payment due within thirty (30) days of the Court entering an order granting preliminary approval. *Id*.

Payments to Participating Class Members and/or Aggrieved Employees will be dispersed within 17 days of Defendant's final installment payment. Settlement ¶ 5.C.

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*.

E. <u>Notice of Judgment</u>

As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class members, the final judgment entered by the Court and any changes to the Final Approval hearing date or

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location will be posted on the Settlement Administrator's website at mendoza-hernandez-v-pacific-snow-valley-resort.phoenixcases.com. *See* Settlement ¶ 11.C.

IV. ARGUMENT

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

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

Here, this Court found that the Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on June 12, 2025. *See* Moore Decl., ¶ 21; Exh. A. After the Court entered an order granting preliminary approval, no events have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement Class Members have objected to any portion of the Settlement and no Settlement Class Members have elected to opt-out of the Settlement. *See* Islas Decl., ¶¶ 8-10. This Court should therefore confirm its conditional certification of the Settlement Class.

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

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

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

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

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

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

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

As detailed in Plaintiff's Preliminary Approval Motion, there is significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example, with respect to Plaintiff's failure to provide meal periods claim, Defendant contends it has always maintained a lawful meal period policy and provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendant. Moore Decl., ¶ 9. Defendant points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Id.*; *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendant contends Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id*.

In regard to Plaintiff's failure to provide rest periods claim, Defendant contends that its policies and procedures authorized and permitted Settlement Class Members to take all off-duty rest periods in compliance with California law. Moore Decl., ¶ 11. Defendant also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would evolve into an unmanageable series of mini-trials. *Id*.

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

In regard to Plaintiff's failure to timely pay all wages upon termination claim, Defendant asserts it has strong defenses to waiting time penalties because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Moore Decl., ¶ 15; *see also* 8 Cal. Code Regs. §

13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed).

As for Plaintiff's claim for PAGA penalties, Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that her underlying claims will fail. Moore Decl., ¶ 17; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant also maintains that, given its good faith 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. *Id*.; *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 a reasonable compromise in view of the risks of further litigation. Moore Decl., ¶ 18. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages figures. *Id*. 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 workweeks worked by each Settlement Class Member during the Class Period. *See* Settlement, ¶ 5.B.i. 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, of the 146 Settlement Class Members who received Notice, not a single Settlement Class Member has objected to the Settlement and no Settlement Class Members have elected to opt-out of the Settlement. Islas Decl., ¶¶ 8-10. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

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

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. Moore Decl., ¶ 33.

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:

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

Id. at 503 (internal citation omitted); *see also, e.g.*, *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache 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 Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.") (citation omitted).

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

Here, Class Counsel's fee request of $106,666.66 (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); *see also*, *e.g.*, *Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27, 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour class actions…"); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience in similar wage and hour class action matters. *See* Moore Decl., ¶ 29. Thus, the percentage sought by Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

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

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

In this case, Class Counsel have a lodestar of **$152,700.00** which is 1.43 times more than the $106,666.66 fee request. *See* Moore Decl., ¶ 28. 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. *Id*., Exh. C. Based on the *Laffey* Matrix, the hourly rate for a 20+ year attorney is $1,141, the hourly rate for an 18th year attorney is $948, the hourly rate for a 9th year attorney is $839, and the hourly rate for a 6th year attorney is $581. *Id*.

Name	**Rate**	**Hours**	**Pre-Multiplier Lodestar**
Scott M. Lidman (27th Year Attorney)	$900	73.7	$66,330.00
Paul K. Haines (18th Year Attorney)	$800	15.4	$12,320.00
Milan Moore (9th Year Attorney)	$650	83.5	$54,275.00
Tiara Gose-Hardy (6th Year Attorney)	$525	31	$16,275.00
Paralegals	$200	17.5	$3,500.00
Total Lodestar			**$152,700.00**

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* Islas Decl., ¶¶ 8-10. Additionally, the *average* settlement payment in this case of approximately $763.37 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 final approval of class action settlement where average recovery for each class member was approximately $108). The fact that Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation for over two years. Moore Decl., ¶ 25. During this time, Class Counsel have expended a total of $8,245.28 in actual costs and have devoted substantial time to this litigation and expect to incur approximately $450.00 in future costs for filing the instant motion, filing the final declaration regarding distribution of settlement, service and messenger fees, postage fees, and/or court costs for future court appearances for a total of $8,695.28. *Id*.; Exh. B. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's documents and policies, analyzing Settlement Class Members' timekeeping data and payroll records, drafting a mediation brief, preparing for and attending mediation, reviewing and analyzing Defendant's financials, negotiating and revising the long-form Settlement, drafting the preliminary approval motion and attending the hearing, fielding calls from Class Members, communicating with the Settlement Administrator, preparing this Motion, and otherwise litigating the case. *See* Moore Decl., ¶ 24. 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. Moore Decl., ¶ 27.

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* Moore Decl., ¶¶ 2-5; Declaration of Scott M. Lidman ("Lidman

Decl."), ¶¶ 2-8; Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-4; and Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. 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 Defendant and the reasonableness of the Settlement. *See* Moore Decl., ¶ 26. 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 the propriety of statutory penalties and Defendant's requirement to "provide" meal periods and "authorize and permit" rest periods, to name just a few. Moore Decl., ¶ 26. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should be approved.

D. <u>The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable</u>

Class Counsel seek to be reimbursed a total of $8,695.28[2] in litigation costs. Class Counsel's request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Moore Decl., ¶ 25; 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

[2] Class Counsel have expended a total of $8,245.28 in actual costs and anticipates incurring costs in the amount of $450.00 for filing fees, service and messenger fees, and/or postage fees.

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.

E. <u>The Court Should Finally Approve the Requested Administration Costs</u>

Plaintiff also requests that the Court approve $7,950.00 in administration costs to the Settlement Administrator, Phoenix Settlement Administrators. As detailed in the declaration of Lluvia Islas on behalf of Phoenix Settlement Administrators ("Phoenix") submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Islas Decl., ¶ 2. 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 197 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* Islas Decl., ¶¶ 2-15. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. <u>Plaintiff's Requested Service Award Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that She Assumed on Behalf of the Class</u>

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.

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Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of $10,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf of Settlement Class Members. Moore Decl., ¶ 32; Declaration of Ana Maria Mendoza-Hernandez ("Mendoza-Hernandez Decl."), ¶ 8. Plaintiff 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 was available during the mediation. *See* Moore Decl., ¶ 32; Mendoza-Hernandez Decl., ¶¶ 2-11. The class has benefited from Plaintiff's actions as the average settlement amount is $763.37.

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. Mendoza-Hernandez Decl., ¶ 8. Plaintiff also understood the risk that she could be liable for Defendant's costs if she lost the case. *Id*. Plaintiff accepted these risks and burdens because she wanted Defendant to compensate its current and former employees for unpaid wages. *Id*. at ¶ 8. Plaintiff estimates she spent between 5-8 hours on activities related to this case. *Id*. at ¶ 9.

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* Islas Decl., ¶¶ 8-10. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved.

V. <u>APPOINTMENT OF RECEIVER</u>

On September 18, 2025, Plaintiff's counsel learned that on July 14, 2025, in connection with another pending matter involving a default on a commercial loan entitled *Hua Nan Commercial Bank, LTD. v. Pacific Snow Valley Resort, LLC*, San Bernardino County Case No. CIVSB2503742, a Receiver was appointed to take possession, custody and control of Defendant's real and personal property, including its bank accounts. Moore Decl., ¶ 34. As a result, Defendant has not made, and is not yet able to make, any payments towards the GSA. *Id*. And, the Receiver has indicated that given the amount of secured debt outstanding, it is unlikely that any funds will remain for unsecured creditors. *Id*. In addition to the secured debt, there are significant unpaid Transient Occupancy Taxes due to the City of Big Bear and capital repairs required to keep the property operating in compliance with local ordinances. *Id*.

Despite the appointment of a Receiver over Defendant's property, Plaintiff contends the Settlement should be finally approved. The Court found the terms of the Settlement to be within the range of reasonableness of a settlement and preliminarily granted approval of the Settlement. Moore Decl., ¶ 21. The Class Notice was also approved by the Court and mailed to the Settlement Class. *Id.*; Islas Decl., ¶ 5. Not one Settlement Class Member objected to the Notice. Islas Decl., ¶¶ 8-10. Without Final Approval of the Settlement and entry of an order and judgment, Plaintiff and the Class will almost certainly not receive any funds previously promised to them. To the contrary, with a Final Judgment, Plaintiff can make efforts to collect on the Judgment through various manners and attempt to classify the class as a secured creditor. While Plaintiff and the Settlement Class are awaiting the funding of the GSA and receipt of Individual Settlement Payments, their rights are unaffected, as their releases do not go into effect until Defendant fully funds the GSA. Moore Decl., ¶ 34; *see* Settlement, ¶ 3.D. As such, the Settlement should be finally approved.

VI. 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: October 20, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: Milan Moore
Milan Moore

Attorney for Plaintiff
ANA MARIA MENDOZA-HERNANDEZ