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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BENITO**

10 ERIC ECHEVERRIA, an individual and on
11 behalf of all others similarly situated;

12 Plaintiff,

13 vs.

14 FIRECLAY TILE, INC., a Delaware
15 corporation; and DOES 1 through 50,

16 Defendants.

Case No.: CU-23-00249

[Assigned for All Purposes to:
Hon. J. Omar Rodriguez, Dept. 1]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS AND PAGA ACTION
SETTLEMENT, CLASS
REPRESENTATIVE SERVICE
PAYMENT, AND ATTORNEYS' FEES
AND COSTS; MEMORANDUM OF
POINTS AND AUTHORITIES**

(Filed concurrently with Supporting
Declarations and [Proposed] Judgment and
Order)

DATE: May 7, 2025

TIME: 10:30 a.m.

DEPT.: 1

Action Filed: November 3, 2023

Trial Date: Not Set

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

3 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court and
4 California Code of Civil Procedure section 382, on May 7, 2025 at 10:30 a.m. in Department 1 of
5 the San Benito County Superior Court, located at 450 Fourth Street, Hollister, California, Plaintiff
6 Eric Echeverria ("Plaintiff"), individually and on behalf of a class of similarly situated individuals,
7 will and hereby does move this Court for entry of an Order:

8 1. Confirming the certification of the Settlement Class for settlement purposes under
9 Section 382 of the California Code of Civil Procedure;

10 2. Confirming the appointment of Plaintiff as the Class Representative for settlement
11 purposes;

12 3. Confirming the appointment of William C. Sung and Tiffany L. Luu as Class
13 Counsel;

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

16 5. Approving an award of \$113,333.33 in attorney's fees to Class Counsel;

17 6. Approving an award of \$13,729.12 in costs to Class Counsel;

18 7. Approving an award of \$9,400.00 in costs to Apex Class Action LLC for its
19 settlement administration services;

20 8. Approving an enhancement payment of \$10,000.00 to Plaintiff for Class
21 Representative Service Payment;

22 9. Approving a payment of \$30,000.00 to the Labor & Workforce Development
23 Agency ("LWDA") for its share of civil penalties under the Private Attorneys General Act
24 ("PAGA"); and

25 10. Entering final judgment in the form of the Proposed Judgment and Order Granting
26 Final Approval of Class and PAGA Action Settlement filed herewith.

27 This Motion is made on the following grounds: (l) the Class continues to meet the
28 requirements for class certification for settlement purposes under Code of Civil Procedure § 382;

1 (2) Plaintiff and Class Counsel continue to be adequate representatives of the Class; (3) the
2 Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the
3 requested amounts for Class Counsel's attorneys' fees and costs, settlement administration costs,
4 and the Class Representative enhancement payment are all fair, adequate, and reasonable; and (5) in
5 light of the foregoing, the Proposed Judgment and Order Granting Final Approval of Class and
6 PAGA Action Settlement submitted herewith should be entered so as to give finality to, and allow
7 for disbursements from, the Settlement.

8 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
9 Authorities; the supporting declarations of William C. Sung, Tiffany L. Luu, Plaintiff Eric
10 Echeverria, and Madely Nava of Apex Class Action LLC, and the exhibits attached thereto; the
11 Agreement; the pleadings, and other papers filed in this Action; and on any further oral or
12 documentary evidence or argument presented at the time of the hearing.

13
14 DATED: March 31, 2025

Respectfully submitted,

15 **JUSTICE FOR WORKERS, P.C.**

16
17 By: 

18 William C. Sung

19 Tiffany L. Luu

20 Attorneys for Plaintiff ERIC ECHEVERRIA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Eric Echeverria (“Plaintiff”) submits this Memorandum of Points and Authorities in support of Plaintiff’s Motion for Final Approval of Class and PAGA Action Settlement (the “Motion”) with Defendant Fireclay Tile, Inc. (“Defendant”) (together with Plaintiff, the “Parties”). Under the Settlement, Defendant has agreed to pay a non-reversionary Gross Settlement Amount of \$340,000.00 to the following Class comprised of 417 individuals:

All persons employed by Defendant Fireclay Tile, Inc. in California and classified as a non-exempt, hourly employee and who worked for Defendant between November 3, 2019 to July 3, 2024 (the “Class Period”).

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 \$395.02 to each Participating Class Member**. This is an excellent result for the Class, especially in light of the significant litigation risks that Plaintiff 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 Plaintiff’s 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 enhancement payment are all fair, adequate, and reasonable. In light of the foregoing, Plaintiff respectfully submits that the Court should enter the Proposed Judgment and Order Granting Final Approval submitted herewith.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Defendant owns and operates an architectural tile manufacturing company in Aromas, California with showrooms in San Francisco and Berkeley. Declaration of William C. Sung in Support of Plaintiff’s Motion for Final Approval of Class Action and PAGA Settlement (“Sung

Decl.”), ¶ 9. Plaintiff worked for Defendant as a Machine Operator from October 2019 to November 9, 2023. Declaration of Eric Echeverria in Support of Plaintiff’s Motion for Final Approval of Class Action and PAGA Settlement (“Echeverria Decl.”), ¶ 2.

On November 3, 2023, Plaintiff filed the Class Action Complaint in San Benito County Superior Court, alleging the following causes of action against Defendant for (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; and (8) Unfair Competition. Sung Decl., ¶ 10. On the same day, November, 3, 2023, Plaintiff sent a notice letter under the California Private Attorneys General Act (“PAGA”) to the Labor and Workforce Development Agency (“LWDA”). Sung Decl., ¶ 11. Subsequently, on January 30, 2024, Plaintiff filed the First Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq.* Sung Decl., ¶ 12.

B. DISCOVERY, MEDIATION, AND PRELIMINARY APPROVAL

In connection with mediation, the Parties engaged in extensive informal discovery. Defendant produced (1) a class list with unique identifying information for each class member and the class member’s hourly rate, job title, location worked, and dates of employment; (2) a 25% random sampling of employee time and payroll records in Excel format; (3) various policies and procedural documents, including employee handbooks, meal and rest period policy, meal period waiver, and alternative workweek agreement; and (4) class and PAGA statistics, including the number of workweeks worked by Class Members during the Class Period and pay periods worked by Aggrieved Employees during the PAGA Period. Sung Decl., ¶ 13.

In preparation for mediation, Plaintiff’s counsel and its retained expert data analyst conducted a comprehensive analysis and extrapolation of the payroll and timekeeping data confidentially produced by Defendant to create a detailed exposure analysis for all claims at issue. Sung Decl., ¶ 14. This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Defendant’s potential defenses. *Ibid.*

///

1 On June 3, 2024, the Parties participated in a full-day mediation with Lisa Klerman, Esq., a
2 well-respected wage and hour class action mediator. Sung Decl., ¶ 15. During mediation, the Parties
3 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's
4 claims, and the legal basis for the claims and defenses. *Ibid.* The Parties reached a tentative class
5 and PAGA settlement at the mediation. *Ibid.* During the months that followed, the Parties finalized
6 the terms of the Settlement in executed the Class Action and PAGA Settlement Agreement
7 ("Settlement" or "Agreement"). *Id.*, Ex. 1 (Agreement).

8 On September 9, 2024, Plaintiff submitted the proposed Settlement to this Court with
9 Plaintiff's Motion for Preliminary Approval of Class Action Settlement. Sung Decl., ¶ 16. On
10 October 9, 2024, this Court issued its Order Granting Preliminary Approval of Class Action
11 Settlement. *Id.*, Ex. 2 (Order Granting Preliminary Approval).

12 **III. SUMMARY OF THE SETTLEMENT AND NOTICE ADMINISTRATION**

13 **A. CLASS DEFINITION**

14 As noted, the Class is comprised of: "All persons employed by Defendant Fireclay Tile, Inc.
15 in California and classified as a non-exempt, hourly employee and who worked for Defendant
16 between November 3, 2019 to July 3, 2024 (the "Class Period")." Order Granting Preliminary
17 Approval, ¶ 1 (Ex. 2 to Sung Decl.).

18 **B. MONETARY TERMS**

19 The Settlement provides for Defendant to pay a non-reversionary Gross Settlement Amount
20 of \$340,000.00. Agreement, § 3.1 (Ex. 1 to Sung Decl.). The Net Settlement Amount is the amount
21 remaining from the Gross Settlement Amount after deducting requested attorneys' fees
22 (\$113,333.33.00) and litigation costs (\$13,729.12), requested Class Representative Service Payment
23 (\$10,000.00), settlement administration costs (\$9,400.00), and the amount set aside as PAGA civil
24 penalties (\$30,000.00). Agreement, §§ 1.28, 3.2; Sung Decl., ¶ 17, Ex. 3. Based on these requested
25 amounts, the Net Settlement Amount is estimated at \$163,537.55. Admin. Decl., ¶ 17.

26 Each Individual Class Payment to Class Members will be calculated as follows: "The
27 Administrator shall pay Individual Class Payments to Class Members calculated by (a) dividing the
28 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., \$7,500.00) will be distributed to all Aggrieved Employees who worked for Defendant who worked for Defendant from November 3, 2022 to July 3, 2024 (the "PAGA Period") based on the proportionate number of pay periods worked during the PAGA Period. *Id.* at §§ 1.32, 3.2.5.

All Individual Class Payments from the Net Settlement Amount will be classified as 20% wages to be reported on a W-2 form, and 80% 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. *Id.* at § 3.1.

C. SUMMARY OF THE NOTICE ADMINISTRATION

On October 30, 2024, Defendant's counsel provided the Administrator with the Class List consisting of 348 Class Members' names, social security numbers, last known mailing addresses, and the total number of relevant workweeks. Declaration of Madely Nava of Apex Class Action LLC in Support of Motion for Final Approval of Class Action Settlement ("Admin. Decl."), ¶ 5. The Administrator conducted a National Change of Address ("NCOA") search to ensure the accuracy and validity of the addresses before mailing Class Notices. *Id.*, at ¶ 6. 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 November 14, 2024, the Administrator mailed the Class Notice in English and Spanish to the 348 Class Members via U.S. First Class Mail. *Id.* at ¶ 7, Ex. A (Class Notice).

On December 20, 2024, Defendant's counsel informed the Administrator that the initial Class Data was incomplete and provided updated Class Data on January 3, 2024 identifying 417 Class Members. *Id.* at ¶ 8. On January 14, 2025, the Administrator mailed corrected Class Notices in English and Spanish to the 417 Class Members¹. *Id.* at ¶ 9, Ex. B (Corrected Class Notice).

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¹ The cost of administration did not increase as a result of the second mailing. *See* Admin. Decl. at ¶ 21 (the administration cost remains at \$9,400).

1 The Administrator received 45 returned Class Notices as undeliverable. *Id.* at ¶ 10. The
2 Administrator conducted a computerized skip trace on the 45 returned Class Notices, found 34
3 updated addresses, and re-mailed the Class Notices to the 34 updated addresses. *Ibid.* Ultimately, 11
4 Class Notices are considered undeliverable as an updated address could not be found through a skip
5 trace. *Id.* at ¶ 12.

6 Class Members from the first mailing had until January 13, 2025 and Class Members from
7 the second mailing has until March 10, 2025 to submit objections, disputes, and/or requests for
8 exclusion. *Id.* at ¶¶ 13-15. Admin. Decl., ¶¶ 10-12. The Administrator received no objections, no
9 requests for exclusion, and no workweek disputes. *Ibid.* Thus, the participation rate by Class
10 Member is 100%. The average estimated Individual Class Payment is approximately \$395.02, with
11 the highest estimated payment being \$1,196.06 and lowest estimated payment being \$5.05. *Id.* at ¶
12 18. Additionally, 266 Aggrieved Employees who were employed during the PAGA Period will
13 receive a portion of the \$7,500.00 PAGA Penalties. *Id.* at ¶ 19. The average Individual PAGA
14 Payment is approximately \$46.96, with the highest estimated payment being \$46.96 and the lowest
15 estimated payment being \$1.07. *Ibid.*

16 **D. FUNDING OF THE SETTLEMENT AND UNCASHED SETTLEMENT**
17 **CHECKS**

18 Defendant shall deposit the Gross Settlement Amount and employer payroll taxes with the
19 Administrator within 15 calendar days of the Effective Date. Agreement, § 4.3. Within 15 calendar
20 days after Defendant funds the Gross Settlement Amount, the Administrator will disburse all
21 Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
22 Administration Expenses Payment, Class Representative Service Payment, the Class Counsel Fees
23 Payment, and the Class Counsel Litigation Expenses Payment. *Id.* at § 4.4.

24 After disbursement, Class Members will have 180 days to cash their checks. *Id.* at § 4.4.1. If
25 any checks are returned as undeliverable, the Administrator will conduct a Class Member Address
26 Search and remail the settlement check to either a USPS forwarding address or to an address
27 ascertained through the Class Member Address Search within 7 calendar days of receiving the
28 returned checks. *Id.* at § 4.4.2. Funds remaining unclaimed after 180 days shall be sent to the

1 California State Controller's Office in the Class Member's name to be held as unclaimed property
2 for the Class Member. *Id.* at § 4.4.3.

3 **IV. LEGAL ARGUMENT**

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

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

12 Here, this Court found that the Class meets all the requirements for class certification for
13 settlement purposes when it granted preliminary approval of the Settlement on October 9, 2024. *See*
14 *generally* Sung Decl., Ex. 2. Subsequent to the Court's Order granting preliminary approval, no
15 events have cast doubt on the propriety of this determination, and in fact, the reaction of the Class
16 has been overwhelmingly supportive of the Settlement, with not a single objection and not a single
17 request for exclusion submitted, resulting in a 100% participating rate. *See* Admin. Decl., ¶¶ 13-14.
18 This Court should therefore confirm its conditional certification of the Class.

19 **B. THE SETTLEMENT IS A FAIR, ADEQUATE, AND REASONABLE**
20 **COMPROMISE OF DISPUTED WAGE AND HOUR CLAIMS**

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

1 and reasonable.

2 **1. The Settlement Was Reached Through Arms-Length Negotiation by**
3 **Experienced Counsel and Presumably Fair, Adequate, and Reasonable**

4 A class settlement is presumptively fair where it is reached through arm's-length bargaining,
5 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
6 counsel is experienced in similar litigation, and the percentage of objectors to the settlement is
7 small. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. In deciding whether to approve a
8 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair
9 under the circumstances of the case. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438. In
10 exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair,
11 adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant
12 factors for the Court to consider include, but are not limited to:

13 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of
14 further litigation, the risk of maintaining class action status through trial, the amount
15 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.

16 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the
17 factors to each case and give due regard to "what is otherwise a private consensual agreement
18 between the parties." *Id.*

19 "In the context of a settlement agreement, the test is not the maximum amount a plaintiff
20 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
21 all of the circumstances." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.
22 Because settlements inherently involve compromise, even settlements providing for substantially
23 narrower relief than likely would be obtained if the suit were successfully litigated can be
24 reasonable because "the public interest may indeed be served by a voluntary settlement in which
25 each side gives ground in the interest of avoiding litigation." *Id.* (quoting *Air Line Stewards, etc.,*
26 *Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109). In addition, courts review the
27 discovery process and information received through it to aid them in assessing whether the parties
28 sufficiently developed the claims and their supporting factual bases before reaching settlement. *See*

1 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-31. Information is sufficient
2 where it allows the parties and the court to form “an understanding of the amount that is in
3 controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential Svcs.*
4 *LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that the parties can provide the
5 Court with “a meaningful and substantiated explanation of the manner in which the factual and legal
6 issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132-33.

7 **2. The Settlement is Fair, Adequate, and Reasonable in Light of the Risks**
8 **Faced by Plaintiff**

9 While Plaintiff steadfastly maintains Plaintiff’s claims are meritorious, Plaintiff
10 acknowledges Plaintiff’s position included substantial risks and uncertainty, which justifies a
11 downward departure from the maximum exposure each claim potentially carried.

12 As detailed in Plaintiff’s Motion for Preliminary Approval, there is a significant risk of non-
13 certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims. Sung
14 Decl., ¶ 18. For example, with respect to Plaintiff’s alleged unlawful rounding claim, Defendant
15 argues that its rounding policies/practices were lawful, since it was both neutral on its face and
16 resulted, over time, in employees being paid for all hours worked and contends that multiple Courts
17 of Appeal have found rounding mechanisms to be lawful under similar circumstances. *Ibid*; *see*,
18 *e.g., Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239, 1254; *AHMC Healthcare,*
19 *Inc. v. Superior Court* (2018) 24 Cal.App.5th 1014, 1028.

20 As to Plaintiff’s allegation that Defendant miscalculated the regular rate of pay by failing to
21 incorporate incentive compensation, Defendant contends that it properly utilized the “rate-in-effect”
22 method when calculating the overtime rate when Class Members earned shift differentials and the
23 incentives at issue were discretionary in nature and need not be incorporated into the regular rate of
24 pay. Sung Decl., ¶ 19. Specifically, Bonus is an annual discretionary bonus, HPBonus is a
25 discretionary bonus for a specific hand painting department, MiscBonus is for small one-off
26 bonuses, Incentive was a sale commission no longer in use, and Servaward is a discretionary bonus
27 for length of tenure. *Ibid*.

28 ///

1 As to Plaintiff's claims for alleged meal and rest period violations, Defendant counters that
2 it has maintained compliant written meal and rest break policies and practices throughout the Class
3 Period, and that it has always provided compliant meal and rest periods in line with those policies
4 and practices. Sung Decl., ¶ 20; *see Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1034
5 (rejecting "ensure" standard). Defendant further argues that any non-compliant meal periods or rest
6 periods resulted from lawful employee waiver or voluntary choice, rather than any systemic policy
7 and/or practice of Defendant. Sung Decl., ¶ 20. Finally, Defendant maintains Plaintiff's meal and
8 rest period claims are not suited for class certification since individual inquiries would be needed to
9 assess which employees, if any, took non-compliant or missed meal or rest periods, how many meal
10 or rest periods were non-compliant or missed, the reasons why a particular employee did not take a
11 meal or rest period on a particular shift, and for second meal periods, whether they waived the meal
12 period. *Ibid.*

13 With respect to Plaintiff's claim for unreimbursed business expenses, Defendant maintains
14 Plaintiff's reimbursement claims are not suited for class certification since individual inquiries
15 would be needed to assess which employees, if any, used their personal cellphone for work; whether
16 they were required to use their personal cellphone by Defendant or if it was merely convenient for
17 them to do so; whether they sought reimbursement from Defendant and were denied; and the
18 amount of their unreimbursed expenses. Sung Dec., ¶ 21.

19 As to Plaintiff's derivative claims for statutory waiting time and wage statement penalties
20 under Labor Code §§ 203 and 226(e), Defendant denies liability for waiting time and wage
21 statements, and argues that it possesses strong, good faith defenses to Plaintiff's underlying claims,
22 thus precluding recovery of waiting time penalties that are only available for "willful" failure to pay
23 wages. Sung Dec., ¶ 22. Defendant further maintains that any alleged wage statement violations
24 were not "knowing and intentional," and that Plaintiff cannot show the Class "suffer[ed] injury" due
25 to these alleged violations as required by Labor Code § 226(e) for the imposition of penalties. *Ibid.*
26 Defendant relies on *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, for
27 the proposition that an employer's good-faith defenses precludes a "willfulness" finding under
28 Labor Code § 203 and a "knowing and intentional" finding under Labor Code § 226(e) for the

1 imposition of statutory penalties. Sung Dec., ¶ 22. Defendant also claims that Plaintiff’s alleged
2 exposure for waiting time and wage statement penalties was grossly inflated because not every
3 employee experienced an alleged Labor Code violation. *Ibid.*

4 Finally, with respect to Plaintiff’s claim for civil penalties under PAGA, since Plaintiff’s
5 PAGA claim is derivative of Plaintiff’s underlying wage claims, Defendant asserts the PAGA claim
6 would fail with those claims. Sung Dec., ¶ 23; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
7 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims
8 also fail.”). Defendant further maintains that, given its good faith defenses, this Court would
9 exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable
10 for any of Plaintiff’s claims. Sung Dec., ¶ 23; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore*
11 *Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties);
12 *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL
13 7563047, at *4 (reducing PAGA penalties by over 82% in part because employer “not aware” of
14 violations); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil
15 penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the
16 law).

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

23 **3. The Settlement Fairly, Reasonably, and Adequately Compensates Class**
24 **Members**

25 As noted, the Individual Class Payments and Individual PAGA Payments will be calculated
26 based on the proportionate number of workweeks worked by each Participating Class Member
27 during the Class Period and based on proportionate number of pay periods worked by each
28 Aggrieved Employee during the PAGA Period, respectively. Agreement, §§ 3.2.4, 3.2.5.1. This

1 method of distribution compensates Class Members based on the estimated extent of their injuries,
2 as Class Members who worked more workweeks or pay periods would have been subject to more of
3 the alleged wage and hour violations than those who worked fewer workweeks. Thus, the formula
4 for compensating Class Members is fair, adequate, and reasonable, as it is tethered to the damages
5 and penalties that could be recovered by them.

6 **4. The Absence of Any Objections or Opt Outs Confirms that the**
7 **Settlement is Fair, Adequate, and Reasonable**

8 Class members' response to a settlement is relevant in evaluating whether it merits final
9 approval. *Dunk*, 48 Cal.App.4th at 1801. The absence of objections and requests for exclusion
10 supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*
11 (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454
12 showed a "particularly impressive" favorable response from class members). Here, not a single
13 Class Member has objected to the Settlement or elected to opt-out, resulting in a 100% participation
14 rate. Admin. Decl., ¶¶ 13-14. This extremely favorable response of the Class further confirms that
15 the Settlement is fair, adequate, and reasonable.

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

19 Plaintiff and the Class, as the prevailing parties in settlement, are entitled to recover their
20 attorney's fees and costs for their wage claims. An attorney's fee award is justified where the legal
21 action has produced its benefits by way of a voluntary settlement. *See e.g., Maria P. v. Riles* (1987)
22 43 Cal.3d 1281, 1290-91; *Westside Cmnty. for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d
23 348, 352-53; *see also* Code Civ. Proc. § 1021.5. Here, Plaintiff submits that Plaintiff is entitled to
24 recover attorneys' fees under the common fund theory, as confirmed by a lodestar "cross-check."

25 **1. Under the Common Fund Doctrine, It Is Proper to Compensate Class**
26 **Counsel Based on a Percentage of the Recovery Obtained for the Class**

27 When a settlement results in a common fund for the benefit of a class, class counsel may be
28 awarded fees as a percentage of the common fund. *Wershba*, 91 Cal.App.4th at 254 (recognizing the

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

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

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

23 Here, Class Counsel’s fee request of \$113,333.33 (one-third of the Gross Settlement
24 Amount) is fair and reasonable based on a percentage of the recovery. First, “regardless whether the
25 percentage method or the lodestar method is used, fee awards in class actions average around one-
26 third of the recovery.” *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 66, n.11. This is also consistent
27 with Class Counsel’s experience in similar matters. *See* Sung Decl., ¶ 24. Thus, the percentage
28 sought by Class Counsel (the same percentage approved in *Laffitte*) is reasonable.

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1 **2. The Fee Request Is Also Reasonable Based on a Lodestar “Cross-Check”**

2 The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess
3 the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial
4 court calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring
5 the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06.
6 While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold
7 further that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as
8 the court did here; they also retain the discretion to forgo a lodestar cross-check and use other
9 means to evaluate the reasonableness of a requested percentage fee.”).

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

17 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
18 *Chavez*, 162 Cal.App.4th at 49-50 (approving multiplier of about 2.5); *Coalition for L.A. County*
19 *Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving multiplier of
20 about 12.8). In class actions such as this one, where the value of the benefit conferred to the class
21 “can be monetized with a reasonable degree of certainty,” the court may “adjust the lodestar in
22 comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and
23 within the range of fees freely negotiated in the legal marketplace in comparable litigation.”
24 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.

25 Here, Class Counsel have a lodestar of approximately \$103,425.00, which results in a
26 multiplier of approximately 1.10 compared to the \$113,333.33 fee request. *See Sung Decl.*, ¶¶ 25-
27 27, Exs. 5 (Sung Itemized Timesheet) & 6 (Luu Itemized Timesheet). A general summary showing
28 the number of hours of work performed by each attorney is set forth below. The billing rates used

are reasonable in view of the evidence submitted herewith. Sung Decl., ¶¶ 25-27, Ex. 4 (Laffey Matrix); Declaration of Tiffany L. Luu in Support of Motion for Final Approval (“Luu Decl.”), ¶ 7.

Name	Rate	Hours	Lodestar
William C. Sung (14 th Year Attorney)	\$800	102	\$81,600
Tiffany L. Luu (5 th Year Attorney)	\$450	48.50	\$21,825
		Total Lodestar:	\$103,425

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. *See* Admin. Decl., ¶ 14.

In addition, the average estimated Individual Class Payment in this case of \$395.02 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

1 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this
2 litigation and expending considerable effort, all while working on a pure contingency basis. Since
3 undertaking representation of Plaintiff in this litigation, Class Counsel have borne all the costs of
4 litigation since the filing of the Action without receiving any compensation to date. *See* Sung Decl.,
5 Sung Decl., ¶ 28. During this time, counsel have incurred \$13,729.12 in litigation costs, and
6 devoted substantial time to this litigation. *Ibid.*

7 Counsel's efforts have included: pre-filing research and investigation; analyzing Plaintiff's
8 claims and potential defenses to the same; conducting legal research; conducting extensive and
9 informal discovery; analyzing Class Members' timekeeping and payroll records and other data and
10 documents with the help of a retained expert; creating a comprehensive damages model; preparing
11 for and attending mediation; negotiating and preparing the long-form Settlement Agreement;
12 preparing the Motion for Preliminary Approval; overseeing Notice administration; drafting this
13 Motion for Final Approval; and otherwise litigating this Action. Sung Decl., ¶ 29. Given the
14 considerable potential for adverse outcomes in this case, including but not limited to losing on class
15 certification and/or merits issues, the contingent risk borne by counsel in this case was great.

16 Class Counsel's previous experience in litigating wage and hour class actions also supports
17 the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side
18 wage and hour class action litigation, with two decades of combined experience litigating claims
19 similar to those raised in this case. *See* Sung Decl., ¶¶ 2-7; Luu Decl., ¶¶ 2-6. Class Counsel have
20 been certified as class counsel in a number of other cases. Sung Decl., ¶ 6; Luu Decl., ¶ 6. Their
21 experience in similar matters was integral in evaluating the claims against Defendant and the
22 reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires
23 skill and knowledge concerning the rapidly evolving substantive law, as well as the procedural law
24 of class action litigation. Because it is reasonable to compensate Class Counsel commensurate with
25 their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is
26 reasonable. Thus, Plaintiff submits the requested fee award is fair, reasonable, and adequate and
27 should be approved.

28 ///

1 **D. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE AS A**
2 **PERCENTAGE OF THE COMMON FUND CONFIRMED BY A LODESTAR**
3 **“CROSS-CHECK”**

4 Plaintiff seeks \$13,729.12 in litigation costs. Sung Decl., ¶ 17, Ex. 3. The cost request is fair,
5 adequate, and reasonable, as the costs were reasonably incurred, and the costs Plaintiff seeks are
6 routinely approved by courts. *See e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel
7 should recover “those out-of-pocket expenses that would normally be charged to a fee paying
8 client”); *Ashker v. Sayre* (N.D. Cal. Mar. 7, 2011) No. 05-03759 CW, 2011 WL 825713 at *3
9 (“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-
10 paying clients”); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins.*
11 *Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-59 (legal research costs reimbursable); *In re Immune*
12 *Response Sec. Litig.* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation, consultant and
13 expert fees; legal research; copies; postage; filing fees; messenger and overnight delivery costs
14 reimbursable). In addition, not a single Class Member objected to the Settlement, including Class
15 Counsel’s request of up to \$15,000.00 in litigation costs. *See Admin. Decl.*, ¶ 14. Because these
16 costs were reasonably incurred, and no Class Member has objected to them, the Court should grant
17 the request.

18 **E. THE COURT SHOULD APPROVAL THE REQUESTED SETTLEMENT**
19 **ADMINISTRATION COSTS.**

20 Plaintiff also requests that this Court approve \$9,400.00 in settlement administration costs to
21 the Administrator. As detailed in the Admin. Decl., the Administrator performed duties that were
22 integral in effectuating the Settlement and the Notice process. Among other things, the
23 Administrator calculated each Class member’s Individual Class and PAGA Payments, updated
24 addresses contained in the class data supplied by Defendant, formatted and translated the Class
25 Notice for mailing, mailed Class Notices to all Class Members, kept the Parties informed of any
26 objections or requests for exclusion, and otherwise administered the Settlement. *See Admin. Decl.*,
27 ¶¶ 2-20. For these reasons, the Administrator’s requested costs are fair, reasonable, and adequate,
28 and should be finally approved.

1 **F. THE COURT SHOULD APPROVE PLAINTIFF’S REQUESTED CLASS**
2 **REPRESENTATIVE SERVICE PAYMENT**

3 Courts routinely approve enhancement payments to compensate named plaintiffs for the
4 services they provide and the risks they incur during class action litigation. *See, e.g., Bell v.*
5 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named
6 plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal.
7 1995) 901 F. Supp. 294 (approving \$50,000 service payment). Indeed, “[i]ncentive awards are
8 fairly typical in class action cases.” *Rodriguez v. West Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948,
9 958. The Court may award incentive payments “to compensate [Plaintiff] for work done on behalf
10 of the class, to make up for financial or reputational risk undertaken in bringing the action. *Id.* at
11 958-59.

12 Here, Plaintiff seeks a Service Payment of \$10,000.00 and Plaintiff and Class Counsel
13 submit that this request is reasonable given Plaintiff’s efforts in this case and the risks Plaintiff
14 undertook on behalf of the Class. *See Echeverria Decl.*, ¶¶ 4-6; *Sung Decl.*, ¶ 30. Plaintiff expended
15 substantial time and effort on behalf of the Class, including providing factual information and
16 documents to counsel, attending meetings with counsel to discuss the claims and theories at issue in
17 the litigation, and otherwise actively participating in the prosecution of his claims. *Echeverria Decl.*,
18 ¶ 4. Notably, Plaintiff was a current employee of Defendant when he filed this Action as a
19 whistleblower on November 3, 2023 and took a significant risk to his livelihood in order to help
20 Class Members recover their unpaid wages, meal and rest period premiums, and other penalties. *Id.*
21 at ¶ 5. Defendant terminated Plaintiff’s employment on November 9, 2023. *Ibid.* As a result of
22 Plaintiff’s efforts, he has helped a Class of 417 members recover on average \$395.02 in settlement
23 payments per person, an excellent result for the Class.

24 Plaintiff also undertook the risk of being liable for Defendant’s costs if this case were lost,
25 as well as the reputational risk of being the named plaintiff in a wage and hour class action against
26 an employer. *See, e.g., Deaver v. Compass Bank* (N.D. Cal. Dec. 11, 2015) 2015 WL 8526982 at
27 *14-15 (approving incentive payment in wage and hour settlement, finding the award “particularly
28 appropriate in this wage and hour class action, where Plaintiff undertook a significant ‘reputational

1 risk' in bringing this action against his former employer"). Plaintiff is also agreeing to a much
2 broader release than other Class Members, including a waiver of Civil Code § 1542. *See*
3 Agreement, § 5.1; *see also Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245,
4 268 (approving \$15,000 total award to named plaintiff in wage and hour class action settlement,
5 including \$10,000 incentive award plus an additional \$5,000 for plaintiff's release of claims).

6 Finally, after receiving notice of the proposed Class Representative Service Payment for
7 Plaintiff, no Class Member objected to the amount. Admin. Decl., ¶ 14. Given Plaintiff's significant
8 contributions to this case, the risks Plaintiff undertook, and the lack of any objection from Class
9 Members, Plaintiff's requested Service Payment is appropriate and justified as part of the
10 Settlement and should be finally approved.

11 **V. CONCLUSION**

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

15
16 DATED: March 31, 2025

Respectfully submitted,

17 **JUSTICE FOR WORKERS, P.C.**

18
19 By: 

20 William C. Sung

21 Tiffany L. Luu

22 Attorneys for Plaintiff ERIC ECHEVERRIA
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