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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

STETSON WHITEHEAD, an individual; on
behalf of himself and all others similarly
situated,

Plaintiffs,

v.

GLS US FREIGHT, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. STK-CV-UOE-2023-0012910

[Assigned for All Purposes to:
The Hon. Robert T. Waters, Dept. 11B]

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: October 1, 2025
Time: 9:00 a.m.
Dept: 11B

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

2 **PLEASE TAKE NOTICE** that on October 1, 2025, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard in Department 11B of the above-entitled court, located at the San
4 Joaquin Superior Court, 180 E. Weber Avenue, Stockton, California 95202, Plaintiff Stetson
5 Whitehead (“Plaintiff”) will hereby move the Court for final approval of a class action
6 settlement, entry of a final Order and Judgment, approval of Plaintiffs’ enhancement awards,
7 approval of Plaintiffs’ attorneys’ fees and costs, and approval of the settlement administration
8 expenses.

9 This Motion is based upon this Notice, the attached Memorandum of Points and
10 Authorities, the Declarations of Aaron Bartz, Walter Haines, Stetson Whitehead, and Jarrod
11 Salinas, all documents and records on file in this action, and on such other further oral and
12 documentary evidence as may be given at the hearing on this Motion.

13 Dated: September 4, 2025

BARTZ LAW GROUP, APC

16 //Aaron Bartz//

17 Aaron A. Bartz

18 Attorneys for Plaintiff STETSON

19 WHITEHEAD and all others similarly
20 situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This class action and PAGA settlement, arising out of Plaintiffs’ allegations that
4 Defendant violated California’s wage and hour laws, is sought on behalf of 1,330¹ current and
5 former non-exempt employees who worked in California for Defendant GLS US Freight, Inc.
6 (“Defendant”) beginning November 30, 2019 through September 1, 2024.

7 Pursuant to the preliminary approval order, the notice of class settlement and related
8 settlement documents were mailed to the class on June 5, 2025. No class member has opted out
9 of the settlement and no class member has objected to the settlement. (See Declaration of Jarrod
10 Salinas (“Salinas Decl.”) ¶¶ 9, 11.)

11 There is no claim form requirement, and each member of the class is entitled to receive
12 compensation, with no reversion to the Defendant. The gross settlement is \$1.6 million. The net
13 amount to be paid to class members (after payment of class counsel fees and expenses,
14 settlement administration costs, Private Attorneys General Act (“PAGA”) penalties, and
15 Plaintiffs’ enhancement awards), is approximately \$977,717. Each class member’s share of the
16 settlement is based on workweeks, and each shall receive, on average, approximately \$735.

17 **II. THE SETTLEMENT**

18 The class members entitled to the settlement fund are all current and former non-exempt
19 employees who have performed work in the state of California for Defendant at any time during
20 the period beginning from November 30, 2019 through September 1, 2024. There are 1,330 class
21 members.

22 The settlement fund is all in (except for the employer’s share of payroll taxes, which
23 Defendant shall pay in addition to the \$1.6 million settlement), there is no claim form

24 _____
25
26 ¹ In the motion for preliminary approval, Defendant estimated there were over
27 1,500 class members. After a further review, Defendant revised down the number of class
28 members based on Defendant’s further analysis of the class member data.

1 requirement, and no residual will revert to Defendant. No class member has opted out, and no
2 class member has objected to the settlement. In the event a class member does not negotiate
3 (cash) his or her settlement check, the claims administrator shall distribute the unclaimed funds
4 to the California State Controller's Unclaimed Property Fund.

5 The payment to the Settlement Class Members will be characterized eighty percent
6 interest and penalties, and twenty percent wages. The administrator will issue W-2 statements
7 for the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and
8 interest.

9 Based upon Class Counsel's independent analysis and investigation in this matter, the
10 Settlement Class will be compensated based on each member's respective number of workweeks
11 worked during the Class Period. The total number of workweeks is 102,450.

12 Based on the settlement terms, there will be an approximate net settlement fund of
13 **\$971, 717**. In exchange for their payment, Class Members will release Defendant and each of its
14 former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors,
15 successors, and assigns from all claims that were alleged, or reasonably could have been alleged,
16 based on the Class Period facts stated in the Action and Plaintiff's PAGA Notice, including
17 claims under the California Labor Code, California Industrial Welfare Commission Wage
18 Orders, regulations, and/or other provisions of law as set forth in more detail in Section 5.3 of the
19 Agreement.. The named Plaintiff will, in addition to releasing claims alleged in the lawsuit, give
20 a general release of all claims pursuant to Civil Code section 1542 as set forth in Section 5.1 and
21 5.2.

22 The all-in settlement fund will also include all of the attorneys' fees and costs allowed by
23 this Court. The attorneys' fees shall not exceed one-third of the \$1.6 million settlement fund, or
24 \$533,333. The settlement fund will also be used to pay class counsel's costs of \$14,000, as well
25 as settlement administration costs of \$14,950.

26 The PAGA allocation of the settlement is \$50,000, of which \$37,500 (75%) will be
27 distributed to the Labor Workforce and Development Agency (LWDA), with the remaining
28

1 portion - \$12,500 (25%) - going to PAGA Members (all allegedly aggrieved persons who
2 worked for Defendant at any time from October 3, 2022 through September 1, 2024).

3 The settlement also includes Plaintiff's class representative enhancement. Based on
4 Plaintiff's work in connection with this case, including connecting Class Counsel with other
5 witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting
6 with developing the claims and theories in this case, and related work, Plaintiff seeks a total of
7 \$10,000.

8 **In summary, the settlement fund is allocated as follows:**

- 9 (1) Net settlement fund: \$977,717;
10 (2) Attorney's fees and costs: \$533,333 in attorneys' fees and \$14,000 in costs;
11 (3) Settlement administrator expenses of \$14,950;
12 (4) PAGA payment: \$50,000 (37,500 to the LWDA, and \$12,500 to aggrieved
13 employees);
14 (5) Class representative enhancement: \$10,000 for the named Plaintiff.

15 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE IN THIS CASE**

16 Pursuant to both state and federal rules of civil procedure, "a class action shall not be
17 dismissed or compromised without the approval of the court, and notice of the proposed
18 dismissal or compromise shall be given to all members of the class in such manner as the Court
19 directs" (Cal. Civ. Code § 1781(f); *see also* Fed. R. Civ. P. 23(e).)

20 To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
21 class action requires court approval. (*See Malibu Outrigger Bd. of Governors v. Superior Court*
22 (1980) 103 Cal. App. 3d 573, 578-579.) The purpose of the requirement is the protection of
23 those class members, including the named plaintiffs, whose rights may not have been given due
24 regard by the negotiating parties. (*See Officers for Justice v. Civil Service Comm.* (9th Cir. 1982)
25 688 F.2d 615, 625, cert. denied 459 U.S. 1217.) To determine whether to grant final approval to
26 a proposed class action under Civil Code section 382, the Court's overriding concern is whether
27 the proposed settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Company*
28 (1996) 48 Cal. App. 4th 1794, 1801 (quoting *Officers for Justice, supra*, 688 F.2d at 623-624).)

1 The settlement of a class action follows in three stages: (1) preliminary approval of the proposed
2 settlement; (2) notice to class members; and (3) final approval or fairness hearing at which
3 evidence and argument may be heard on the fairness of the settlement. Here, this Court already
4 preliminarily approved the settlement, notice was provided to all class members, no class
5 members have objected, and no class members have opted out.

6 **A. The Settlement is Presumed Fair**

7 A presumption of fairness exists where: (1) the settlement is reached through arm's
8 length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to
9 act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of
10 objectors is small. (*See Dunk, supra*, 48 Cal. App. 4th at 1802.) A court may also consider
11 relevant factors such as the strength of the plaintiffs' case, the risk, expense, complexity and
12 likely duration of further litigation, the risk of maintaining class action status through trial, the
13 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
14 the experience and views of counsel, the presence of a governmental participant and the reaction
15 of the class members to the proposed settlement. (*See Officers for Justice, supra*, 688 F.2d at
16 624.) "This list is not exhaustive and should be tailored to each case. Due regard should be
17 given to what is otherwise a private consensual agreement between the parties." (*Dunk, supra*,
18 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a
19 proposed class action settlement is fair. (*See Mallick v. Superior Court* (1979) 89 Cal. App. 3d
20 434.)

21 **B. The Settlement Was Reached Through Arm's Length Negotiations**

22 This settlement is the result of arms-length and hard-fought negotiations. Defendant has
23 denied and continues to deny all of the claims and contentions alleged in this case. Nonetheless,
24 Defendant has agreed to settle this case in the manner and upon the terms and conditions set
25 forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of
26 further legal proceedings, and the uncertainties of trial and appeals.

27 Plaintiffs and Class Counsel recognize the expense of continuing to litigate and trying
28 this case against Defendant through possible appeals which could take several years. Class

1 Counsel are also mindful of and recognize the inherent problems of proof under, and alleged
2 defenses to, the claims asserted in the case. Based upon their evaluation, Plaintiffs and Class
3 Counsel have determined that the settlement set forth in the Settlement Agreement is in the best
4 interest of the Class Members.

5 Here the litigation has been hard fought and displayed capable and experienced advocacy
6 on both sides. “There is likewise every reason to conclude that settlement negotiations were
7 vigorously conducted at arm’s length and without any suggestion of undue influence.” *In re*
8 *Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. AZ 1989).

9 C. **Plaintiffs Conducted Sufficient Investigation and Discovery To Warrant**
10 **Settlement**

11 The stage of the proceedings and the amount of discovery completed are important
12 factors for courts to consider in determining whether a settlement is fair, adequate and
13 reasonable. (See *In re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741,
14 *affd.*, 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
15 15, 18, *affd.*, 661 F.2d 939 (9th Cir. 1981).)

16 The agreement to settle did not occur until Class Counsel possessed sufficient
17 information to make an informed judgment regarding the likelihood of success on the merits and
18 the results that could be obtained through further litigation. Class Counsel obtained substantial
19 informal discovery from Defendant, including personnel records and pay data for Plaintiff,
20 employment policies, and timekeeping and payroll records for a statistically meaningful
21 sampling of the class.

22 Based on the foregoing data and their own independent investigation and evaluation,
23 Class Counsel is of the opinion that the settlement with Defendant for the consideration and on
24 the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the
25 best interest of the class in light of all known facts and circumstances, including the risk of
26 significant delay, defenses asserted by Defendant, and numerous issues raised on appeal and
27 potential appeals down the road. Defendant and its counsel also agree that the settlement is fair
28 and in the best interest of the Settlement Class Members. There can be no doubt that counsel for

1 both parties possessed sufficient information to make an informed judgment regarding the
2 likelihood of success on the merits and the results that could be obtained through further
3 litigation.

4 **D. Class Counsel Is Experienced In Similar Litigation And Endorse The**
5 **Settlement**

6 The view of attorneys advocating for the class is “entitled to significant weight.” (*Fisher*
7 *Bros. v. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *see also Ellis,*
8 *supra*, 87 F.R.D. at 18.) Class counsel has significant experience in class actions and
9 employment litigation, including wage and hour class actions. As such, they are experienced and
10 qualified to evaluate the claims and defenses in this case, and unequivocally support the
11 settlement reached herein. The recovery for the class is fair, reasonable and adequate, and Class
12 Counsel supports the settlement.

13 **E. There Are No Objectors To The Settlement**

14 Significantly, there has not been a single objection to the settlement, and not one class
15 member has asked to be excluded from the settlement. This alone is a testament to the fairness
16 and adequacy of the settlement.

17 **F. The Strength of Plaintiffs’ Case, The Amount Offered In Settlement, and**
18 **The Risk, Expense, Complexity, and Duration of Further Litigation Favors**
19 **Settlement**

20 Where both sides face significant uncertainty, the attendant risks favor settlement.
21 (*Hanlon v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, “[t]he expense and
22 possible duration of the litigation should be considered in evaluating the reasonableness of [a]
23 settlement.” (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454,
24 458.)

25 Pursuant to *Kullar v. Footlocker Retail Inc.*, 168 Cal. App 4th 116, 118 and *Dunk v. Ford*
26 *Motor Co.*, (1996) 48 Cal.App.4th 1794, the following describes the settlement's
27 reasonableness. Plaintiffs recognize the expense and length of continued proceedings necessary
28 to continue the litigation against Defendant through trial and through any possible appeals.

Plaintiffs have also taken into account the uncertainty and risk of denial of motion for class certification and the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation.

Based on the foregoing, Plaintiffs have determined that the settlement is a fair, adequate and reasonable settlement and is in the best interests of the Class Members. The reasonable exposure and the reasonable settlement value for each of the alleged claims are as follows:

CLAIM	TOTAL EXPOSURE	SETTLEMENT VALUE
Failure to Pay Wages	\$2,747,540	\$274,754
Meal	\$5,273,022	\$527,302
Rest	\$6,015,334	\$601,533
Waiting time	\$5,618,793	\$561,879
Paystub	\$1,606,450	\$160,645
Reimbursement	\$1,519,608	\$151,960
PAGA	\$11,316,300	\$565,815
TOTAL	\$34,097,047	\$2,843,888

1. Overtime/Off-the-Clock Wage Violations

Labor Code § 510 provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Further, “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay . . . , [and] any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of an employee.”

1 Labor Code § 1194 states any employee receiving less than the legal minimum wage is
2 entitled to recover the unpaid balance of the full amount of this minimum wage, including
3 interest thereon, reasonable attorney's fees, and costs of suit.

4 Plaintiff contends that Defendant failed to pay all wages due in numerous respects. **First**,
5 Plaintiff asserts and will testify that Plaintiff and the class were trained and required to do pre-
6 trip vehicle inspections prior to clocking in for their shifts and were not compensated for this off-
7 the-clock time. Off-the-clock time is compensable when an employer knows or should have
8 known the employees are working off-the-clock time. *See Morillion v. Royal Packing Co.*, 22
9 Cal.4th 575, 585 (2000). Plaintiff asserts that such pre-trip inspection time is unquestionably
10 compensable because Plaintiff and other drivers were instructed by Defendant's supervisors and
11 managers to arrive before their shifts and perform such inspections to maximize their ability to
12 meet strict delivery schedules which resulted in violations of Labor Code §§ 510 and 1194 and
13 the relevant California Industrial Welfare Commission Orders. (Bartz Decl., ¶ 11.a).

14 **Second**, Plaintiff contends that he and other drivers were subject to Defendant's unlawful
15 10 hour per day and 50 hour per week overtime policy and were not compensated for shifts
16 longer than 10 hours per day or workweeks longer than 50 hours. Defendant argues that Plaintiff
17 and other drivers were not subject to overtime requirements because they were subject to
18 Department of Transportation regulations and the Motor Carrier Act. However, Plaintiff asserts
19 that simply because the "interstate commerce" requirement may be met for certain purposes,
20 does not mean that interstate commerce is met for the purposes of receiving overtime. *Baird v.*
21 *Wagoner Transp. Co.*, 425 F.2d 407, 410 (6th Cir. 1970). Further, "[i]f the truck does not cross
22 state lines, and if the goods the truck is carrying do not constitute goods in interstate
23 commerce. . . , the driver is not exempt under the federal regulations." (See DLSE Policies and
24 Interpretations Manual, § 50.8.4.) The Interstate Commerce Commission has held that interstate
25 commerce is not found where, among other things, "the terminal storage is a distribution point or
26 local marketing facility from which specific amounts of the product are sold or allocated," and
27 "transportation in the furtherance of this distribution within the single State is specifically
28 arranged only after sale or allocation from storage." *See* 29 C.F.R. 782.7(b)(2). As such,

1 Plaintiff continues to assert that many drivers, including Plaintiff, who drove local routes
2 between fixed terminals, and only performed intrastate deliveries, should be entitled to overtime
3 and were not compensated for such overtime. (Bartz Decl., ¶ 11.a).

4 Plaintiff and his expert analyzed payroll and time records for the class members and
5 calculated that the total verdict value for this claim is approximately \$2,747,540. Plaintiff and
6 his expert assumed 15 minutes per shift of unpaid hours, based on discussions with the Plaintiff
7 and other class members. Plaintiff's expert reviewed payroll records for the class, including pay
8 period counts per year, and a weighted average rate of pay. Based on the defenses alleged, as
9 well as fact that the failure to pay wage claims will rest on testimony from Plaintiff and class
10 members, and documented evidence of such violations is scant, Plaintiff placed a reasonable
11 settlement value of the overtime/minimum wage claim at ten percent of the total verdict value, or
12 **\$274,754**. This valuation takes into consideration Class Counsel's analysis of the law, and
13 evidence produced by the Defendant. (Bartz Decl., ¶ 11.a).

14 **2. Meal and Rest Period Claims**

15 a. Meal period liability and damages

16 Plaintiff contends that Defendant failed to provide Plaintiff and class members with a
17 duty-free 30-minute meal period for every five hours of work as is required by Labor Code § 512
18 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant Corp. v. Superior*
19 *Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with the applicable Wage
20 Order(s) results in payment by the employer of one additional hour of pay at the employee's
21 regular rate of pay for each workday that the rest or meal period is not provided. (Labor Code §
22 226.7.) Defendant also cannot create "incentives to forego, or otherwise encourage[] the skipping
23 of legally protected breaks." *Brinker, supra*, 53 Cal.4th at 1040. Moreover, when time records
24 show short, missed, and late meal periods, there is a presumption that an employer violated
25 California's meal period requirements. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78
26 (2021) ("If time records show noncompliant meal periods, then a rebuttable presumption of
27 liability arises.")

28 Plaintiff contends that, although Defendant's meal period policies are facially valid,

1 Defendant's practice of administering these policies is unlawful. **First**, Plaintiff contends that
2 Defendant's time records show substantial violations, which under *Donahue*, create a
3 presumption that Defendant was not in compliance with the law. (Bartz Decl., ¶ 11.b.i).

4 **Second**, Plaintiff asserts that, despite the substantial violations in the time records, there
5 were infrequent meal period premiums paid during the class period and that the dearth of meal
6 period premiums paid demonstrates that Defendant had a pattern and practice of neglecting to
7 pay meal period premiums for meals which were late, short, interrupted, missed, or on-duty.
8 (Bartz Decl., ¶ 11.b.i).

9 Notwithstanding the above, Defendant contends that Plaintiff and class members had the
10 ability and in fact did take meal periods, and that if they did not, it was their own choice, and
11 therefore not actionable. Defendant further contends that that truck drivers are not entitled to
12 meal periods, as the Federal Motor Carrier Safety Administration's (FMCSA) orders preempt
13 California's meal period rules.

14 In response to Defendant's contentions, Plaintiff asserts that the FMCSA's orders apply
15 to interstate commerce, not to purely intrastate travel such as Plaintiff's and other drivers.
16 Further, Plaintiff contends that Defendant has obligated itself within its own policies and
17 procedures to provide meal periods, so Defendant cannot after the fact argue that it does not need
18 to comply with its own policies. (Bartz Decl., ¶ 11.b.i).

19 Class Counsel and their expert calculated the maximum verdict value of the meal break
20 claim to be approximately \$5,273,022. This calculation is based on a 40% violation rate for the
21 class members, and average rate of pay based on the payroll data for the class. Based on
22 discussions with Plaintiff and interviews of other Class Members, and the defenses raised,
23 Plaintiff believes he had a ten percent probability of recovering all of these damages.
24 Accordingly, Plaintiff contends the reasonable exposure of the meal break claim is
25 approximately **\$527,302**. (Bartz Decl., ¶ 11.b.i).

26 b. Rest period liability and damages

27 Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
28 permit all employees to take rest periods, which insofar as practicable shall be in the middle of

1 each work period. The authorized rest period time shall be based on the total hours worked daily
2 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
3 a rest period need not be authorized for employees whose total daily work time is less than three
4 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
5 there shall be no deduction from wages.”

6 Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an
7 employee a rest period in accordance with the applicable provisions of this order, the employer
8 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
9 each workday that the rest period is not provided.” Moreover, during rest periods, “employees
10 must not only be relieved of work duties, but also be freed from employer control over how they
11 spend their time.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016). Further, when
12 an employer adopts common policies that prevent employees from taking their rest breaks, it
13 presents a common factual issue by which liability may follow. *See Jaimez v. Daiohs USA, Inc.*,
14 181 Cal.App.4th 1286, 1304 (2010). Indeed, “[t]he wage orders and governing statute do not
15 countenance an employer’s exerting coercion against the taking of, creating incentives to forego,
16 or otherwise encouraging the skipping of legally protected breaks.” *Brinker, supra*, 53 Cal.4th at
17 1040.

18 Plaintiff contends that Defendant did not authorize or permit Plaintiff or the class
19 members duty-free rest periods for several reasons. **First**, with respect to Plaintiff and other
20 drivers, Plaintiff asserts that when Plaintiff and other drivers attempted to take rest periods, they
21 were admonished for doing so, as Defendant required Plaintiff and other drivers to carry a tablet
22 with them tracking their location and delivery time. Whenever Plaintiff and other drivers
23 detoured from their expected deliveries, they were immediately contacted on their personal cell
24 phones and questioned about why they were taking a break. As such, Plaintiff and other drivers
25 simply did not take their rest periods, because if they did, they were disciplined. (Bartz Decl., ¶
26 11.b.ii).

1 **Second**, Plaintiff's damages analysis fairly estimates the same violation rate of 40% as
2 applied to the meal periods. Defendant's record sampling reflected that no premium payments
3 were attributed to any rest period violations. (Bartz Decl., ¶ 11.b.ii). A complete lack of premium
4 pay "would require perfection or, more likely, a 'deep, system-wide error' in failing to pay such
5 premiums." *In re Tea Station Inv.*, 2021 Bankr. LEXIS 2985, at *22 (C.D. Cal. Oct. 26, 2021). In
6 *Safeway v. Superior Court* (2015) 238 Cal. App. 4th 1138, 1153, the Court counseled against
7 arguments that are based on human perfection.

8 Defendant again argues that the FMCSA orders preempt drivers' rest period claims. For
9 the same reasons as stated above, Plaintiff believes that the FMCSA orders are inapplicable here.
10 (Bartz Decl., ¶ 11.b.ii).

11 Class Counsel and their expert assumed a 40% violation rate for all shifts by class
12 members of 3.5 hours or more. Based on that assumption, Class Counsel calculated total
13 violations across the class, multiplied by an average rate of pay for the class members. As such,
14 Class Counsel calculated the maximum verdict value of the rest period claims to be
15 approximately \$6,015,334. Based on the defenses raised, the difficulty of proving rest period
16 violations on a class wide basis, and the lack of objective evidence proving such violations,
17 Plaintiff believes he had a ten percent chance of recovering all of the rest period damages. As
18 such, Plaintiff believes the reasonable exposure of the rest break claim is approximately
19 **\$601,533**. (Bartz Decl., ¶ 11.b.ii).

20 **3. Waiting Time Penalty**

21 The waiting time penalty claim is purely derivative. Class Counsel analyzed the data to
22 find that there are approximately 987 former employees included in the putative class that would
23 be eligible for the Labor Code §203 penalties. Class Counsel calculated the total verdict value at
24 approximately \$5,618,793. This amount was calculated by multiplying the average daily rate of
25 pay during the statutory period by 30, which is the maximum number of days allowable as
26 waiting time penalties under section 203, and then multiplying that by the total number of former
27 employees. Plaintiff further discounted the waiting time penalty claim based on risk and the fact
28 that waiting time penalties are not awarded if a good faith dispute exists as to whether the wages

were owing, including whether in fact non-California based employees would be entitled to waiting time penalties. Further, the class would have the burden of proving a “willful” withholding of wages. Plaintiff considered that under Labor Code §203 there is only a penalty if "an employer willfully fails to pay" all wages due to an employee upon separation. Willfulness does not exist if there is a "good faith dispute," in fact or law that wages were due, even if the employer's reasoning ultimately proves incorrect. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1204; 8 Cal. Code Regs. § 13520 ("A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recover on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.")

Once Plaintiff determined the maximum reasonable exposure of the claim, Plaintiff placed a settlement value of **\$561,879** or approximately ten percent of the reasonable exposure value, based upon the above discounts applied to the reasonable value of the claim. (Bartz Decl., ¶ 11.c).

4. Paystub

As to the paystub penalty, which is derivative of the other claims identified above, Class Counsel arrived at a maximum reasonable exposure of this claim of approximately \$1,606,450. This figure was arrived at by assuming that each wage statement that was provided to the class members violated LC §226, and multiplying the number of pay periods during the statutory period by \$50 for initial violations, and \$100 for subsequent violations.

Defendant argues that, even assuming there are any violations, which they deny, the fact that derivative violations were minor and that the Defendant had presented evidence of a good faith dispute as to any violation. *Hurst v. Buczek Enters., LLC* (N.D. Cal. 2012) 870 F.Supp.2d 810, 829 (no section 226 violation where the employer "makes a good faith claim" in its defense); *Harris v. Vector Mktg. Corp.* (2009) 656 F.Supp.2d 1128, 1146 (N.D. Cal. 2009) (the "employer did not knowingly and intentionally fail to provide itemized wage statements" where there was a "good faith dispute").

Based on the raised defenses, as well as the risk of certification and related risks of

1 proving all violations, Plaintiff has placed a reasonable settlement value of **\$160,645** or ten
2 percent of the reasonable exposure of the pay stub claim. (Bartz Decl., ¶ 11.d).

3 **5. Reimbursement Claim**

4 California Labor Code section 2802(a) provides:

5 An employer shall indemnify his or her employee for all necessary expenditures
6 or losses incurred by the employee in direct consequence of the discharge of his
7 or her duties, or of his or her obedience to the directions of the employer, even
8 though unlawful, unless the employee, at the time of obeying the directions,
9 believed them to be unlawful.

10 Plaintiff contends that that he and other class members also used their personal cell
11 phones to review their shift schedules and communicate with managers and supervisors about
12 work business, without reimbursement. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal.
13 App. 4th 1137, 1144 (2014) (finding that reimbursement for personal cell phone usage required
14 when mandatory for performing one's job).

15 In *Cochran*, the court stated: "The threshold question in this case is this: Does an
16 employer always have to reimburse an employee for the reasonable expense of the mandatory
17 use of a personal cell phone, or is the reimbursement obligation limited to the situation in which
18 the employee incurred an extra expense that he or she would not have otherwise incurred absent
19 the job? The answer is that reimbursement is always required. Otherwise, the employer would
20 receive a windfall because it would be passing its operating expenses on to the employee. Thus,
21 to be in compliance with section 2802, the employer must pay some reasonable percentage of the
22 employee's cell phone bill." *Id.* at 1144.

23 Defendant contends that it paid for all reasonable and necessary expenses incurred by
24 Plaintiff and class members, and that the reimbursement claim has little to no value.

25 Plaintiff contends that this claim is valued at \$1,519,608 based upon expenses per month
26 calculations throughout the class period. Given the fact that there are individualized issues in
27 proving reimbursement violations and damages, Plaintiff believes this claim's reasonable value
28

1 is **\$151,960**, or ten percent of the total value. (Bartz Decl., ¶ 11.e).

2 **6. PAGA**

3 Plaintiff contends that PAGA penalties are owed based on the numerous alleged Labor
4 Code violations identified above. Once a PAGA violation is found, a court must award civil
5 penalties. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1211-1213.
6 Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that “based
7 on the facts and circumstances of the particular case, to do otherwise would result in an award
8 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2).

9 Significantly, moreover, because it is an open question regarding the Defendant’s
10 liability, there is a very real possibility that a court would substantially reduce the penalties, even
11 if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4 (C.D. Cal.
12 2011) (reducing penalties from \$2.8 million to \$500,000 based on wage statement violations
13 because to assess full penalties would be unjust and arbitrary); *Thurman v. Bayshore Transit*
14 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30% affirmed
15 on appeal).

16 Class Counsel and their expert calculated the reasonable PAGA penalties to be valued at
17 \$11,316,300, which includes the stacking of penalties for numerous violations, as set forth
18 above. Based on the uncertainty of recovery on Plaintiff’s claims, Plaintiff believes the PAGA
19 claim’s reasonable value is five percent of the total value, or approximately **\$565,815**. (Bartz
20 Decl., ¶ 11.f).

21 **7. Total Damage Exposure²**

22 Plaintiff believes that the \$1,600,000 settlement achieved in this case is very good for the
23 class members. Based upon a reasonable exposure value of \$2,843,888, the settlement
24 represents approximately 56% of that total value. Given the many defenses raised, the

25
26
27 ² The Unfair Competition claim is subsumed into the *Kullar* analysis above. The
28 Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of
damages, and is included within the above analysis.

1 uncertainty of the certifiability of any class, and the risks of going to trial, Class Counsel believe
2 this settlement is a very good result for all of the class members. (Bartz Decl., ¶ 11.g).

3 Importantly, the mere fact that a settlement does not provide the same recovery as might
4 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
5 adequate. *Wershba*, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
6 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
7 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement
8 because the public interest may indeed be served by a voluntary settlement in which each side
9 gives ground in the interest of avoiding litigation”); *7-Eleven Owners for Fair Franchising v*
10 *Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may
11 amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed
12 settlement is grossly inadequate and should be disapproved”); *White v. Experian Information*
13 *Solutions, Inc.* (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was
14 not fair and reasonable even though it represented 99% discount off the maximum value of the
15 claims); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a
16 settlement is fundamentally fair . . . is different from the question whether the settlement is perfect
17 in the estimation of the reviewing court”). Moreover, the proposed settlement is non-reversionary
18 and will provide immediate benefits to the Class Members without a claims process. *White*, 803
19 F.Supp.2d at 1098; *c.f.*, Federal Judicial Center, *Managing Class Action Litigation: A Pocket*
20 *Guide for Judges* (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
21 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
22 claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is
23 within the “range of reasonableness,” and is fair and adequate for the Class.

24
25 **G. All Class Members Have Received Proper Notice of the Settlement**

26 Pursuant to the Court’s Preliminary Approval Order dated May 7, 2025, the Notice of
27 Class Action Settlement was sent out to all 1,330 Class Members via first-class mail by Claims
28 Administrator Phoenix Settlement Administrators (“Phoenix”) on June 5, 2025. Prior to this date,

1 the name, last known address, and social security number of each Class Member were provided
2 by Defendant through a review of its personnel files. Upon its receipt of the Class Member
3 contact information, Phoenix accessed the National Change of Address (“NCOA”) database and
4 updated the addresses provided by Defendant.

5 After receiving the Class Notice, not a single Class Member has objected to the
6 settlement and not one class member has requested exclusion from the settlement. (Salinas
7 Decl., ¶¶ 9, 11).

8 **IV. PLAINTIFFS’ REQUESTED ATTORNEYS’ FEES ARE APPROPRIATE AND**
9 **JUSTIFIED**

10 **A. Fees Can Be Awarded As A Percentage of the Common Fund**

11
12 When a common fund is created, attorneys who secured the fund are entitled to a
13 percentage of the fund. (*See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 [“the
14 court may determine the amount of a reasonable fee by choosing an appropriate percentage of
15 the fund created”]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 [“percentage fees
16 have traditionally been allowed in . . . common fund cases”]). Plaintiffs’ request for one-third of
17 the common fund is reasonable, falls within the Ninth Circuit’s historical benchmark for
18 attorneys fees of 25% to 50% of a common fund, and is fair compensation for undertaking
19 complex litigation on a contingent basis. (*See, e.g.,* Rubinstein, Conte and Newberg, Newberg on
20 Class Actions at § 14:6 [surveying cases, and finding that 30-50% of fees awarded in cases in
21 which the common fund is relatively small]; see also *In re Ampicillin Antitrust Litigation*
22 (D.D.C. 1981) 526 F.Supp. 494 [court approved attorney fee award equal to 45% of the
23 settlement fund].)

24 The percentage method is the preferred method in common fund settlements and
25 regularly used in wage and hour class action settlements. *See, e.g., In re Capacitors Antitrust*
26 *Litig.*, 2018 WL 4790575, at *2 (N.D. Cal. Sept. 21, 2018) (“[T]he percentage-of-the-fund
27 method is preferred when counsel’s efforts have created a common fund for the benefit of the
28 class.”); *Jones v. San Diego Metro. Transit Sys.*, 2017 WL 5992360, at *4 (S.D. Cal. Nov. 30,

1 2017) (“the percentage-of-recovery approach is preferred when fees will be drawn from a
2 common fund”); *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, 2013 WL 7985367, at *1 (C.D.
3 Cal. Dec. 23, 2013) (“The use of the percentage-of-the-fund method in common-fund cases is the
4 prevailing practice in the Ninth Circuit for awarding attorneys’ fees.”); *Bautista v. Harvest*
5 *Mgmt. Sub LLC*, 2014 WL 12579822, at *11 (C.D. Cal. July 14, 2014) (“The benefit percentage
6 method is generally preferred in common fund cases”). The “recognized advantages” of the
7 percentage method include “relative ease of calculation, alignment of incentives between counsel
8 and the class, a better approximation of market conditions in a contingency case, and the
9 encouragement it provides counsel to seek an early settlement and avoid unnecessarily
10 prolonging the litigation.” *Laffitte, supra*, 1 Cal. 5th at 503.

11 Unlike the federal courts, California law does not recognize an explicit 25%
12 “benchmark” to use in determining common fund fees. *Laffitte*, 1 Cal.5th at 495-504. To the
13 contrary, many California courts have concluded that common fund awards in practice average
14 one-third of the recovery: “Empirical studies show that, regardless of whether the percentage
15 method or the lodestar method is used, fee awards in class actions average around one-third of
16 the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n. 11 (2008); *In re Omnivision*
17 *Technologies*, 559 F.Supp.2d 1036, 1047 (N.D. Cal. 2008) (“in most common fund cases, the
18 award exceeds [the 25%] benchmark”). Indeed, *Laffitte* itself involved a 33.3% recovery in a
19 wage and hour class action. 1 Cal.5th at 505; *see also* Rubinstein, Conte and Newberg, Newberg
20 on Class Actions at § 14:6 (surveying cases, and finding that 30-50% of fees awarded in cases in
21 which the common fund is relatively small); *see also In re Ampicillin Antitrust Litigation* 526
22 F.Supp. 494 (D.D.C. 1981) (court approved attorney fee award equal to 45% of the settlement
23 fund).

24 Class counsel seeks an award of attorneys’ fees of \$533,333, or one-third of the
25 settlement. Class counsel’s fee is eminently reasonable here. Class counsel achieved a very
26 good result for all class members, who will all be entitled to receive their share of the settlement
27 according to their workweeks during the class period.

1 **B. Plaintiffs’ Attorneys’ Fees Are Also Recoverable Under A Lodestar**
2 **Cross-Check**

3 A lodestar cross-check is also within a Court’s discretion to ensure that the fee percentage
4 is reasonable. *See Laffitte, supra*, 1 Cal.5th at 504-506. As *Laffitte* recognizes, “trial courts
5 conducting lodestar cross-checks have generally not been required to closely scrutinize each
6 claimed attorney-hour, but have instead used information on attorney time spent to focus on the
7 general question of whether the fee award appropriately reflects the degree of time and effort
8 expended by the attorneys.” *Laffitte, supra*, 1 Cal.5th at 505 (internal quotation omitted). Other
9 courts agree. *See, e.g., Aguilar v. Wawona Frozen Foods*, 2017 WL 2214936, at *6 (E.D. Cal.
10 2017) (“[I]t is well established that ‘[t]he lodestar cross-check calculation need entail neither
11 mathematical precision nor bean counting. . . [courts] may rely on summaries submitted by the
12 attorneys and need not review actual billing records.’”) (internal citations omitted); *Sutter Health*
13 *Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (in class actions, hours may be
14 documented in summary or declaration form, without the need for full time records)).

15 Once a lodestar has been established, it may “be adjusted, based on consideration of
16 factors specific to the case, in order to fix the fee at the fair market value for the legal services
17 provided.” *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000). “[C]ourts have
18 routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases.” *In re*
19 *Washington Public Power Supply System Securities Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994). In
20 evaluating the lodestar, and whether an upward adjustment is appropriate, courts look to the
21 contingent risks involved, qualifications of counsel, the reasonableness of the rates charged, the
22 novelty and difficulty of the case, the results achieved, and related matters. *See, e.g., Serrano,*
23 *supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.*, 34 Cal.3d 311, 321-322 (1983). All
24 such factors support the fee award here.

25 The starting point in determining the appropriate hourly fee is to discern the prevailing
26 rate for similar work in the pertinent geographic area. *PLCM Group v. Perez*, 22 Cal. 4th 1084,
27 1096-1097 (2000) (using prevailing hourly rate in community for comparable legal services even
28 though party used in-house counsel). Class Counsel’s hourly rates are comparable to, or less

1 than, those charged by other class action plaintiffs' counsel and are commensurate with the rates
2 awarded to Class Counsel in similar actions. (See Bartz Decl., ¶ 25.a; Declaration of Walter
3 Haines ("Haines Decl."), at ¶ 7).

4 A properly supported motion for attorney's fees is prima facie evidence that the expenses
5 and services were necessarily incurred. *Hadley v. Krepel*, 167 Cal.App.3d 677, 682 (1985).
6 Here, Class Counsel provide appropriately detailed declarations and detailed, contemporaneous
7 billing statements in support of the lodestar amounts. (Bartz Decl., ¶ 25.a, Ex. 4). Billing records
8 are entitled to a "presumption of credibility" and "are entitled to credence in the absence of a
9 clear indication the records are erroneous." *Horsford v Board of Trustees*, 132 Cal.App.4th 359,
10 396 (2005).

11 Based on Class Counsel's lodestar, a one-third fee results in a 3.6 multiplier to date. A
12 multiplier is appropriate when "(1) attorneys take a case with the expectation they will receive a
13 risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is
14 evidence the case was risky." *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016). Here,
15 Class Counsel took this case on a full contingency basis, their rates are commensurate with
16 market rates of hourly defense counsel, and do not reflect the risk associated with this being a
17 contingency case. (Bartz Decl., ¶ 25.f.i).

18 This case also presented substantial risks for Class Counsel. As discussed above,
19 Defendant raised various preemption defenses that may have wiped out substantially all of
20 Plaintiff's claims asserted in this action. This was a very real possibility, but Plaintiff and Class
21 Counsel aggressively litigated this matter to a successful settlement.

22 California law also embraces the application of fee multipliers. See *Wershba v. Apple*
23 *Computer*, 91 Cal.App.4th 224, 255 (2001) (under California law, "[m]ultipliers can range from
24 2 to 4 or even higher."). The multiplier requested here is also in line with those granted in other
25 complex class actions involving a common fund. See *Kang v. Wells Fargo Bank, N.A.*, 2021 WL
26 5826230 (N.D. Cal. Dec. 8, 2021) (multiplier of **5.49** granted after lodestar cross-check in wage
27 and hour class action); *Steiner v. Am. Broadcasting Co.*, 248 Fed. App'x 780, 783 (9th Cir. 2007)

(awarding cross-check multiplier of **6.85**); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274, at *7 (N.D. Cal., May 21, 2015) (applying **5.5** lodestar multiplier in UCL class action).

The multiplier also does not reflect additional work that will need to be performed in this case. Class Counsel estimate that they will spend at least 25 hours preparing and attending the final approval hearing, conferring with the settlement administrator, responding to inquiries from class members, and assisting in administering the settlement. (Bartz Decl., ¶ 25.a). Accounting for such future incurred fees is permissible when performing a lodestar cross-check. *See In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litig.*, 746 Fed.Appx. 655, 659 (9th Cir. 2018); *Reyes v. Bakery and Confectionary Union and Ind. Int’l Pension Fund*, 281 F.Supp.3d 833, 856 (N.D. Cal. 2017) (finding that 125 anticipated future hours included in lodestar to manage “class members’ claims” appropriate and reasonable). When such future hours are included in the lodestar, the multiplier is reduced to 3.14.

1. The Requested Award of Attorneys’ Fees is Supported by Class Counsel’s Prosecution of this Case on a Contingency Basis

Recognizing that attorneys who represent clients under contingency-fee agreements shoulder considerable risk of the possibility of minimal or low recovery, courts recognize that contingent-fee attorneys should obtain a larger fee than the market-value of their services in order to help assure skilled representation of class interests. *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th at 580 (“[A] lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions.”); *Ketchum v. Moses*, 24 Cal. 4th at 1132 (2001) (“[A] contingent fee contract, since it involves a gamble on the result, may properly provide for larger compensation than would otherwise be recoverable.”).

The risks faced by attorneys working on contingency are substantial. This is particularly true in the context of class action litigation where there can be numerous hotly contested procedural and substantive issues, considerable outlay of costs without guarantee of recovery, and the possibility that intervening factors, such as the financial condition of the defendant, may limit the scope of potential recovery. California courts thus recognize that “the experience of the

1 marketplace indicates that lawyers generally will not provide legal representation on a contingent
2 basis unless they receive a premium for taking that risk.” *Ketchum*, 24 Cal. 4th at 1136. “Given
3 the unique reliance of our legal system on private litigants to enforce substantive provisions of
4 law through class and derivative actions ... [attorneys] must be provided incentives roughly
5 comparable to those negotiated in the private bargaining that takes place in the legal
6 marketplace, as it will otherwise be economic for defendants to increase injurious behavior.”
7 *Lealao*, 82 Cal. App. 4th at 47. These policies support Plaintiffs’ fee request, as Class Counsel
8 undertook substantial risk in prosecuting this case.

9 **2. The Requested Award of Attorneys’ Fees is Supported by the Results**
10 **Achieved on Behalf of the Class**

11 Courts assess the reasonableness of a request for attorneys’ fees by examining the
12 results achieved on behalf of the Class. *See Serrano*, 20 Cal. 3d at 49. This settlement
13 represents a substantial recovery for the Settlement Class in light of the compelling defenses to
14 liability.

15 As set forth above and in the supporting declarations, Class Counsel undertook a
16 thorough analysis of the claims in this action including spending hundreds of hours of legal
17 research and data analysis to develop the core theories of liability in this case. Using this data,
18 Class Counsel was able to determine that the maximum settlement amount of \$1.6 million was
19 well within the range of the “risk adjusted” valuation of the potential recovery. Class Counsel
20 also expended substantial efforts and resources communicating with Plaintiffs and other
21 settlement class members, in order to maximize the total amount claimed by class members
22 under the settlement. The result is that participating Class Members will receive over \$977,717
23 in total settlement payments at an average recovery of \$735. Accordingly, the cumulative
24 benefits achieved by the Settlement favor approval of the requested fees.

25 **3. The Requested Award of Attorneys’ Fees is Supported by Class**
26 **Counsel’s Experience, Reputation, and Skill**

27 The “skill and experience of the attorneys and nature of work performed” are also
28 evaluated under California law in connection with a fee motion. *Northwest Energetic Services*,

1 *LLC v. Cal. Franchise Tax Bd.*, 159 Cal. App. 4th 841, 880 (2008). Class Counsel regularly
2 litigate wage and hour claims and have considerable experience settling wage and hour class
3 actions. *See* Bartz Decl. at ¶¶ 14-16; Haines Decl. at ¶ 3.

4 **V. PLAINTIFFS' REQUESTED COSTS ARE REASONABLE AND SHOULD BE**
5 **APPROVED**

6 Class Counsel has incurred a total of **\$14,000** in costs and expenses that would
7 normally be billed to a fee-paying client. Defendant has agreed to pay out these costs out of the
8 settlement amount. The majority of costs incurred in this action relate to filing fees, expert fees,
9 and mediator fees, which are costs that are reasonable and necessary to the litigation of this case.
10 (*See* Bartz Decl. at ¶ 26, Ex. 6).

11 In accordance with the Settlement Agreement, Class Counsel requests an award of
12 \$14,000, which is less than the amount of costs Preliminarily Approved by the Court in this
13 Action. Accordingly, the requested costs should also be awarded.

14 **VI. THE REQUESTED PAYMENT TO THE CLAIMS ADMINISTRATOR IS**
15 **REASONABLE AND SHOULD BE APPROVED**

16 Plaintiffs request final approval of claims administration costs in the amount of
17 \$14,950 to be paid to Phoenix, which, per the Court's preliminary approval Order, attests
18 that it has promptly and properly distributed the Class Notice, to all Class Members and has
19 otherwise completed all of its duties in administering and facilitating the settlement terms in this
20 action. (*See generally* Salinas Decl.)

21 **VII. THE ENHANCEMENT AWARD FOR THE CLASS REPRESENTATIVE**
22 **IS FAIR AND REASONABLE**

23 The proposed enhancement awards for the class representatives are intended to recognize
24 their initiative, risks, and efforts on behalf of the Settlement Class. Courts routinely approve
25 class representative service payments, also known as incentive awards, to compensate named
26 plaintiffs for the services they provide and the risks they incur during class action litigation. *See*
27 *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see also Bell v.*
28 *Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named

plaintiffs for efforts in bringing the case); Manual for Complex Litigation, § 21.62, fn. 971 (noting that such awards “may sometimes be warranted for time spent meeting with Class Members, monitoring cases, or responding to discovery”). “An incentive award may be appropriate to induce someone to serve as a class representative. In determining whether to make an incentive award, the court may consider (1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit received by the class representative as a result of the litigation.” *Golba v. Dick’s Sporting Goods, Inc.*, 238 Cal.App.4th 1251, 1272 (2015).

In this litigation, the named class representative Stetson Whitehead testified to his risks, time and effort incurred, the adverse consequences suffered, and the benefits received in this case. (*See generally*, the Declaration of Stetson Whitehead). In addition, the named plaintiff is required to execute a general release of all claims against Defendant, which includes a waiver of unknown claims and their rights under California Civil Code § 1542. For all of these reasons, the requested service payment of \$10,000 for Mr. Whitehead is appropriate and justified.

VIII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court issue an Order and Judgment approving the Settlement, and grant Plaintiffs’ attorneys’ fees and costs, Phoenix’s administrative expenses, and Plaintiffs’ enhancement awards.

Dated: September 4, 2025

BARTZ LAW GROUP, APC

//Aaron Bartz//

Aaron A. Bartz
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WHITEHEAD and all others similarly
situated