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

10 NORMA BORQUEZ, an individual and on  
11 behalf of all others similarly situated;

12 Plaintiff,

13 vs.

14 SMART METALS RECYCLING LLC, a  
15 Limited Liability Company; and DOES 1  
through 50,

16 Defendants.

Case No.: CV2024-0050

[Assigned for All Purposes to:  
Hon. Samuel T. McAdam, Dept. 14]

**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: April 8, 2025

TIME: 9:00 a.m.

DEPT.: 14

Action Filed: January 3, 2024

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 April 8, 2025 at 9:00 a.m. in Department 14 of  
5 the Yolo County Superior Court, located at 1000 Main Street, Woodland, California 95695, Plaintiff  
6 NORMA BORQUEZ ("Plaintiff"), individually and on behalf of a class of similarly situated  
7 individuals, 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 Joint Stipulation of Class Action and PAGA  
15 Settlement ("Settlement" or "Agreement");

16 5. Approving an award of \$133,333.33 in attorney's fees to Class Counsel;

17 6. Approving an award of \$7,206.73 in costs to Class Counsel;

18 7. Approving an award of \$7,950.00 in costs to Phoenix Settlement Administrators for  
19 its settlement administration services;

20 8. Approving an enhancement payment of \$7,500.00 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 Norma  
10 Borquez, and Yami Burns of Phoenix Settlement Administration, and the exhibits attached thereto;  
11 the 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 7, 2025

Respectfully submitted,

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

16  
17 By: 

18 William C. Sung

19 Tiffany L. Luu

20 Attorneys for Plaintiff NORMA BORQUEZ  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Norma Borquez (“Plaintiff”) submits this Memorandum of Points and Authorities in  
4 support of Plaintiff’s Motion for Final Approval of Class and PAGA Action Settlement (the  
5 “Motion”) with Defendant Smart Metals Recycling LLC (“Defendant”) (together with Plaintiff, the  
6 “Parties”). Under the Settlement, Defendant has agreed to pay a non-reversionary Gross Settlement  
7 Amount of \$400,000.00 to the following Class comprised of 193 individuals:

8 All current and former hourly-paid or non-exempt employees of Defendant Start  
9 Metals Recycling, LLC in California from January 3, 2020 through December 31,  
2024.,

10 In this non-reversionary class and PAGA action settlement, all Participating Class Members  
11 will receive automatic payments without the need to submit a claim form, **resulting in an average**  
12 **Individual Class Payment of approximately \$1,057.05 to each Participating Class Member.**

13 This is an excellent result for the Class, especially in light of the significant litigation risks that  
14 Plaintiff faced. Moreover, after receiving notice of the proposed Settlement and projected estimated  
15 Individual Class Payments, **not a single Class Member has objected to the Settlement or elected**  
16 **to opt-out of the Settlement, resulting in a 100% participation rate.**

17 As explained further below, the Court should grant Plaintiff’s Motion in its entirety because  
18 (1) the Class continues to meet the requirements for certification for settlement purposes under  
19 Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the  
20 disputed claims in this case; and (3) the requested amounts for attorneys’ fees and costs, settlement  
21 administration costs, and class representative enhancement payment are all fair, adequate, and  
22 reasonable. In light of the foregoing, Plaintiff respectfully submits that the Court should enter the  
23 Proposed Judgment and Order Granting Final Approval submitted herewith.

24 **II. SUMMARY OF THE LITIGATION**

25 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

26 Defendant owns and operates an electronics recycling facility that recycled computer parts  
27 and harvested hard drives, RAMs, memory cards, etc. for resale, and is based in Woodland,  
28 California. Declaration of William C. Sung in Support of Plaintiff’s Motion for Final Approval of

1 Class Settlement (“Sung Decl.”), ¶ 9. Defendant employed Plaintiff as an hourly-paid, non-exempt  
2 employee from approximately February 2022 to October 24, 2023 as an operator who wiped hard  
3 drives and harvested computer parts. Declaration of Norma Borquez in Support of Plaintiff’s  
4 Motion for Final Approval of Class Settlement (“Borquez Decl.”), ¶ 2.

5 On January 3, 2024, Plaintiff commenced this Action by filing a Class Action Complaint,  
6 alleging the following six causes of action against Defendant: (1) failure to pay overtime wages; (2)  
7 failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to provide accurate  
8 wage statements; (5) failure to provide timely pay at separation; and (6) unfair competition in  
9 violation of Business and Professions Code sections 17200 *et seq.* Sung Decl., ¶ 10. Previously, on  
10 January 1, 2024, Plaintiff sent a notice letter under the California Private Attorneys General Act  
11 (“PAGA”) to the Labor and Workforce Development Agency (“LWDA”). Sung Decl., ¶ 11.  
12 Subsequently, on March 13, 2024, Plaintiff filed a First Amended Class and Representative Action  
13 Complaint (“FAC”), adding a cause of action for civil penalties under the PAGA. Sung Decl., ¶ 12.

#### 14 **B. DISCOVERY, MEDIATION, AND SETTLEMENT**

15 In connection with mediation, the Parties engaged in extensive informal discovery. Defendant  
16 produced (1) a 20% random, anonymized sampling of employee time and payroll records in Excel  
17 format; (2) Defendant’s relevant employment policies, including but not limited to Defendant’s  
18 employee handbooks in effect during the Class Period; (3) Plaintiff’s personnel file, time records,  
19 and wage statements; and (4) class and PAGA metrics, including but not limited to the number of  
20 workweeks worked by Class Members during the Class Period and pay periods worked by  
21 Aggrieved Employees during the PAGA Period. Sung Decl., ¶ 13.

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

27 On September 12, 2024, the Parties participated in a full-day mediation with Russ Wunderli,  
28 Esq., a well-respected wage and hour class action mediator. Sung Decl., ¶ 15. During mediation, the

Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Ibid.* The Parties reached a tentative class and PAGA settlement at the mediation. *Ibid.* During the months that followed, the Parties finalized the terms of the Settlement in executed the Joint Stipulation of Class and PAGA Settlement and Release ("Settlement" or "Agreement"). *Id.*, Ex. 1 (Agreement).

### **C. PRELIMINARY APPROVAL AND MAILING OF CLASS NOTICES**

On October 8, 2024, Plaintiff submitted the proposed Settlement to this Court with Plaintiff's Motion for Preliminary Approval of Class Action Settlement. Sung Decl., ¶ 16. On November 5, 2024, this Court issued its Order Granting Preliminary Approval of Class Action Settlement. *Id.*, Ex. 2 (Order Granting Preliminary Approval).

On December 3, 2024, the Administrator mailed the Court-approved Class Notice to 181 Class Members with a response deadline of February 3, 2025; and on January 28, 2025, the Administrator mailed the Class Notice to 12 additional Class Members with a response deadline of March 14, 2025. Declaration of Yami Burns in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement ("Phoenix Decl."), ¶¶ 3-10. As of March 5, 2025, the Administrator received no objections, no requests for exclusion, and no workweek disputes. *Id.*, at ¶¶ 10-12. Now that Class Notice has been provided to Class Members and the notice administration is complete, Plaintiff respectfully submits the Settlement for this Court's final approval.

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

### **A. CLASS DEFINITION**

As noted, the Class is comprised of: "All current and former hourly-paid or non-exempt employees of Defendant Start Metals Recycling, LLC in California from January 3, 2020 through December 31, 2024." Sung Decl., Ex. 2 at ¶ 6.

### **B. MONETARY TERMS**

The Settlement provides for Defendant to pay a non-reversionary Gross Settlement Amount of \$400,000.00. Agreement, § 3.1 (Ex. 1 to Sung Decl.). The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees (\$133,333.33.00) and litigation costs (\$7,206.73), requested Class Representative Service Payment

1 (\$7,500.00), settlement administration costs (\$7,950.00), and the amount set aside as PAGA civil  
2 penalties (\$40,000.00). Settlement, §§ 1.28 3.2; Sung Decl., ¶ 17, Ex. 3; Phoenix Decl., ¶ 14. Based  
3 on these requested amounts, the Net Settlement Amount is estimated at \$204,009.94. Phoenix Decl.,  
4 ¶ 14.

5 Each Individual Class Payment to Class Members will be calculated as follows: “The  
6 Administrator shall pay Individual Class Payments to Class Members calculated by (a) dividing the  
7 Net Settlement Amount by the total number of Workweeks worked by all Participating Class  
8 Members during the Class Period and (b) multiplying the result by each Participating Class  
9 Member’s Workweeks. Settlement, § 3.2.4. In addition, 25% of the amount designated as PAGA  
10 Penalties (i.e., \$10,000.00) will be distributed to all Aggrieved Employees who worked for  
11 Defendant who worked for Defendant from January 1, 2023 to December 31, 2024 (the “PAGA  
12 Period”) based on the proportionate number of pay periods worked during the PAGA Period. *Id.* at  
13 §§ 1.34, 3.2.5.1.

14 All Individual Class Payments from the Net Settlement Amount will be classified as 20%  
15 wages to be reported on a W-2 form, and 80% penalties and interest, to be reported on a 1099 form.  
16 Settlement, § 3.2.4.1. Defendant’s share of employer-side payroll taxes shall be paid by Defendant  
17 separate, and in addition to, the Gross Settlement Amount. *Id.* at § 3.1.

### 18 C. SUMMARY OF THE NOTICE ADMINISTRATION

19 On December 3, 2024, Defendant provided the Administrator with the names, last known  
20 mailing addresses, social security numbers, and dates of employment for 181 Class Members.  
21 Phoenix Decl., ¶ 3. That same day, the Administrator conducted a National Change of Address  
22 (“NCOA”) search in an attempt to update Class Members’ addresses as accurately as possible. *Id.*,  
23 at ¶ 4. A search of this database provides updated addresses for any individual who has moved in  
24 the previous four (4) years and notified the U.S. Postal Service of their change of address. *Ibid.*

25 On December 19, 2024, the Class Notices were mailed via U.S. first-class mail, in English  
26 and Spanish, to all 181 Class Members. *Id.* at ¶¶ 5, 10-12, Ex. A. On January 23, 2025, Defendant  
27 provided an updated Class List reflecting workweeks through the end of the Class Period and the  
28 updated Class List included 12 additional Class Members. *Id.* at 6. On January 28, 2025, the Class

1 Notices were mailed via U.S. first-class mail, in English and Spanish, to the additional 12 Class  
2 Members. *Id.* at ¶ 7, Ex. B. Following the first and second mailings and as of March 5, 2025, 14  
3 Class Notices were returned to Phoenix. *Id.* at ¶ 8. Phoenix attempted to locate a current mailing  
4 address by performing computerized skip traces on the returned Class Notices. *Id.* Of the 14 Class  
5 Notices that were skip-traced, 11 updated addresses were obtained and the Class Notices were  
6 promptly re-mailed to those Settlement Class members via first class mail. *Ibid.* Ultimately, 3 Class  
7 Notices are considered undeliverable as an updated address could not be found through a skip trace.  
8 *Id.* at ¶ 9.

9 Class Members from the first mailing had until February 3, 2025 and Class Members from  
10 the second mailing has until March 14, 2025 to submit objections, disputes, and/or requests for  
11 exclusion. Phoenix Decl., ¶¶ 10-12. As of March 5, 2025, the Administrator received no objections,  
12 no requests for exclusion, and no workweek disputes. *Ibid.* After the March 14, 2025 deadline for  
13 the second mailing, the Administrator will submit a supplemental declaration regarding any  
14 objections, disputes, and/or requests for exclusion. As the Settlement currently stands, the  
15 participation rate is 100%, and the average estimated Individual Class Payment is approximately  
16 \$1,057.05, with the highest estimated payment being \$5,600.73 and lowest estimated payment being  
17 \$23.14. *Id.* at ¶ 15. Additionally, Aggrieved Employees who were employed during the PAGA  
18 Period will receive a portion of the \$10,000.00 PAGA Amount. *Id.*, at ¶ 16. The highest Individual  
19 PAGA Payment is approximately \$186.24 and the average individual PAGA Payment is  
20 approximately \$59.88. *Ibid.*

21 **D. FUNDING OF THE SETTLEMENT AND UNCASHED SETTLEMENT**  
22 **CHECKS**

23 Defendant shall deposit the Gross Settlement Amount and Employer Taxes with the  
24 Administrator within 30 calendar days of the Effective Date. Settlement, § 4.3. At least 5 business  
25 days prior to Defendant's deadline to fund the Gross Settlement Amount and Employer Taxes, the  
26 Administrator shall calculate the total Employer Taxes and issue Defendant instructions and the  
27 amount of Employer Taxes. *Ibid.*

28 ///

1 Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will  
2 disburse all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA  
3 Payment, the Administration Expenses Payment, Class Representative Service Payment, the Class  
4 Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment. *Id.* at § 4.4. After  
5 disbursement, Class Members will have 180 days to cash their checks. *Id.* at § 4.4.1. Funds  
6 remaining unclaimed after 180 days shall be sent to the California State Controller's Office in the  
7 Class Member's name to be held as unclaimed property for the Class Member. *Id.* at § 4.4.3.

#### 8 **IV. LEGAL ARGUMENT**

##### 9 **A. THE SETTLEMENT MEETS ALL REQUIREMENTS FOR CLASS** 10 **CERTIFICATION UNDER CODE OF CIVIL PROCEDURE § 382**

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

17 Here, this Court found that the Class meets all the requirements for class certification for  
18 settlement purposes when it granted preliminary approval of the Settlement on November 5, 2024.  
19 *See generally* Sung Decl., Ex. 2. Subsequent to the Court's order granting preliminary approval, no  
20 events have cast doubt on the propriety of this determination, and in fact, the reaction of the Class  
21 has been overwhelmingly supportive of the Settlement, with not a single objection and not a single  
22 request for exclusion submitted, resulting in a 100% participating rate. *See* Phoenix Decl., ¶¶ 10-12.  
23 This Court should therefore confirm its conditional certification of the Class.

##### 24 **B. THE SETTLEMENT IS A FAIR, ADEQUATE, AND REASONABLE** 25 **COMPROMISE OF DISPUTED WAGE AND HOUR CLAIMS**

26 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*  
27 *Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class action settlements  
28 involve a court approval process that exists to prevent fraud, collusion, and unfairness to class

1 members. *Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-  
2 79. This approval process consists of preliminary settlement approval, notice being given to class  
3 members, and a final fairness and approval hearing being held, at which class members have the  
4 opportunity to be heard with respect to the settlement. *Id.* Now that notice has been provided to the  
5 Class, Plaintiff respectfully requests that this Court finally approve the Settlement as fair, adequate,  
6 and reasonable.

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

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

18           [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of  
19 further litigation, the risk of maintaining class action status through trial, the amount  
20 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.

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

24           "In the context of a settlement agreement, the test is not the maximum amount a plaintiff  
25 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under  
26 all of the circumstances." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.  
27 Because settlements inherently involve compromise, even settlements providing for substantially  
28 narrower relief than likely would be obtained if the suit were successfully litigated can be

1 reasonable because “the public interest may indeed be served by a voluntary settlement in which  
2 each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Line Stewards, etc.,*  
3 *Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109). In addition, courts review the  
4 discovery process and information received through it to aid them in assessing whether the parties  
5 sufficiently developed the claims and their supporting factual bases before reaching settlement. *See*  
6 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-31. Information is sufficient  
7 where it allows the parties and the court to form “an understanding of the amount that is in  
8 controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential Svcs.*  
9 *LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that the parties can provide the  
10 Court with “a meaningful and substantiated explanation of the manner in which the factual and legal  
11 issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132-33.

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

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

17           As detailed in Plaintiff’s Motion for Preliminary Approval, there is a significant risk of non-  
18 certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims. Sung  
19 Decl., ¶ 18. For example, with respect to Plaintiff’s alleged unlawful AWS claim, Defendant argues  
20 that it has a lawfully voted on AWS policy and its implemented AWS schedule substantially  
21 complied with the AWS policy such that it is not required to pay overtime for the 8<sup>th</sup> to 9<sup>th</sup> hour of  
22 work. *Ibid.* Defendant further contends that damages are limited because Defendant did not  
23 implement any AWS schedule until July 2023. *Ibid.*

24           With respect to Plaintiff’s claim for alleged regular rate violations for overtime pay,  
25 Defendant contends that it properly paid overtime and the bonuses were non-discretionary in nature  
26 and need not be factored into the regular rate of pay. Sung Decl., ¶ 19. Defendant further argues that  
27 Class Members received different types of bonuses throughout the Class Period, creating  
28 substantive differences among the Class Members with respect to the incentives received, making

1 class certification unlikely. *Ibid.*

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

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

27 Finally, with respect to Plaintiff's claim for civil penalties under PAGA, since Plaintiff's  
28 PAGA claim is derivative of Plaintiff's underlying wage claims, Defendant asserts the PAGA claim

1 would fail with those claims. Sung Dec., ¶ 22; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th  
2 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims  
3 also fail.”). Defendant further maintains that, given its good faith defenses, this Court would  
4 exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable  
5 for any of Plaintiff’s claims. Sung Dec., ¶ 22; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore*  
6 *Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties);  
7 *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at \*4 (C.D.  
8 Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of  
9 violations); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil  
10 penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the  
11 law).

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

18                   **3. The Settlement Fairly, Reasonably, and Adequately Compensates Class**  
19                   **Members**

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

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

3           Class members' response to a settlement is relevant in evaluating whether it merits final  
4 approval. *Dunk*, 48 Cal.App.4th at 1801. The absence of objections and requests for exclusion  
5 supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*  
6 (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454  
7 showed a "particularly impressive" favorable response from class members). Here, not a single  
8 Class Member has objected to the Settlement or elected to opt-out, resulting in a 100% participation  
9 rate. Phoenix Decl., ¶¶ 10-12. This extremely favorable response of the Class further confirms that  
10 the Settlement is fair, adequate, and reasonable.

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

14           Plaintiff and the Class, as the prevailing parties in settlement, are entitled to recover their  
15 attorney's fees and costs for their wage claims. An attorney's fee award is justified where the legal  
16 action has produced its benefits by way of a voluntary settlement. *See e.g., Maria P. v. Riles* (1987)  
17 43 Cal.3d 1281, 1290-91; *Westside Cmnty. for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d  
18 348, 352-53; *see also* Code Civ. Proc. § 1021.5. Here, Plaintiff submits that Plaintiff is entitled to  
19 recover attorneys' fees under the common fund theory, as confirmed by a lodestar "cross-check."

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

22           When a settlement results in a common fund for the benefit of a class, class counsel may be  
23 awarded fees as a percentage of the common fund. *Wershba*, 91 Cal.App.4th at 254 (recognizing the  
24 "percentage of recovery" method). The California Supreme Court confirmed in *Laffitte v. Robert*  
25 *Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 that "[t]he percentage of fund method survives in  
26 California class action cases." Our Supreme Court held:

27           The recognized advantages of the percentage method—including relative ease of  
28 calculation, alignment of incentives between counsel and the class, a better  
approximation of market conditions in a contingency case, and the encouragement it  
provides counsel to seek an early settlement and avoid unnecessarily prolonging the

1 litigation—convince us the percentage method is a valuable tool that should not be  
2 denied our trial courts.

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

16 Here, Class Counsel’s fee request of \$133,333.33 (one-third of the Gross Settlement  
17 Amount) is fair and reasonable based on a percentage of the recovery. First, “regardless whether the  
18 percentage method or the lodestar method is used, fee awards in class actions average around one-  
19 third of the recovery.” *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 66, n.11. This is also consistent  
20 with Class Counsel’s experience in similar matters. *See* Sung Decl., ¶ 23. Thus, the percentage  
21 sought by Class Counsel (the same percentage approved in *Laffitte*) is reasonable.

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

23 The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess  
24 the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial  
25 court calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring  
26 the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06.  
27 While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold  
28 further that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as

the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.”).

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

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

Here, Class Counsel have a lodestar of approximately \$103,850.00, which results in a multiplier of approximately 1.28 compared to the \$133,333.33 fee request. *See Sung Decl.*, ¶¶ 24-26, Exs. 5 (Sung Itemized Timesheet) & 6 (Luu Itemized Timesheet). A general summary showing 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.*, ¶¶ 24-26, Ex. 3 (Laffey Matrix); Declaration of Tiffany L. Luu in Support of Motion for Final Approval (“Luu Decl.”), ¶ 7.

| Name                                                | Rate  | Hours                  | Lodestar  |
|-----------------------------------------------------|-------|------------------------|-----------|
| William C. Sung<br>(14 <sup>th</sup> Year Attorney) | \$800 | 92.70                  | \$82,160  |
| Tiffany L. Luu<br>(5 <sup>th</sup> Year Attorney)   | \$450 | 38.20                  | \$21,960  |
|                                                     |       | <b>Total Lodestar:</b> | \$103,850 |

1       The fee award requested here is justified because Class Counsel achieved a significant  
2 monetary recovery for the Class in an uncertain and risky case while bearing the substantial burdens  
3 of representation on a contingency basis, and the fees requested are in line with the market rate.  
4 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-51 (finding that exceptional results  
5 in a contingency case, significant risk, and the absence of supporting precedents, are proper  
6 considerations in awarding attorney’s fees). Class Counsel negotiated a substantial recovery for the  
7 Class, resulting in a 100% participation rate, and not a single Class Member objected to the  
8 Settlement, including Class Counsel’s requested fees. *See* Phoenix Decl., ¶¶ 10-12.

9       In addition, the average estimated award in this case of \$1,057.05 far exceeds average  
10 payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*  
11 (E.D. Cal. 2008) No. 2:06-CV-02674-JAM-DAD (wage and hour class action settlement approved  
12 where average class member recovery was approximately \$60); *Schiller v. David’s Bridal, Inc.*  
13 (E.D. Cal. June 11, 2012) No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (finding that average  
14 payment to class members of less than \$200 was a “good” result); *Williams v. Centerplate, Inc.*  
15 (S.D. Cal. Aug. 26, 2013) No. 11-CV-2159 HKSC, 2013 WL 4525428 (granting final approval of  
16 class action settlement where average recovery for each class member was approximately \$108 and  
17 describing result as “very favorable”). The fact that Class Counsel achieved these results in the face  
18 of serious defense challenges and in an uncertain legal landscape, confirms the strength of the  
19 results achieved.

20       As noted, this case presented significant risk as to both class certification and prevailing on  
21 the merits. Accordingly, it is fair and reasonable to account for these risks in compensating Class  
22 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this  
23 litigation and expending considerable effort, all while working on a pure contingency basis. Since  
24 undertaking representation of Plaintiff in this litigation, Class Counsel have borne all the costs of  
25 litigation since the filing of the Action without receiving any compensation to date. *See* Sung Decl.,  
26 Sung Decl., ¶ 27. During this time, counsel have incurred \$7,206.73 in litigation costs, and devoted  
27 substantial time to this litigation. *Ibid.*

28     ///

1 Counsel's efforts have included: pre-filing research and investigation; analyzing Plaintiff's  
2 claims and potential defenses to the same; conducting legal research; conducting extensive and  
3 informal discovery; analyzing Class Members' timekeeping and payroll records and other data and  
4 documents with the help of a retained expert; creating a comprehensive damages model; preparing  
5 for and attending mediation; negotiating and preparing the long-form Settlement Agreement;  
6 preparing the Motion for Preliminary Approval; overseeing Notice administration; drafting this  
7 Motion for Final Approval; and otherwise litigating this Action. Sung Decl., ¶ 28. Given the  
8 considerable potential for adverse outcomes in this case, including but not limited to losing on class  
9 certification and/or merits issues, the contingent risk borne by counsel in this case was great.

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

22 **D. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AS A**  
23 **PERCENTAGE OF THE COMMON FUND CONFIRMED BY A LODESTAR**  
24 **"CROSS-CHECK"**

25 Plaintiff seeks \$7,206.73 in litigation costs. Sung Decl., ¶ 17, Ex. 3. The cost request is fair,  
26 adequate, and reasonable, as the costs were reasonably incurred, and the costs Plaintiff seeks are  
27 routinely approved by courts. *See e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel  
28 should recover "those out-of-pocket expenses that would normally be charged to a fee paying

1 client”); *Ashker v. Sayre* (N.D. Cal. Mar. 7, 2011) No. 05-03759 CW, 2011 WL 825713 at \*3  
2 (“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-  
3 paying clients”); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins.*  
4 *Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-59 (legal research costs reimbursable); *In re Immune*  
5 *Response Sec. Litig.* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation, consultant and  
6 expert fees; legal research; copies; postage; filing fees; messenger and overnight delivery costs  
7 reimbursable). In addition, not a single Class Member objected to the Settlement, including Class  
8 Counsel’s request of up to \$20,000.00 in litigation costs. *See* Phoenix Decl., ¶¶ 10-12. Because  
9 these costs were reasonably incurred, and no Class Member has objected to them, the Court should  
10 grant the request.

11 **E. THE COURT SHOULD APPROVAL THE REQUESTED SETTLEMENT**  
12 **ADMINISTRATION COSTS.**

13 Plaintiff also requests that this Court approve \$7,950.00 in settlement administration costs to  
14 the Administrator, Phoenix Settlement Administrators. As detailed in the declaration of Yami Burns  
15 submitted herewith, the Administrator performed duties that were integral in effectuating the  
16 Settlement and the Notice process. Among other things, Phoenix calculated each Class member’s  
17 Individual Class and PAGA Payments, updated addresses contained in the class data supplied by  
18 Defendant, formatted and translated Notices for mailing, mailed Class Notices to all 193 Class  
19 Members, kept the Parties informed of any objections or requests for exclusion, and otherwise  
20 administered the Settlement. *See* Phoenix Decl., ¶¶ 2-18. For these reasons, Phoenix’s requested  
21 costs are fair, reasonable, and adequate, and should be finally approved.

22 **F. THE COURT SHOULD APPROVE PLAINTIFF’S REQUESTED CLASS**  
23 **REPRESENTATIVE SERVICE PAYMENT**

24 Courts routinely approve enhancement payments to compensate named plaintiffs for the  
25 services they provide and the risks they incur during class action litigation. *See, e.g., Bell v.*  
26 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named  
27 plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal.  
28 1995) 901 F. Supp. 294 (approving \$50,000 service payment). Indeed, “[i]ncentive awards are

1 fairly typical in class action cases.” *Rodriguez v. West Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948,  
2 958. The Court may award incentive payments “to compensate [Plaintiff] for work done on behalf  
3 of the class, to make up for financial or reputational risk undertaken in bringing the action. *Id.* at  
4 958-59.

5 Here, Plaintiff seeks a Service Payment of \$7,500 and Plaintiff and Class Counsel submit  
6 that this request is reasonable given Plaintiff’s efforts in this case and the risks Plaintiff undertook  
7 on behalf of the Class. *See* Borquez Decl., ¶¶ 4-6; Sung Decl., ¶ 29. Plaintiff expended substantial  
8 time and effort on behalf of the Class, including providing factual information and documents to  
9 counsel, attending meetings with counsel to discuss the claims and theories at issue in the litigation,  
10 and otherwise actively participating in the prosecution of his claims. Borquez Decl., ¶ 2.

11 Plaintiff also undertook the risk of being liable for Defendant’s costs if this case were lost,  
12 as well as the reputational risk of being the named plaintiff in a wage and hour class action against  
13 an employer. *See, e.g., Deaver v. Compass Bank* (N.D. Cal. Dec. 11, 2015) 2015 WL 8526982 at  
14 \*14-15 (approving \$7,500 incentive payment in \$500,000 wage and hour settlement, finding the  
15 award “particularly appropriate in this wage and hour class action, where Plaintiff undertook a  
16 significant ‘reputational risk’ in bringing this action against his former employer”). Plaintiff is also  
17 agreeing to a much broader release than other Class Members, including a waiver of Civil Code §  
18 1542. *See* Settlement, § 5.1; *see also Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306  
19 F.R.D. 245, 268 (approving \$15,000 total award to named plaintiff in wage and hour class action  
20 settlement, including \$10,000 incentive award plus an additional \$5,000 for plaintiff’s release of  
21 claims).

22 Finally, after receiving notice of the proposed Class Representative Service Payment for  
23 Plaintiff, no Class Member objected to the amount. Phoenix Decl., ¶ 11. Given Plaintiff’s  
24 significant contributions to this case, the risks Plaintiff undertook, and the lack of any objection  
25 from Class Members, Plaintiff’s requested Service Payment is appropriate and justified as part of  
26 the Settlement and should be finally approved.

27 ///

28 ///

1 **V. CONCLUSION**

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

5  
6 DATED: March 7, 2025

Respectfully submitted,

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

8  
9 By: 

10 William C. Sung

11 Tiffany L. Luu

12 Attorneys for Plaintiff NORMA BORQUEZ  
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