

HEATHER DAVIS, SBN 239372
heather@protectionlawgroup.com
AMIR NAYEBDADASH, SBN 232204
amir@protectionlawgroup.com
BRENDAN J. BURTON, SBN 323495
brendan@protectionlawgroup.com
SHADI SAHEBGHALAM, SBN 343043
shadi@protectionlawgroup.com
PROTECTION LAW GROUP, LLP
149 Sheldon Street
El Segundo, California 90245
Telephone: (424) 290-3095
Facsimile: (866) 264-7880

Attorneys for Plaintiff
CESAR GUILLEN HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

CESAR GUILLEN HERNANDEZ,
individually and on behalf of others similarly
situated, and as an aggrieved employee and
Private Attorney General;

Plaintiff,

vs.

SIMPSON CHEVROLET OF IRVINE, a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 30-2024-01376148-CU-OE-CXC

*Assigned for All Purposes to: Hon. William D.
Claster, Dept. CX-101*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Hearing Date: June 27, 2025

Hearing Time: 9:00 a.m.

Department: CX-101

Reservation Number:

Complaint Filed: January 25, 2024

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on June 27, 2025, at 9:00 a.m., or as soon thereafter as
3 this matter may be heard, in Department CX101 of the Orange County Superior Court, located at
4 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff CESAR GUILLEN
5 HERNANDEZ (“Plaintiff”) will apply to this Court for an order granting final approval of the
6 proposed Class Action and PAGA Settlement Agreement (hereinafter “Settlement” or
7 “Settlement Agreement”) between Plaintiff and Defendant SIMPSON CHEVROLET OF
8 IRVINE (“Defendant”). As part of that approval, Plaintiff will request that the Court:

9 1. Grant final approval of the Settlement attached to the Declaration of Heather
10 Davis, Esq., on the grounds that the proposed Settlement is fair, adequate, and reasonable because:

- 11 a. The non-reversionary Net Settlement Amount of \$276,900.55 will be paid out to
12 the participating members of the Settlement Class;
13 b. Proper notice was provided to all Class Members pursuant to the terms of the
14 Settlement;
15 c. No objections were submitted to the Settlement;
16 d. One (1) Class Member requested to be excluded from the Settlement, thus leaving
17 257 Settlement Class Members; and
18 e. Proper notice of the Settlement was provided to the LWDA in accord with Labor
19 Code 2699 *et. seq.*;

20 2. Award attorneys’ fees in the amount of \$197,750.00 (35% of the Gross Settlement
21 Amount) to Protection Law Group, LLP (“Class Counsel”);

22 3. Award costs in the amount of \$13,599.45 to Class Counsel for actual litigation
23 costs and expenses incurred;

24 4. Award payment of \$10,000.00 to the Settlement Administrator, Phoenix
25 Settlement Administration Solutions (“Phoenix”) for the costs of Settlement Administration;

26 5. Award an Enhancement Payment of \$7,500.00 to Plaintiff Cesar Guillen
27 Hernandez;

28 6. Approve payment of \$60,000.00 for penalties pursuant to the California Labor

1 Code Section 2698 *et. seq.* the Private Attorneys General Act of 2004 (“PAGA”) and the
2 distribution of seventy-five percent of these penalties (\$45,000.00) to the California Labor and
3 Workforce Development Agency (“LWDA”) and twenty-five percent (\$15,000.00) to the PAGA
4 Members as part of the Net Settlement Amount; and

5 7. Order the funding and distribution of the Gross Settlement Amount in the manner
6 set forth in the Settlement.

7 The Motion is based upon this Notice; the attached Memorandum of Points and
8 Authorities; the Declaration of Heather Davis, Esq. and exhibits thereto; the Declaration of Cesar
9 Guillen Hernandez in Support of Motion for Preliminary Approval; the Declaration of Mayra
10 Gonzalez of Phoenix; the pleadings and other records on file with the Court in this matter, and
11 any other further evidence or argument that the Court may properly receive at or before the
12 hearing.

13
14 DATED: May 30, 2025

PROTECTION LAW GROUP, LLP

15
16 By: _____

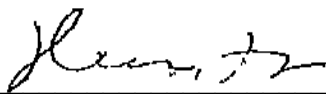

Heather Davis
Brendan Burton
Shadi Sahebghalam
Attorneys for Plaintiff
CESAR GUILLEN HERNANDEZ

TABLE OF CONTENTS

<u>I.</u>	<u>INTRODUCTION</u>	1
<u>II.</u>	<u>FACTUAL AND PROCEDURAL BACKGROUND</u>	1
<u>III.</u>	<u>THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION</u>	4
<u>IV.</u>	<u>STANDARD OF REVIEW FOR FINAL APPROVAL</u>	5
<u>V.</u>	<u>THE SETTLEMENT IS PRESUMED FAIR</u>	6
<u>A.</u>	<u>The Settlement Was Reached Through Arm’s Length Bargaining</u>	6
<u>B.</u>	<u>There was Sufficient Investigation and Discovery by Experienced Counsel</u>	7
<u>C.</u>	<u>There Have Been No Objections and Only One Request For Exclusion</u>	8
<u>VI.</u>	<u>THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED</u>	8
<u>A.</u>	<u>The Standard For Attorneys’ Fees In A Class Action</u>	8
<u>B.</u>	<u>A Fee Award Based on a Percentage of the Gross Settlement Amount is Appropriate</u> 8	
<u>C.</u>	<u>The Fee is Reasonable Based on the <i>Dunkel</i> Factors</u>	10
<u>1.</u>	<u><i>Time and Labor Required</i></u>	10
<u>2.</u>	<u><i>The Skill Required to Perform Legal Services</i></u>	11
<u>3.</u>	<u><i>The Value, Amount, and Results Achieved</i></u>	11
<u>4.</u>	<u><i>Whether the Fee is Fixed or Contingent</i></u>	12
<u>D.</u>	<u>The Fee is Reasonable Under a Lodestar Analysis</u>	12
<u>1.</u>	<u><i>Counsel Spent a Reasonable Amount of Time</i></u>	13
<u>2.</u>	<u><i>Class Counsel’s Hourly Rate is Reasonable</i></u>	14
<u>VII.</u>	<u>THE REQUESTED COSTS ARE FAIR AND REASONABLE</u>	14
<u>VIII.</u>	<u>THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND REASONABLE</u> ...	15
<u>IX.</u>	<u>CONCLUSION</u>	16

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal.App.4th 1135 (2000)	5, 7
<i>Apple Computer, Inc. v. Super. Ct.</i> , 126 Cal.App.4th 1253 (2005)	8
<i>Camden I Condominium Association, Inc. v. Dunkel</i> , 946 F.2d 768 (11th Cir. 1991)	10, 12
<i>Cates v. Chiang</i> , 213 Cal.App.4th 791 (2013)	12, 13
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	5
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	6
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	5, 8
<i>Gaudin v. Saxon Mortgage Servs., Inc.</i> , 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015)	15
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	8
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	5
<i>In re Microsoft I-V Cases</i> , 135 Cal.App.4th 706 (2006)	6
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001)	13, 14
<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal.App.4th 19 (2000)	8
<i>Munoz v. BCI Coca-Cola Bottling Company of Los Angeles</i> , 186 Cal.App.4th 399 (2010)	14
<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	8
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	15
<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759 (9th Cir. 1977)	8, 9
<i>Vizcaino v. Microsoft Corp.</i> , 290 F. 3d. 1043 (2002)	12
<i>Vo v. Las Virgenes Municipal Water Dist.</i> , 79 Cal.App.4th 440 (2000)	13
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001)	5, 6, 7, 9
<i>Winslow v. Harold G. Ferguson Corp.</i> , Cal.2d (1944)	9

Treatises

<i>Newberg on Class Actions</i> , 4 th Ed. 2002, §14:6	9
R. Pearle, <i>California Attorney Fee Awards</i> (CEB, 1993 §7A)	9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff CESAR GUILLEN HERNANDEZ (“Plaintiff”) seeks final approval of a class action and PAGA settlement with Defendant SIMPSON CHEVROLET OF IRVINE (“Defendant”). The settlement provides for: (1) a Gross Settlement Amount of \$565,000.00; (2) attorneys’ fees in the amount of \$197,500.00; (3) actual litigation costs and expenses incurred by Class Counsel in the amount of \$13,599.45; (4) Settlement Administration Costs of \$9,250.00; (5) payment of \$60,000.00 in PAGA penalties – 75% (\$45,000.00) of which will be paid to the California Labor and Workforce Development Agency (“LWDA”) and 25% (\$15,000.00) of which will be paid to the PAGA Members; and (6) an Enhancement Payment in the amount of \$7,500.00 to named Plaintiff. The result is a Net Settlement Amount (“NSA”) of \$276,900.55 that will be distributed to the following Settlement Class of 257 individuals who worked for Simpson Chevrolet of Irvine as hourly-paid or non-exempt employees in the state of California at any time between January 25, 2020, and October 29, 2024. Settlement Class Members will receive an average Individual Settlement Payment of approximately \$1,094.12 and a high payment of \$2,730.51. *See* Declaration of Mayra Gonzalez of Phoenix Settlement Administration Solutions in support of Motion for Final Approval (“Phoenix Decl.”) ¶14.

At Preliminary Approval, the Court established a presumption of fairness after extensively analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following notice of the proposed Settlement to the Class. Out of 258 Class Members, only one Class Member has submitted a request for exclusion, and there have been zero objections to the terms of the Settlement. Phoenix Decl. ¶¶8-10. The lack of objections and participation by almost all Class Members (99.96% of the Class) is further evidence, in addition to the factors extensively analyzed at Preliminary Approval, that demonstrates the Settlement is a fair and reasonable result. Accordingly, the Court should approve the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant SIMPSON CHEVROLET OF IRVINE (“Defendant”) is a Chevrolet dealership that offers vehicles for sale or lease, maintenance, upgrades and provides services to

1 clients throughout California. Plaintiff Cesar Guillen Hernandez was employed by Defendant as
2 an hourly-paid, non-exempt employee in the position of Sales Porter and Service Porter at
3 Defendants' location in Irvine, California. *See* Declaration of Heather Davis in Support of Motion
4 for Final Approval ("Davis Decl.") ¶12; *see also* Declaration of Cesar Guillen Hernandez in
5 support of Motion for Preliminary Approval ("Hernandez Decl.") ¶2.

6 On December 13, 2024, Plaintiff provided notice to Defendants and the California Labor
7 and Workforce Development Agency ("LWDA") of the alleged wage and hour violations and his
8 intent to seek civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA").
9 Davis Decl. ¶13.

10 On January 25, 2024, Plaintiff filed a class action complaint with the Orange County
11 Superior Court, Case No. 30-2024-01376148-CU-OE-CXC ("the Action"), against Defendants,
12 alleging the following causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums;
13 (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely
14 Paid; (6) Wages Not Timely Paid During Employment; (7) Failure to Provide Accurate Wage
15 Statements; (8) Failure to Reimburse Expenses; and (9) Violation of California Business &
16 Professions Code §§ 17200, *et. seq.* Davis Decl. ¶14.

17 On February 20, 2024, Plaintiff filed a First Amended Complaint adding a separate
18 individual representative Action alleging one cause of action for violation of California Labor
19 Code § 2699 – the Private Attorneys General Act of 2004 ("PAGA Action"). Davis Decl. ¶15.

20 On February 21, 2024, Plaintiff propounded the following discovery: (i) Form
21 Interrogatories – General, Set One, (ii) Special Interrogatories, Set One, (iii) Requests for
22 Production of Documents, Set One, and (iv) a Deposition Notice of Defendant's Person(s) Most
23 Qualified. Davis Decl. ¶16.

24 Thereafter, the Parties engaged in discussions to attend a formal private mediation. Plaintiff
25 requested certain documents and data be produced in order to accurately and fairly evaluate
26 the claims and damages, so that any approval motion would be granted. The Parties agreed,
27 and decided to mediate with Kevin Barnes, Esq., on the nearest available date, August 21, 2024. On
28 April 4, 2024, the Parties filed a Joint Stipulation regarding Discovery and Mediation, setting forth

1 duties and responsibilities of each party prior to mediation. Davis Decl. ¶17.

2 In advance of mediation, Defendant provided Plaintiff's Counsel with extensive informal
3 discovery including all relevant policies and handbooks in place during the Class Period, which
4 included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment
5 of wages and other relevant areas of investigation, a randomly selected 20% sampling of time and
6 payroll data for the putative class, and figures and information regarding the class size and
7 composition. The randomly-selected 20% sampling included records for putative class members
8 who were employed throughout different time periods during the Class Period, that is
9 representative of the Class. With this data for the Class, Plaintiff's Counsel and their retained
10 expert were able to perform a comprehensive damages analysis and estimate Defendant's potential
11 violations, liability, and exposure, including, and not limited to, analyzing time and pay data,
12 considering potential meal period violations, potential rest period violations, potential synthetic
13 meal period recordings, unpaid and rest period premiums, rounding, overtime and premium
14 payments, etc. This discovery and investigation allowed Plaintiff's Counsel to perform a
15 comprehensive damages analysis and estimate Defendant's potential liability. Davis Decl. ¶18.

16 After extensive review of the mediation documents and other information, on August 21,
17 2024, the Parties attended a full day mediation before Kevin Barnes, Esq. At the mediation, the
18 Parties engaged in intensive settlement discussions during which they debated their respective
19 positions and exchanged views regarding the strengths and weaknesses of the alleged claims, but
20 despite the help of the mediator were unable to reach an agreement. Davis Decl. ¶19.

21 The Parties endeavored to diligently continue discussions through the mediator, and on
22 August 30, 2024, the Parties each agreed to a mediator's proposal, assenting to the essential terms
23 of settlement. Davis Decl. ¶20

24 Thereafter the Parties diligently worked to draft and negotiate a long form Joint Stipulation
25 of Class Action and PAGA Settlement ("Settlement Agreement"). On September 20, 2024, the
26 Parties fully-executed the long form Settlement Agreement. Davis Decl. ¶21.

27 On November 18, 2024, Plaintiff filed for preliminary approval of this Settlement
28 Agreement. Then, on or about December 20, 2024, the Court issued a Minute Order ruling

1 requesting clarification on certain terms and requesting Supplemental Briefing on others. The
2 Court continued the hearing of the preliminary approval to January 31, 2025, so that the Parties
3 could address a number of issues raised by the Court. The Parties submitted on the Court's tentative
4 ruling, and the Court confirmed its tentative ruling on December 20, 2024. Davis Decl. ¶22.

5 On January 2, 2025, Plaintiff filed his Supplemental Brief in Support of Plaintiff's Motion
6 for Preliminary Approval of Class Action and PAGA Settlement. Davis Decl. ¶23. On January 31,
7 2025, the Court granted Plaintiff's Motion for Preliminary Approval of Class Action and PAGA
8 Settlement and ordered Plaintiff to submit a revised proposed order that conformed with the
9 Court's Order. Davis Decl. ¶24.

10 Plaintiff now moves for final approval of the Class Action and PAGA Settlement
11 Agreement (hereinafter "Settlement" or "Settlement Agreement"). Davis Decl., **Exhibit 2**.

12 **III. THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION**

13 The Court approved Settlement Administrator for this matter is Phoenix Settlement
14 Administration Solutions ("Settlement Administrator") as approved by the Court. Davis Decl. ¶34.
15 Class Counsel provided the Settlement Administrator with the text for the Notice Packet on
16 February 13, 2025. The Notice Packet included the formula for determining the estimated sum to
17 be paid to each individual from the Net Settlement and stated each Class Members' estimated
18 Individual Settlement Payment. Davis Decl. ¶35. Also on February 13, 2025, Counsel for
19 Defendant provided the Settlement Administrator with the Class Mailing List. Davis Decl. ¶ 36;
20 Phoenix Decl. ¶3.

21 On February 21, 2025, the Notice Packets were mailed to all 258 Class Members. Davis
22 Decl. ¶37; Phoenix Decl. ¶5. Initially, sixteen (16) Notice Packets were returned to the Settlement
23 Administrator. The returned Notice Packets did not have a forwarding address. As such, the
24 Settlement Administrator performed a skip trace on these Notice Packets. As a result of the skip
25 trace, sixteen (16) Notice Packets were promptly re-mailed to those Class Members. In sum, zero
26 (0) Notice Packets remain undeliverable since an updated address could not be obtained via skip
27 trace. *See* Phoenix Decl. ¶¶6-7. There were no objections to the Settlement, only one (1) request
28 for exclusion, and no disputes. Phoenix Decl. ¶¶8-10.

1 According to the terms of the Settlement Agreement, within sixty (60) calendar days after
2 the Effective Date (as defined in the Settlement Agreement), Defendant will deposit the Gross
3 Settlement Amount and all applicable employer-side payroll taxes into the Qualified Settlement
4 Fund (“QSF”) to be established by the Settlement Administrator. Within fourteen (14) calendar
5 days thereafter, the Settlement Administrator will issue payments for: (1) Net Settlement Amount
6 to the Settlement Class Members per the terms of the Settlement and the Final Approval; (2) an
7 award of attorneys’ fees; (3) an award of litigation expenses and costs; (4) an award of Settlement
8 Administration Costs; (5) a PAGA Payment of \$60,000.00 (75% of which, or \$45,000.00, shall be
9 paid to the LWDA, and the remaining 25%, or \$15,000.00, which will be distributed to the PAGA
10 Members); and (6) an Enhancement Payment to the Class Representative. *See* Settlement
11 Agreement ¶¶ 5, 9, 12, 14, 21, 39, 41; Davis Decl. ¶40.

12 **IV. STANDARD OF REVIEW FOR FINAL APPROVAL**

13 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48
14 Cal.App.4th 1794 (1996). California courts look to federal authority for guidance with class action
15 settlements. *Id.* at 1801, n.7. “In general, questions whether a settlement was fair and reasonable,
16 whether certification of the class was proper, and whether the attorney fee award was proper are
17 matters addressed to the trial court’s broad discretion.” *Wershba v. Apple Computer, Inc.*, 91
18 Cal.App.4th 224, 234-35 (2001) (disapproved of on other grounds).

19 Accordingly, a court’s decision to approve a class action settlement may be reversed only
20 upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
21 1026 (9th Cir. 1998). To determine whether the settlement is fair, courts consider relevant factors
22 such as the strength of a plaintiff’s case, the risk of further litigation, the risk of maintaining class
23 action status, the amount offered in settlement, the extent of discovery completed, the experience
24 and views of counsel, and the reaction of the class members among others. *Dunk*, 48 Cal.App.4th
25 at 1801. These factors are not exclusive and “the court is free to engage in a balancing and weighing
26 of the factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245
27 (disapproved of on other grounds).

28 In considering the class settlement, the court need not reach any ultimate conclusions on

1 the issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair*
2 *Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether
3 the settlement agreement is the best one that class members could have possibly obtained, but
4 whether the settlement taken as a whole is “fair, adequate, and reasonable.” *See Chavez v. Netflix,*
5 *Inc.*, 162 Cal.App.4th 43, 55 (2008). A settlement need not obtain 100 percent of the damages
6 sought in order to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 251 (disapproved of on other
7 grounds). Even if the relief afforded by the proposed settlement is substantially narrower than it
8 would be if the lawsuit was to be successfully litigated, that is no bar to a class settlement because
9 the public interest may indeed be served by a voluntary settlement in which each side gives ground
10 in the interest of avoiding prolonged litigation. *Id.* The burden is on the proponent of the settlement
11 to show that it is fair and reasonable. *Id.* at 245 (disapproved of on other grounds). However, a
12 presumption of fairness exists where: (1) the settlement is reached through arm’s-length
13 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
14 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
15 small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

16 **V. THE SETTLEMENT IS PRESUMED FAIR**

17 Because this Court preliminarily approved the Settlement, it necessarily determined the
18 Settlement appeared to be fair and reasonable. Plaintiff’s Motion for Preliminary Approval
19 established the presumption of fairness. The same factors that allowed the Court to previously
20 approve the Settlement apply here and are reinforced in these moving papers including: (1) the
21 Settlement was reached through arm’s-length bargaining; (2) investigation and discovery were
22 sufficient to allow counsel and the court to act intelligently; and (3) Class Counsel are experienced
23 in similar litigation. Additionally, the reaction of the Class Members, also supports the
24 reasonableness of the Settlement. *See Davis Decl.* ¶¶ 26-33.

25 **A. The Settlement Was Reached Through Arm’s Length Bargaining**

26 California courts recognize that “a presumption of fairness exists where . . . [a] settlement
27 is reached through arm’s-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245; *see also Clark v.*
28 *Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the Settlement was reached

1 following a full day of mediation with Kevin Barnes, Esq., a highly respected mediator with
2 extensive experience in complex wage and hour matters. The mediation and Settlement occurred
3 only after extensive formal and informal discovery and investigations, and extensive analysis of
4 the claims at issue. These negotiations were at arm's length, non-collusive, and, although
5 conducted in a professional manner, were adversarial. Davis Decl. ¶¶ 17-20, 26-28, 42.

6 **B. There was Sufficient Investigation and Discovery by Experienced Counsel**

7 Class Counsel undertook extensive investigation, analysis, and research prior to filing the
8 Action. This included attending client meetings; propounding formal and informal discovery;
9 extensively meeting and conferring with Defendant's Counsel on various discovery issues, and
10 conducting legal research on unanticipated and remote legal defenses. In order to investigate
11 Defendant's policies, practices, and procedures, Class Counsel propounded formal and informal
12 discovery, and in advance of mediation reviewed and analyzed extensive time and payroll data.
13 Indeed, Class Counsel analyzed hundreds of pages of documents, and thousands of pages of time
14 and payroll data. Further, Class Counsel participated in case strategy and analysis, drafting,
15 reviewing, revising pleadings, and preparing for and attending mediation. Class Counsel
16 participated in extensive negotiations at mediation and following the mediation to reach a
17 settlement and then spent substantial time drafting and revising the Class Action and PAGA
18 Settlement Agreement. A Settlement was achieved despite all of the obstacles that had to be
19 overcome, because Class Counsel used their complex wage-and-hour litigation experience and
20 skills to obtain the Settlement. Davis Decl. ¶¶ 17-20, 26-28, 42.

21 Moreover, the settlement negotiations were conducted by highly capable and experienced
22 counsel. Class Counsel's experience and the extensive investigation allowed Plaintiff to enter this
23 Settlement aware of the risks associated with the case and permitted Class Counsel to negotiate an
24 informed, reasonable, and intelligent Settlement. Davis Decl. ¶¶ 2-11. After extensive formal and
25 informal discovery and investigation, it is Class Counsel's opinion that the Settlement is in the
26 best interest of the Class, the PAGA Members, and State of California because it provides for a
27 guaranteed result over a reasonably short period of time as opposed to waiting years for the same,
28 or possibly a worse, result and will result in significant savings in costs.

1 **C. There Have Been No Objections and Only One Request For Exclusion**

2 California courts have consistently found that a small number of objectors indicates the
3 class' support for a settlement and strongly favors final approval. *See Wershba*, 91 Cal.App.4th at
4 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-
5 53 (final approval granted despite 9 objectors). Here, as of the filing of this Motion, there have
6 been no objections to the Settlement and only one (1) Class Member has requested to be excluded,
7 a participation rate of 99.96% thus leaving 257 Settlement Class Members. Phoenix Decl. ¶¶8-11.
8 The lack of objections and strong participation in the Settlement by the Class further speaks
9 volumes about the fairness, reasonableness, and adequacy of this Settlement.

10 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

11 **A. The Standard For Attorneys' Fees In A Class Action**

12 Where the amount of a settlement is a "certain easily calculable sum of money," California
13 courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See Dunk*,
14 48 Cal.App.4th at 1808. The ultimate goal is the award of a "reasonable" fee to compensate counsel
15 for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.*,
16 126 Cal.App.4th 1253, 1270 (2005). Trial courts have wide latitude in assessing the value of
17 attorneys' fees and their decisions will not be disturbed on appeal absent a manifest abuse of
18 discretion. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). California law
19 provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal
20 marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Id.*
21 at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the
22 vindication of many legal rights . . ." *Id.* at 53. Therefore, fees in a class action should approximate
23 the terms of a contingent-fee contract negotiated by an attorney and client in comparable litigation.
24 *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases because "it better
25 approximates the workings of the marketplace than the lodestar approach." *Id.*

26 **B. A Fee Award Based on a Percentage of the Gross Settlement Amount is Appropriate**

27 California and federal courts have long recognized that an appropriate method for
28 determining the award of attorneys' fees is based on a percentage of the total value made available

1 to class members by the settlement. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th
2 Cir. 1977); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977). The California Supreme Court has urged
3 trial courts to follow federal authority in this area. *See Green v. Obledo*, 29 Cal.3d 126, 146 (1981).
4 The purpose of this equitable doctrine is to spread litigation costs among all beneficiaries so that
5 the active beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d at 769.

6 Courts have consistently recognized that class litigation is necessary to protect the rights
7 of individuals whose injuries and/or damages are too small to economically justify individual
8 representation. Accordingly, in determining a reasonable common fund fee award, courts award
9 fees to serve as an economic enhancement for lawyers to engage in class litigation that will permit
10 increased access to the judicial system for meritorious claims and deter wrongdoing. *See*, R. Pearle,
11 *California Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7; *Vincent*, 557 F.2d at 769.

12 Furthermore, a common fund award is not dependent on a determination of the actual
13 amount claimed out of the fund by those entitled—it is the creation of the fund that is the crucial
14 fact. *See Winslow v. Harold G. Ferguson Corp.*, 25 Cal.2d 274, 284 (1944); *Wershba*, 91
15 Cal.App.4th at 247 (holding that reasonable attorneys’ fees are based on the total value of the
16 settlement obtained by the efforts of counsel) (disapproved on other grounds).

17 Historically, courts have awarded percentage fees in the range of 20% to 50%, depending
18 on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6. According to
19 *Newberg*, “. . . no general rule could be articulated as to what is a reasonable percentage of a
20 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award . . . though
21 somewhat larger percentages are not unprecedented.” *Id.* *Newberg* further notes that achievement
22 of a substantial recovery with modest hours expended should not be penalized, but should be
23 rewarded for considerations of time saved by superior services performed. *Id.*

24 The amount of attorney fees provided by the Settlement Agreement, *i.e.*, thirty-five percent
25 (35%) of the Gross Settlement Amount, is well-within the range of reasonableness in light of the
26 facts and circumstances surrounding the case. Class Counsel risked substantial economic loss
27 when they took the case on a contingency basis, knowing that there could likely be a long battle
28 with an aggressive defense firm. As a result of Class Counsel taking on this risk and the efforts of

1 Class Counsel, the Settlement Class Members will now be able to recover for these claims that
2 would otherwise have gone unaddressed. The requested fee therefore makes sense because (1) it
3 is consistent with the private marketplace where contingent-fee attorneys are customarily
4 compensated on such a basis; (2) it aligns the interests of Class Counsel and absent Class Members
5 in achieving the maximum possible resolution of the case; (3) it encourages the most efficient
6 resolution of the litigation by providing an enhancement for early, yet fair and reasonable
7 settlement; and (4) reflects the work performed, risks incurred, results obtained, and experience of
8 Plaintiff's Counsel in handling similar matters. As such, Class Counsel have obtained a fair
9 recovery for the Class which justifies a fee award based on the percentage of the common fund.
10 See Davis Decl. ¶¶41-50.

11 **C. The Fee is Reasonable Based on the *Dunkel* Factors**

12 In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991),
13 the court identified twelve factors to be considered in determining whether fee awards are reasonable
14 in a common fund case.¹ The court also noted that, "the analysis in a common fund case focuses not
15 on the Plaintiff's position as 'prevailing parties,' but on a showing that the fund conferring a benefit
16 on the class resulted from their efforts" and thus in common fund cases "the monetary results
17 achieved predominate over all other criteria." *Id.* at 774. Plaintiff will address some of the factors
18 that are particularly relevant here.

19 **1. Time and Labor Required**

20 Class Counsel have aggressively litigated the case from the initial pleading to the
21 settlement of the Action. Class Counsel actively participated in this litigation, attending client
22 meetings; propounding formal and informal discovery; extensively meeting and conferring with
23 Defendant's Counsel on various discovery issues; and conducting legal research on unanticipated

24
25 ¹ These factors include (1) the time and labor required, (2) the novelty and difficulty of the questions
26 involved, (3) the skill requisite to perform the legal services properly, (4) the preclusion of other
27 employment by the attorney due to the acceptance of the case, (5) the customary fee, (6) whether the fee is
28 fixed or contingent, (7) time limitation imposed by the client or the circumstances, (8) the amount involved
and results obtained, (9) the experience, reputation and ability of the attorney, (10) the undesirability of the
case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar
cases.

1 and remote legal defenses. In order to investigate Defendant's policies, practices, and procedures,
2 Class Counsel propounded formal and informal discovery, and in advance of mediation reviewed
3 and analyzed extensive time and payroll data. Indeed, Class Counsel analyzed hundreds of pages
4 of documents, and thousands of pages of time and payroll data. Further, Class Counsel participated
5 in case strategy and analysis, drafting, reviewing, revising pleadings, and preparing for and
6 attending mediation. Class Counsel participated in extensive negotiations at mediation and
7 following the mediation to reach a settlement and then spent substantial time drafting and revising
8 the Class Action and PAGA Settlement Agreement. A settlement was achieved despite all of the
9 obstacles that had to be overcome, because Class Counsel used their complex wage-and-hour
10 litigation experience and skills to obtain the Settlement. In total, this Action consumed more than
11 279.10 hours of Class Counsel's efforts. *See* Davis Decl. ¶¶17-21, 26-28, 43, 56, Ex. 3. However,
12 a settlement was finally achieved despite all obstacles, because of the work performed by Class
13 Counsel. In light of the time expended, the requested attorneys' fees are reasonable. Davis Decl.
14 ¶65.

15 ***2. The Skill Required to Perform Legal Services***

16 The Action also required substantial skill to litigate, and Class Counsel were required to
17 overcome numerous barriers in order to reach a settlement. Defendants denied liability, felt
18 strongly about their ability to prevail, challenged the theories of Class Counsel, and mounted
19 several defenses that posed significant problems moving forward. Despite this, Class Counsel were
20 able to use their substantial experience in complex wage and hour litigation to convince
21 Defendants to attend mediation and discuss a potential settlement rather than proceed with further
22 litigation. Class Counsel's skill and experience also allowed them to review and analyze a large
23 amount of time and payroll data, a complex process that took considerable time and energy in
24 order to determine Defendants' underlying practices and potential damages. This settlement,
25 against experienced defense counsel and despite strong potential defenses, was possible because
26 of Class Counsel's skill and experience.

27 ***3. The Value, Amount, and Results Achieved***

28 The Settlement represents a fair resolution of the Action given the risks inherent in

1 litigating them through trial and possible appeals. Counsel obtained a non-reversionary Gross
2 Settlement Amount of \$565,000.00. Although Class Counsel predicts that Plaintiff would prevail
3 on all causes of action at trial, a number of risks reduced the case's value. For instance, as discussed
4 extensively in Plaintiff's Motion for Preliminary Approval, Defendant claimed there were
5 substantial problems with Plaintiff's claims. Defendant contended that their policies were legally-
6 compliant, and raised issues with Plaintiff's meal break, rest break, and off-the-clock claims
7 regarding the necessity of individualized proof. Defendant contended these issues would prevent
8 Plaintiff from successfully recovering on these claims which were a major focus of the litigation.
9 However, despite these challenges, Defendant agreed to a non-reversionary Gross Settlement
10 Amount of \$565,000.00.

11 **4. Whether the Fee is Fixed or Contingent**

12 Whether the representation was provided on a contingency basis, as it was in this Action,
13 is an important factor:

14 **A contingent fee must be higher than a fee for the same legal services paid as**
15 **they are performed.** The contingent fee compensates the lawyer not only for the
16 legal services he renders but for the loan of those services. A lawyer who both bears
17 the risk of not being paid and provides legal services is not receiving the fair market
18 value of his work if he is paid only for the second of these functions. *Cates v.*
19 *Chiang*, 213 Cal.App.4th 791, 823 (2013).

20 The fact that the case was litigated on a contingent basis also strongly supports the award
21 of attorneys' fees requested by Plaintiff. If Class Counsel had been unsuccessful, they would not
22 receive any fee or recover any portion of the substantial expenses spent litigating this matter. Class
23 Counsel have borne all of the risks and costs of litigation and will not receive any compensation
24 until recovery is obtained in the case. These are the types of risks Class Counsel face because of
25 their decision to litigate this matter on a contingency basis. The contingent risk is a relevant factor
26 when considering the reasonableness of the requested fees. Davis Decl. ¶¶49, 62.

27 **D. The Fee is Reasonable Under a Lodestar Analysis**

28 While the percentage-of-the-benefit approach is endorsed as the better approximation of
the workings of the marketplace than the lodestar approach, courts may also use the lodestar
method to "cross-check" the results of the other. This said, Courts have cautioned that the primary

1 basis of the fee award in common fund cases remains the percentage of the fund method and have
2 cautioned that this that class counsel should not necessarily receive a lesser fee achieving a speedy
3 and timely result for class members in need of immediate relief. *See e.g. Vizcaino v. Microsoft*
4 *Corp.*, 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts have noted that “it is widely recognized
5 that the lodestar method creates enhancements for counsel to expend more hours than may be
6 necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not
7 reward early settlement.” *Id.* (quoting *Camden I Condominium Ass’n*, 946 F.2d at 773-74.)

8 Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly
9 rates for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-
10 32 (2001). Counsel is entitled to compensation for every hour reasonably spent on the matter. *See*
11 *Id.* at 1133.

12 ***1. Counsel Spent a Reasonable Amount of Time***

13 Reasonableness of hours is assessed by “the entire course of the litigation, including
14 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v.*
15 *Las Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this
16 Action was highly contested and required a significant amount of time and labor. Defendants raised
17 significant defenses and denied liability. Class Counsel spent substantial time investigating
18 Defendants and their operations.

19 Prior to the mediation, Class Counsel gathered, reviewed, and analyzed data from
20 thousands of pages of documents. Additionally, long and difficult battles, including complicated
21 law and motion work would have followed had the case moved forward. After an agreement was
22 reached in principle, Class Counsel spent significant time negotiating terms of the Settlement to
23 obtain the best possible outcome for the Class. Davis Decl. ¶43.

24 Class Counsel conservatively worked a total of 279.10 hours on this Action. *See Davis*
25 *Decl.* ¶56, **Exhibit 3**. These services included drafting pleadings, researching into claims and
26 defenses presented by Defendants, drafting both formal and informal discovery requests,
27 reviewing and analyzing substantial records, policies, and memorandum in preparation for
28 mediation, drafting the mediation brief, attending mediation, drafting of the settlement agreement,

1 preparing the motion for preliminary approval, and many more. *See Id.* Class Counsel diligently
2 took all steps necessary to ensure this matter was litigated effectively and efficiently. Accordingly,
3 the time spent on this matter was reasonable.

4 ***2. Class Counsel's Hourly Rate is Reasonable***

5 Both California and federal courts recognize that attorneys should be compensated for
6 providing representation on a contingency basis and for taking on the risks associated with said
7 representation, as well as being provided with financial enhancements to enforce important rights
8 and protections like those at issue in the Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding
9 attorneys' fees, the aim is to mirror "the established practice in the private legal market of
10 rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal
11 hourly rates for winning contingency cases." *See Id.*

12 As previously discussed, Class Counsel have been actively involved in the Action from the
13 filing of the initial complaint to completing these final approval papers. Class Counsel invested
14 time and bore the risk that there could have been no recovery. Ultimately, Class Counsel was
15 successful in reaching a settlement of \$565,000.00 on behalf of the Class. To date, the lodestar for
16 Class Counsel is approximately \$190,987.50. *See Davis Decl.* ¶¶58, 60, Ex. 3. However, Class
17 Counsel are only seeking thirty-five percent (35%) of the common fund (*i.e.*, \$197,750.00). *Davis*
18 *Decl.* ¶60. Accordingly, in light of the value provided to the Settlement Class, Class Counsel
19 respectfully request the Court award attorneys' fees of \$197,750.00 to Class Counsel.

20 **VII. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

21 Class Counsel request the reimbursement of the costs incurred litigating this Action in the
22 amount of \$13,599.45. *See Davis Decl.* ¶66, Ex. 4. These costs include filing fees, all costs
23 associated with mediation fees, fees for expert analysis of Defendants' records, and \$500.00 in
24 anticipated future costs associated with the filing of this motion, filing the final report and other
25 costs necessary to fully resolve this matter. *See Davis Decl.* ¶66, Ex. 4. These costs are less than
26 the \$20,000.00 contemplated under the Settlement, meaning an additional \$6,400.55 will be
27 distributed to the Settlement Class Members. *Davis Decl.* ¶66.

28 ///

1 **VIII. THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND**
2 **REASONABLE**

3 Named plaintiffs in class action lawsuits are eligible for reasonable enhancements as
4 compensation “for the expense or risk they have incurred in conferring a benefit on other members
5 of the class.” *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles*, 186 Cal.App.4th 399,
6 412 (2010). The criteria courts may consider in determining whether to make an enhancement
7 payment include: (1) risks faced by the representative; (2) personal difficulties encountered; (3)
8 the time and effort spent on the case; (4) the duration of the litigation; and (5) the personal benefit
9 to the representatives. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal.
10 1995); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23,
11 2015 (finding service award of \$15,000 to be “fair and reasonable”).

12 The requested Enhancement Payment in the amount of \$7,500.00 to named Plaintiff Cesar
13 Guillen Hernandez is fair and appropriate based on the substantial amount of effort Plaintiff
14 invested into bringing this lawsuit and assisting Class Counsel on the Action. Davis Decl. ¶¶67-
15 70. Throughout the litigation, Plaintiff spent substantial time and effort searching for relevant
16 documents, speaking with Class Counsel, providing the facts and evidence necessary to prove the
17 allegations, and providing verified discovery responses. Plaintiff actively attempted to obtain
18 information that would benefit the Settlement Class. Prior to signing the Settlement Agreement,
19 Plaintiff reviewed the Settlement Agreement, asked questions, and discussed the settlement with
20 Class Counsel. The information and documentation provided by Plaintiff was instrumental in
21 establishing the wage and hour violations alleged in the Action, and the recovery provided for in
22 the Settlement would have been impossible to obtain without his participation. These services
23 unquestionably merit the requested Enhancement Payment. Davis Decl. ¶67; Hernandez Decl.,
24 ¶¶5-17.

25 At the same time, Plaintiff faces many risks in adding himself as class representative in
26 the Action. Plaintiff faces actual risks with his future employment, as putting himself on public
27 record in a wage and hour employment lawsuit could also very well affect his likelihood for future
28 employment. Davis Decl. ¶68. Plaintiff also placed himself at substantial risk because if

1 Defendant was to prevail in the Action, he could be liable for Defendant's attorney fees under
2 California Labor Code § 218.5. Despite this, Plaintiff still chose to bring this litigation on behalf
3 of others and has put those interests ahead of his own.

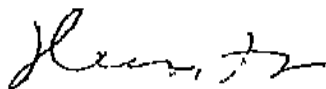
4 As a result of Plaintiff's service, 257 Class Members have the opportunity to participate
5 in a settlement, reimbursing them for wage violations they may have never known about on their
6 own or been willing to pursue on their own. If these Class Members would have each tried to
7 pursue their legal remedies on their own, that would have resulted in each having to expend a
8 significant amount of their own monetary resources and time, which were obviated by Plaintiff
9 putting himself on the line on behalf of these other Class Members. Davis Decl. ¶69. Plaintiff has
10 not received any compensation to date, and will not without Court approval, but should be
11 compensated for the time, efforts, and risk he took to successfully bring the Action on behalf of
12 others. Hernandez Decl. ¶9.

13 **IX. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that the Court grant the Motion for
15 Final Approval and enter Judgment in this Action pursuant to the terms of the Settlement.

16
17
18 DATED: May, 30, 2025

PROTECTION LAW GROUP, LLP

19 By: 
20 Heather Davis
21 Brendan Burton
22 Shadi Sahebghalam
23 *Attorneys for Plaintiff*
24 CESAR GUILLEN HERNANDEZ
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