D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
David Keledjian (SBN 309135)
d.keledjian@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
David Arakelyan (SBN 337076)
e.geesaman@d.law
Norayr Zakaryan (SBN 356913)
n.zakaryan@d.law
450 N. Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff RASHEDA K. KIRBY,
on behalf of herself and others similarly situated

[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

RASHEDA K. KIRBY and AMOURA BURTON, on behalf of themselves and all others similarly situated, and the general public, Plaintiffs, vs. TROVE RECOMMERCE, INC., a Delaware corporation; TROVE, INC., a business entity of unknown form; YERDLE, INC., a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 23CIV04345 [Assigned for All Purposes to: Hon. Michael L. Mau, Dept. 20] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, CLASS REPRESENTATIVE SERVICE PAYMENTS, AND ATTORNEY'S FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES** (Filed concurrently with supporting Declarations and [Proposed] Judgment and Order) DATE: January 9, 2026 TIME: 2:00 p.m. DEPT: 20 Action Filed: September 13, 2023 Trial Date: Not Set

JUSTICE FOR WORKERS, P.C.
William C. Sung, SB# 280792
E-Mail: william@justiceworkers.com
Tiffany L. Luu, SB# 335127
E-Mail: tluu@justiceworkers.com
3600 Wilshire Boulevard, Suite 1815
Los Angeles, CA 90010
Tel: 323-922-2000
Fax: 323-922-2000

Attorneys for Plaintiff AMOURA BURTON

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court and California Code of Civil Procedure section 382, on January 9, 2026 at 2:00 p.m. in Department 20, located at Central Court, 800 North Humboldt St., San Mateo, California, 94401, Plaintiffs Rasheda K. Kirby and Amoura Burton ("Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for entry of an Order:

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 as the Class Representative for settlement purposes;

3. Confirming the appointment of David Yeremian, David Keledjian, David Arakelyan, and Enoch Kim of D.Law, Inc. and William C. Sung and Tiffany Luu of Justice for Workers, P.C. as Class Counsel;

4. Granting final approval of the Class Action and PAGA Settlement Agreement ("Settlement" or "Agreement");

5. Approving an award of $145,000.00 in attorney's fees to Class Counsel;

6. Approving an award of $17,150.72 in costs to Class Counsel;

7. Approving an award of $9,500.00 in costs to Phoenix Settlement Administrators for its settlement administration services;

8. Approving a service payment of $5,000.00 to each Plaintiff, totaling $10,000.00, for Class Representative Service Payments;

9. Approving a payment of $15,000.00 to the Labor & Workforce Development Agency ("LWDA") for its share of civil penalties under the Private Attorneys General Act ("PAGA");

10. Approving a payment of $5,000.00 to the Aggrieved Employees for their share of civil penalties under PAGA; and

11. Entering final judgment in the form of the Proposed Judgment and Order Granting

Final Approval of Class and PAGA Action Settlement filed herewith.

12. This Motion is made on the following grounds: (l) the Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure § 382; (2) Plaintiffs and Class Counsel continue to be adequate representatives of the Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested amounts for Class Counsel's attorneys' fees and costs, settlement administration costs, and the Class Representative service payment are all fair, adequate, and reasonable; and (5) in light of the foregoing, the Proposed Judgment and Order Granting Final Approval of Class and PAGA Action Settlement submitted herewith should be entered so as to give finality to, and allow for disbursements from, the Settlement.

13. This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of William C. Sung, Enoch J. Kim, Plaintiffs Rasheda K. Kirby and Amoura Burton, and Jarrod Salinas of Phoenix Settlement Administrators, and the exhibits attached thereto; the Agreement; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

Respectfully submitted,

DATED: December 15, 2025

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff Amoura Burton

Dated: December 15, 2025

D.LAW, INC.

By *<u>/s/ Enoch J. Kim</u>*______________________

Enoch J. Kim
Attorneys for Plaintiff Rasheda Kirby

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

FEDERAL CASES

STATUTES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Rasheda K. Kirby and Amoura Burton ("Plaintiffs") submit this Memorandum of Points and Authorities in support of Plaintiffs' Motion for Final Approval of Class and PAGA Action Settlement (the "Motion") with Defendant Trove Recommerce, Inc. fka Yerdle, Inc. ("Defendant") (together with Plaintiffs, the "Parties"). Under the Settlement, Defendant has agreed to pay a non-reversionary Gross Settlement Amount of $435,000.00 to the following Class comprised of 329 individuals:

> All current and former hourly-paid or non-exempt employees of Defendant in California during the Class Period of September 13, 2019 through June 10, 2024.

In this non-reversionary class and PAGA action settlement, all Participating Class Members will receive automatic payments without the need to submit a claim form, **resulting in an average Individual Class Payment of approximately $709.27 to each Participating Class Member**. This is an excellent result for the Class, especially in light of the significant litigation risks that Plaintiffs faced. Moreover, after receiving notice of the proposed Settlement and projected estimated Individual Class Payments, **not a single Class Member has objected to the Settlement or elected to opt-out of the Settlement, resulting in a 100% participation rate**.

As explained further below, the Court should grant Plaintiffs' Motion in its entirety because (1) the Class continues to meet the requirements for certification for settlement purposes under Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the requested amounts for attorneys' fees and costs, settlement administration costs, and class representative service payment are all fair, adequate, and reasonable. In light of the foregoing, Plaintiffs respectfully submit that the Court grant this Motion.

II. SUMMARY OF THE LITIGATION

A. BRIEF PROCEDURAL HISTORY

On September 13, 2023, Plaintiff Kirby filed a Class Action Complaint in Case No. 23CIV04345 against Defendant, alleging the following wage and hour violations: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Hourly Wages and

Overtime; (4) Failure to Pay Proper Sick Pay; (5) Failure to Pay Accurate Written Wage Statements; (6) Failure to Timely Pay All Final Wages; (7) Failure to Indemnify; (8) Unfair Competition. Declaration of William C. Sung ("Sung Decl."), ¶ 9. On December 13, 2023, Plaintiff Kirby filed a First Amended Complaint adding a ninth cause of action for penalties pursuant to the California Private Attorneys General Act ("PAGA"). *Ibid.*

On December 22, 2023, Plaintiff Burton filed a Class and Representative Action Complaint in Case No. 23-CIV-06108, alleging the following wage and hour violations: (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Necessary Business Expenses; (8) Unfair Competition; and (9) Civil Penalties Under PAGA. Sung Decl., ¶ 10.

Pursuant to Labor Code § 2699.3(a), Plaintiff Burton and Plaintiff Kirby gave timely written notice to Defendant and the LWDA by sending their PAGA Notices on August 22, 2023 and September 13, 2023, respectively. Sung Decl., ¶ 11.

On February 3, 2025, Plaintiffs filed a Consolidated Second Amended Complaint in this Court which consolidated the *Kirby* and *Burton* actions into one single class and PAGA representative action. Sung Decl., ¶ 12.

B. DISCOVERY, MEDIATION, AND PRELIMINARY APPROVAL

After filing the lawsuits, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting informal discovery, and meeting and conferring with defense counsel about the same; (2) reviewing and analyzing a sampling of time and pay records for the Class as well as employee handbooks, relevant policies and other documentation, including meal and rest break policies and timekeeping policies; (3) researching the applicable law and potential defenses; (4) hiring an expert to construct damage models based on interpretations of California law; and (5) reviewing information provided by Defendant at the mediation. Sung Decl., ¶ 13.

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. Sung Decl., ¶ 14. After Class Counsel analyzed the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. *Ibid.* Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. *Ibid.*

On May 10, 2024, the Parties participated in a full-day mediation, which was presided over by Brandon McKelvey, Esq., a respected and highly experienced mediator in wage and hour class actions. Sung Decl., ¶ 15. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. *Ibid.* The Parties reached a tentative class and PAGA settlement at the mediation. *Ibid*. The terms of the Settlement are in the operative Class Action and PAGA Settlement Agreement ("Settlement" or "Agreement"). *Ibid.*, **Exh. 1** (Agreement).

On July 10, 2025, Plaintiffs submitted the proposed Settlement to this Court with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. Sung Decl., ¶ 16. On August 1, 2025, the Court issued a Minute Order granting preliminary approval of the Settlement and ordering minor edits. *Id.,* **Exh. 2** (Order Granting Preliminary Approval). Then on September 22, 2025, the Court granted the Parties' Joint Stipulation to Modify Class Notice which addressed the minor edits ordered in the Court's August 1, 2025 Minute Order. *Id.*, **Exh. 3** (Order Granting Modification).

Relatedly, the Order Granting Preliminary Approval states in part: "Although these do not prevent preliminary approval, the following minor adjustments to the Settlement should be made prior to the final hearing: . . . The language in Plaintiffs general release should be more closely tied to the allegations in the SAC, as the following language in the release seems to run afoul of Amaro: "including, but not limited to: (a) all claims that are related to Plaintiffs' respective employment with Defendant." Kim Decl., Exh. 1, ¶ 5.1; *Amaro v. Anaheim Area Management, LLC*, (2021) 69 Cal.App.5th 521, 537-538.)" Plaintiffs respectfully submit that the Court erred in extending *Amaro* (which addressed the overbreadth nature of releases that applied to *absent class members*) to a general release that only Plaintiffs are providing in this Settlement (which is a matter of agreement between represented Parties in this Action). *See Amaro* 9 Cal.App.5th at 538 ("A class action settlement must be approved by the court to protect """class members . . . whose rights may not have been given due regard by the negotiating parties."""" . . . Consequently, courts must remain vigilant and ensure that class releases do not extend to claims that are beyond the scope of the allegations in the complaint.") (citations omitted); *compare* Agreement § 5.1 (Plaintiffs' General Release) *with* Agreement § 5.2 ("All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims, rights, demands, liabilities, and causes of action alleged or which could have reasonably been alleged based on the facts alleged in the Operative Complaint that accrued during the Class Period.") Accordingly, Plaintiffs request that the Court approve the Settlement, including a general release of claims which only Plaintiffs are providing as a matter of private agreement between the Parties.

III. SUMMARY OF THE SETTLEMENT AND NOTICE ADMINISTRATION

A. CLASS DEFINITION

The Class is comprised of: "All current and former hourly-paid or non-exempt employees of Defendant Trove Recommerce, Inc. fka Yerdle, Inc. in California during the Class Period of September 13, 2019 through June 10, 2024." Agreement, §§ 1.5, 1.12 (Ex. 1 to Sung Decl.).

B. MONETARY TERMS

The Settlement provides for Defendant to pay a non-reversionary Gross Settlement Amount of $435,000.00. Agreement, § 3.1. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees ($145,000.00) and litigation costs ($17,150.72), requested Class Representative Service Payments ($5,000.00 to each Plaintiff), settlement administration costs ($9,500.00), and the amount set aside as PAGA civil penalties ($20,000.00). Agreement, § 3.2; Sung Decl., ¶ 17, **Exh. 4** (Itemized Costs); Declaration of Enoch Kim ("Kim Decl."), ¶ 23, **Exh. 1** (Itemized Costs). Based on these requested amounts, the Net Settlement Amount is estimated at **$233,349.28**. Declaration of Jarrod Salinas of Phoenix Settlement Administrators ("Admin. Decl."), ¶ 13.

Each Individual Class Payment to Class Members will be determined by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Agreement, § 3.2.4. In addition, 25% of the amount designated as PAGA Penalties (i.e., $5,000.00) will be distributed to all Aggrieved Employees who worked for Defendant from

September 13, 2022 to June 10, 2024 (the "PAGA Period") based on the proportionate number of pay periods worked during the PAGA Period. Agreement, §§ 1.34, 3.2.5.1.

All Individual Class Payments from the Net Settlement Amount will be classified as 25% wages to be reported on a W-2 form, and 75% penalties and interest to be reported on a 1099 form. Agreement, § 3.2.4.1. Defendant's share of employer-side payroll taxes shall be paid by Defendant separate, and in addition to, the Gross Settlement Amount. Agreement, § 3.1.

C. SUMMARY OF THE NOTICE ADMINISTRATION

On September 10, 2025, Defendant's counsel provided the Administrator with the Class List consisting of 329 Class Members' names, social security numbers, last known mailing addresses, and dates of employment. Admin. Decl., ¶ 3. The Administrator conducted a National Change of Address ("NCOA") search to ensure the accuracy and validity of the addresses before mailing Class Notices. Admin. Decl., ¶ 4. If an updated address was found in the NCOA database, the Administrator utilized that address; if no updated address was found, the Administrator utilized the original address. *Ibid.* On October 1, 2025, the Administrator mailed the Class Notice in English and Spanish to the Class Members via U.S. First Class Mail. Admin. Decl., ¶ 5, **Ex. A** (Class Notice in English and Spanish).

The Administrator received 29 returned Class Notices as undeliverable. Admin. Decl., ¶ 6. The Administrator conducted a computerized skip trace on the returned Class Notices, found 25 updated addresses, and re-mailed the Class Notices to the updated addresses. *Ibid.* Ultimately, 4 Class Notices is considered undeliverable as an updated address could not be found through a skip trace. Admin. Decl., ¶ 7.

The Administrator received no objections, no requests for exclusion, and no workweek disputes. Admin. Decl., ¶¶ 8-10. Thus, the participation rate by Class Member is 100%. Admin. Decl., ¶ 11. The average estimated Individual Class Payment is approximately **$709.27**, with the highest estimated payment being **$1,961.62** and lowest estimated payment being **$27.76**. Admin. Decl., ¶ 14. Additionally, 211 Aggrieved Employees who were employed during the PAGA Period will receive a portion of the $5,000.00 PAGA Penalties. Admin. Decl., ¶ 15. The average Individual PAGA Payment is approximately $23.70 with the highest estimated payment being $33.73. Admin.

Decl., ¶ 15.

D. FUNDING OF THE SETTLEMENT AND UNCASHED SETTLEMENT CHECKS

Defendant shall deposit the Gross Settlement Amount and the employer side payroll taxes with the Administrator within 15 calendar days of the Effective Date. Agreement, § 4.3. Within 14 calendar days after Defendant funds the Gross Settlement Amount and employer's share of payroll taxes, the Administrator will disburse all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Agreement, § 4.4. After disbursement, Class Members will have 180 days to cash their checks. Agreement, § 4.4.1. Funds remaining unclaimed after 180 days shall be sent to the California State Controller's Office in the Class Member's name to be held as unclaimed property for the Class Member. Agreement, § 4.4.3.

IV. <u>LEGAL ARGUMENT</u>

A. THE SETTLEMENT MEETS ALL REQUIREMENTS FOR CLASS CERTIFICATION UNDER CODE OF CIVIL PROCEDURE § 382

Under Code of Civil Procedure § 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's claims; and (4) the representative will fairly and adequately represent the class's interests. *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. *See generally* Sung Decl., Exh. 2. Subsequent to the Court's Order granting preliminary approval, no events have cast doubt on the propriety of this determination, and in fact, the reaction of the Class has been overwhelmingly supportive of the Settlement, with not a single objection and not a single request for exclusion submitted, resulting in a 100% participating rate. *See* Admin. Decl., ¶¶ 8-9. This Court should therefore confirm its conditional certification of the Class.

B. THE SETTLEMENT 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* (1976) 62 Cal.App.3d 231, 236. 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* (1980) 103 Cal.App.3d 573, 578-79. 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. *Ibid*. Now that notice has been provided to the Class, Plaintiffs respectfully request that this Court finally approve the Settlement as fair, adequate, and reasonable.

1. <u>The Settlement Was Reached Through Arms-Length Negotiation by Experienced Counsel and Presumably Fair, Adequate, and Reasonable</u>

A class 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.* (1996) 48 Cal.App.4th 1794, 1802. 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* (1979) 89 Cal.App.3d 434, 438. In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

> [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 and give due regard to "what is otherwise a private consensual agreement between the parties." *Id*.

"In the context of a settlement agreement, the test is not the maximum amount a plaintiff 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.* (2001) 91 Cal.App.4th 224, 250. 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 Line Stewards, etc., Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109). In addition, courts review the discovery process and information received through it to aid them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-31. Information is sufficient where it allows the parties and the court to form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Clark v. Am. Residential Svcs. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that the parties can provide the Court with "a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated." *Kullar*, 168 Cal.App.4th at 132-33.

2. <u>The Settlement is Fair, Adequate, and Reasonable in Light of the Risks Faced by Plaintiffs</u>

While Plaintiffs steadfastly maintain Plaintiffs' claims are meritorious, Plaintiffs acknowledge that Plaintiffs' position included substantial risks and uncertainty, which justifies a downward departure from the maximum exposure each claim potentially carried.

As detailed in Plaintiffs' Motion for Preliminary Approval, there is a significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiffs' claims. Sung Decl., ¶ 18. For example, Plaintiffs alleged that Defendant failed to pay Plaintiffs and other Class Members minimum wages and overtime for all hours worked. *Ibid.* Defendant denied all allegations and contended that it paid for all reported hours worked, that Class Members were trained to record all hours worked, that it paid all wages owed at the proper rates, and that any bonuses or incentives paid to Class Members were discretionary in nature. *Ibid.* Defendant further argued that given its written policies and practices, any unrecorded hours were likely subject to individualized inquiry and unlikely to be certified. *Ibid.*

Plaintiffs argued that Defendant had a common practice and policy of denying compliant meal and rest periods. Sung Decl., ¶ 19. In response, Defendant contended that Class Members were given a reasonable opportunity to take their meal periods, and in fact received their meal periods most of the time. *Ibid.* Defendant also argued that its written meal period policies were valid and disseminated to all Class Members. *Ibid*. Defendant also contended that on the occasions when compliant meal periods were not provided, Class Members were paid premium pay in accordance with the law. *Ibid.* As to rest periods, Defendant maintained that it did provide the reasonable opportunity for Class Members to take duty-free rest breaks. *Ibid.* Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded, thereby making certification impossible. *Ibid.*

Plaintiffs contended that they and other Class Members incurred necessary business-related expenses, including the use of their personal cell phones for work. Sung Decl., ¶ 20. Defendant contends that Plaintiffs and Class Members were not required to use their personal cell phones for work and that any such expenses are not required to be reimbursed under the law. *Ibid.*

As to Plaintiffs' derivative claims for statutory waiting time and wage statement penalties under Labor Code §§ 203 and 226(e), Defendant denies liability for waiting time and wage statements, and argues that it possesses strong, good faith defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties that are only available for "willful" failure to pay wages. Sung Dec., ¶ 21. Defendant further maintains that any alleged wage statement violations were not "knowing and intentional," and that Plaintiffs cannot show the Class "suffer[ed] injury" due to these alleged violations as required by Labor Code § 226(e) for the imposition of penalties. *Ibid.* Defendant relies on *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, for the proposition that an employer's good-faith defenses precludes a "willfulness" finding under Labor Code § 203 and a "knowing and intentional" finding under Labor Code § 226(e) for the imposition of statutory penalties. Sung Dec., ¶ 21.

/ / /

Finally, with respect to Plaintiffs' claim for civil penalties under PAGA, since Plaintiffs' PAGA claim is derivative of Plaintiffs' underlying wage claims, Defendant asserts the PAGA claim would fail with those claims. Sung Dec., ¶ 22; *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 further 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 Plaintiffs' claims. Sung Dec., ¶ 22; *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 by over 82% in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

These considerations not only bore heavily on the Parties' negotiations, but also confirm that the Settlement is a fair and reasonable compromise in view of the risk of further litigation. As detailed in Plaintiffs' Motion for Preliminary Approval, Plaintiffs carefully vetted the claims at issue and conducted a detailed statistical analysis of classwide data with the help of a retained expert to arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate the Settlement is fair, adequate, and reasonable in view of them.

3. <u>The Settlement Fairly, Reasonably, and Adequately Compensates Class Members</u>

As noted, the Individual Class Payments and Individual PAGA Payments will be calculated based on the proportionate number of workweeks worked by each Participating Class Member during the Class Period and based on proportionate number of pay periods worked by each Aggrieved Employee during the PAGA Period, respectively. Agreement, §§ 3.2.4, 3.2.5.1. This method of distribution compensates Class Members based on the estimated extent of their injuries, as Class Members who worked more workweeks or pay periods would have been subject to more of the alleged wage and hour violations than those who worked fewer workweeks. Thus, the formula for compensating Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

4. <u>The Absence of Any Objections or Opt Outs Confirms that the Settlement is Fair, Adequate, and Reasonable</u>

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk*, 48 Cal.App.4th at 1801. The absence 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, not a single Class Member has objected to the Settlement or elected to opt-out, resulting in a 100% participation rate. Admin. Decl., ¶¶ 8-9. This extremely favorable response of the Class further confirms that the Settlement is fair, adequate, and reasonable.

C. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AS A PERCENTAGE OF THE COMMON FUND CONFIRMED BY A LODESTAR "CROSS-CHECK"

Plaintiffs and the Class, as the prevailing parties in settlement, are entitled to recover their attorney's fees and costs for their wage claims. An attorney's fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. S*ee e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Cmmty. for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53; *see also* Code Civ. Proc. § 1021.5. Here, Plaintiffs submit that Plaintiffs are entitled to recover attorneys' fees under the common fund theory, as confirmed by a lodestar "cross-check."

1. <u>Under the Common Fund Doctrine, It Is Proper to Compensate Class Counsel Based on a Percentage of the Recovery Obtained for the Class</u>

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. *Wershba*, 91 Cal.App.4th at 254 (recognizing the "percentage of recovery" method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 that "[t]he percentage of fund method survives in California class action cases." Our Supreme 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; *see also e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ("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* (1982) 32 Cal.3d 621, 627 (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.* (6th Cir. 1993) 9 F.3d 513, 516 (percentage of fund method more accurately reflects the results achieved for the putative class 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. Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, 300 ("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.").

Here, Class Counsel's fee request of **$145,000.00** (one-third of the Gross Settlement Amount) is fair and reasonable based on a percentage of the recovery. First, "regardless 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* (2008) 162 Cal.App.4th 43, 66, n.11. This is also consistent with Class Counsel's experience in similar matters. *See* Sung Decl., ¶ 23; Kim Decl., ¶ 14. Thus, the percentage sought by Class Counsel (the same percentage approved in *Laffitte*) is reasonable.

2. <u>The Fee Request Is Also Reasonable Based on a Lodestar "Cross-Check"</u>

The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess the reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court calculates counsel's lodestar and determines whether the "lodestar multiplier" needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th 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 the 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.").

Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the contingent nature of the case and the degree of success achieved. *See Serrano*, 20 Cal.3d at 48-49; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92 Cal. App. 4th 819, 834 ("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*, 162 Cal.App.4th at 49-50 (approving multiplier of about 2.5); *Coalition for L.A. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving multiplier of about 12.8). 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," the 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* (2009) 175 Cal.App.4th 545, 557.

Here, Plaintiffs' counsel's combined lodestar is **$123,395.00**, broken down as:

Justice for Workers, P.C.	**Laffey Matrix Fee**	**Actual Billing Rate**	**Hours Billed**	**Lodestar**
William C. Sung (14th Year Attorney)	$948	$850	49.40	$41,990.00
Tiffany L. Luu (5th Year Attorney)	$581	$500	30.30	$15,150.00
TOTAL:			**79.70**	**$57,140.00**

Sung Decl., ¶¶ 24-26.

/ / /

D.Law, Inc.	Laffey Matrix Fee	Actual Billing Rate	Hours Billed	Lodestar
Enoch J. Kim (17th Year Attorney)	$948	$1,045.00	31.8	$33,231.00
Hrag Alexanian (3rd Year Attorney)	$473	$475.00	26.2	$12,445.00
David Arakelyan (5th Year Attorney)	$581	$585.00	10.9	$6,376.50
Lana Hovhannisyan (1st Year Attorney)	$473	$475.00	0.1	$47.50
Norayr Zakaryan (1st Year Attorney)	$473	$475.00	29.8	$14,155.00
TOTAL:			**98.8**	**$66,255.00**

Kim Decl., ¶¶ 21-22.

Thus, Plaintiffs' counsel's requested fee award represents a **1.18** lodestar multiplier. Sung Decl., ¶ 24. Additionally, Plaintiffs' counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. Sung Decl., ¶ 27. These additional hours will include time spent to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiffs regarding the case. *Ibid.* Plaintiffs' counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay.

The amount of fees requested under the Settlement is warranted based on the contingent risk that Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiffs' counsel. Thus, the request for attorneys' fees satisfies a lodestar check. Accordingly, the Court should find that the circumstances of the present case justify an award of 33 1/3% of the Gross Settlement Amount for attorneys' fees.

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the 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.* (9th Cir. 2002) 290 F.3d 1043, 1048-51 (finding that exceptional results in a contingency case, significant risk, and the absence of supporting precedents, are proper considerations in awarding attorney's fees). Class Counsel negotiated a substantial recovery for the Class, resulting in a **100%** participation rate, and not a single Class Member objected to the Settlement, including Class Counsel's requested fees.

In addition, the average estimated Individual Class Payment in this case of **$709.27** far exceeds average payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.* (E.D. Cal. 2008) No. 2:06-CV-02674-JAM-DAD (wage and hour class action settlement approved where average class member recovery was approximately $60); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (finding that average payment to class members of less than $200 was a "good" result); *Williams v. Centerplate, Inc.* (S.D. Cal. Aug. 26, 2013) No. 11-CV-2159 HKSC, 2013 WL 4525428 (granting final approval of class action settlement where average recovery for each class member was approximately $108 and describing result as "very favorable"). The fact that Class Counsel achieved these results in the face of serious defense challenges and in an uncertain legal landscape, confirms the strength of the results achieved.

As noted, this case presented significant risk as to both class certification and prevailing on the merits. 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 Plaintiffs in this litigation, Class Counsel have borne all the costs of litigation since the filing of the Action without receiving any compensation to date. *See* Sung Decl., Sung Decl., ¶ 28. During this time, Plaintiffs' counsel have incurred and/or will incur a combined **$17,150.72** in litigation costs, and devoted substantial time to this litigation. *Ibid*; Kim Decl., ¶¶ 21-23. 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 counsel in this case was great.

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 two decades of combined experience litigating claims similar to those raised in this case. *See* Sung Decl., ¶¶ 2-7; Kim Decl., ¶ 14. Class Counsel have been certified as class counsel in numerous other cases. Sung Decl., ¶ 6; Kim Decl., ¶ 14. Their experience in similar matters was integral in evaluating the claims against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law, as well as the procedural law of class action litigation. 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. Thus, Plaintiffs submit the requested fee award is fair, reasonable, and adequate and should be approved.

D. THE REQUESTED LITIGATION COST WARRANTS FINAL APPROVAL.

Plaintiffs seek **$17,150.72** in litigation costs, broken down as $5,967.76 to Justice for Workers, P.C. and $11,182.96 to D.Law, Inc. Sung Decl., ¶ 17, Exh. 3; Kim Decl., ¶ 23, Exh. 1. The requested litigation cost award include $**17,122.50** in costs incurred to date and future estimated costs of $14.11 for filing this Motion and $14.11 for filing a declaration re: compliance/distribution. Sung Decl., ¶ 17, Exh. 3.

The cost request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs Plaintiffs seek are routinely approved by courts. *See e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre* (N.D. Cal. Mar. 7, 2011) No. 05-03759 CW, 2011 WL 825713 at *3 ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients"); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-59 (legal research costs reimbursable); *In re Immune Response Sec. Litig.* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation, consultant and expert fees; legal research; copies; postage; filing fees; messenger and overnight delivery costs reimbursable). In addition, not a single Class Member objected to the

Settlement, including Class Counsel's request of up to $30,000.00 in litigation costs. Because these costs were reasonably incurred, and no Class Member has objected to them, the Court should grant the request.

E. THE COURT SHOULD APPROVAL THE REQUESTED SETTLEMENT ADMINISTRATION COSTS.

Plaintiffs also request that this Court approve $9,500.00 in settlement administration costs to the Administrator. As detailed in the Admin. Decl., the Administrator performed duties that were integral in effectuating the Settlement and the Notice process. Among other things, the Administrator calculated each Class member's Individual Class and PAGA Payments, updated addresses contained in the class data supplied by Defendant, formatted and translated the Class Notice for mailing, mailed Class Notices to all Class Members, kept the Parties informed of any objections or requests for exclusion, and otherwise administered the Settlement. *See* Admin. Decl., ¶¶ 3-15. For these reasons, the Administrator's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. THE COURT SHOULD APPROVE PLAINTIFFS' REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENTS

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* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving $50,000 service payment). Indeed, "[i]ncentive awards are fairly typical in class action cases." *Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958. The Court may award incentive payments "to compensate [Plaintiff] for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action. *Id.* at 958-59.

Here, Plaintiffs seek a Service Payments of $5,000.00 to each Plaintiffs, totaling $10,000.00, and Plaintiffs and Class Counsel submit that this request is reasonable given Plaintiffs' efforts in this case and the risks Plaintiffs undertook on behalf of the Class. Plaintiffs expended substantial time and effort on behalf of the Class, including providing factual information and documents to counsel, attending meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of his claims. *See* Declaration of Amoura Burton, ¶¶ 4-6; Declaration of Rasheda Kirby, ¶ 5; Sung Decl., ¶ 29.

Plaintiffs also undertook the risk of being liable for Defendant's costs if this case were lost, as well as the reputational risk of being the named plaintiff in a wage and hour class action against an employer. *See, e.g., Deaver v. Compass Bank* (N.D. Cal. Dec. 11, 2015) 2015 WL 8526982 at *14-15 (approving incentive payment in wage and hour settlement, finding the award "particularly appropriate in this wage and hour class action, where Plaintiffs undertook a significant 'reputational risk' in bringing this action against his former employer"). Plaintiffs are also agreeing to a much broader release than other Class Members, including a waiver of Civil Code § 1542. *See* Agreement, § III.I.2.; *see also Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245, 268 (approving $15,000 total award to named plaintiff in wage and hour class action settlement, including $10,000 incentive award plus an additional $5,000 for Plaintiffs' release of claims).

Finally, after receiving notice of the proposed Class Representative Service Payments for Plaintiffs, no Class Member objected to the amount. Given Plaintiffs' significant contributions to this case, the risks Plaintiffs undertook, and the lack of any objection from Class Members, Plaintiffs' requested Service Payments is appropriate and justified as part of the Settlement and should be finally approved.

V. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs respectfully submit that this Court should grant Plaintiffs' Motion in its entirety and adopt the Proposed Judgment and Order Granting Final Approval of Class Action and PAGA Settlement submitted herewith.

/ / /

/ / /

/ / /

/ / /

/ / /

Respectfully submitted,

DATED: December 15, 2025

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff Amoura Burton

Dated: December 15, 2025

D.LAW, INC.

By *Enoch J. Kims*______________________

Enoch J. Kim
Attorneys for Plaintiff Rasheda Kirby