

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Tiara Gose-Hardy (SBN 323823)
tgose@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
CHERYL GARAY

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
CHERYL GARAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CHERYL GARAY, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MARNA HEALTH SERVICES, INC. dba
HILLCREST NURSING HOME, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CIVSB2419464

*[Assigned for All Purposes to Hon. Lily L.
Sinfield, Dept. S-31]*

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

Date: September 28, 2026
Time: 8:30 a.m.
Dept.: S-31

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on September 28, 2026 at 8:30 a.m. in Department S-31 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Cheryl Garay (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

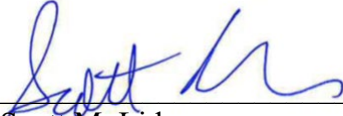
1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Cheryl Garay as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman, Milan Moore and Tiara Gose-Hardy of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Class Action and PAGA Settlement (herein “Settlement”);
5. Approving an award of \$252,966.66 in attorneys’ fees to Class Counsel;
6. Approving an award of \$15,395.09 in costs to Class Counsel;
7. Approving an award of \$8,750.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving an incentive payment of \$5,000.00 to Plaintiff Javier Martinez for his services as Class Representative;
9. Approving an award of \$22,500.00 to the Labor & Workforce Development Agency (“LWDA”);
10. Approving an award of \$7,500.00 to Aggrieved Employees; and
11. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is based on this notice of motion, the attached memorandum of points and authorities attached hereto, the declarations of Scott M. Lidman, Tiara Gose-Hardy, Paul K. Haines, Milan Moore,

1 Plaintiff Cheryl Garay,¹ and Mayra Gonzalez of Phoenix Settlement Administrators, and the exhibits
2 attached thereto, the pleadings and other papers filed in this action, and on any further oral or
3 documentary evidence or argument presented at the time of hearing.

4
5 Dated: August 31, 2026

Respectfully submitted,
LIDMAN LAW, APC

6
7 By: 

8 Scott M. Lidman
9 Attorney for Plaintiff
10 CHERYL GARAY
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28 ¹ The declaration of Plaintiff Cheryl Garay was originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed her declaration with the instant Motion.

TABLE OF CONTENTS

I.	INTRODUCTION	8
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	8
	A. Plaintiff's Claims.....	9
	B. Mediation and Settlement.....	10
	C. Preliminary Approval of Settlement.....	11
III.	SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS.....	11
	A. Settlement Class Definition.....	11
	B. Monetary Terms of the Settlement	12
	C. Summary of Notice Process	12
	1. Mailing of Notice Packets	12
	D. Timing of Payments	13
	E. Notice of Judgment.....	14
IV.	ARGUMENT	14
	A. This Court Should Confirm its Conditional Certification of the Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382	14
	B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims	14
	1. The Settlement was Reached at Arm's Length, Through Experienced Counsel and An Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation	15
	2. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Participating Class Member Will Be Paid Based on the Extent of His or Her Injury	17
	3. The 100% Participation Rate and Absence of Any Objections Further Confirms That the Settlement is Fair, Adequate, and Reasonable	17
	C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check.....	18
	D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable	23
	E. The Court Should Finally Approve the Requested Administration Costs.....	23
	F. Plaintiff's Requested Service Award Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that She Assumed on Behalf of the Class.....	24
V.	CONCLUSION.....	25

TABLE OF AUTHORITIES

Federal Cases

<i>Air Line Stewards, etc., Local 550 v. American Airlines, Inc.,</i>	
455 F.2d 101 (7th Cir. 1972)	15
<i>Ashker v. Sayre,</i>	
2011 WL 825713 (N.D. Cal. 2011)	23
<i>Cicero v. DirectTV, Inc.,</i>	
No. EDCV 07-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010).....	19
<i>Harris v. Marhoefer,</i>	
24 F.3d 16, 19 (9th Cir. 1994)	23
<i>In re Immune Response Securities Litigation,</i>	
497 F. Supp. 2d 1166 (S.D. Cal. 2007).....	23
<i>In re Rite Aid Corp. Securities Litigation,</i>	
396 F.3d 294 (3d Cir. 2005).....	19
<i>Rawlings v. Prudential-Bache Properties, Inc.,</i>	
9 F.3d 513 (6th Cir. 1993)	20
<i>Schiller v. David's Bridal, Inc.,</i>	
2012 WL 2117001 (E.D. Cal. 2012).....	21
<i>Sorenson v. PetSmart, Inc.,</i>	
Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)	21
<i>Trustees of Const. Indust. & Laborers Health & Welfare Trust v. Redland Ins. Co.,</i>	
460 F.3d 1253 (9th Cir. 2006)	23
<i>Van Vranken v. Atlantic Richfield Co.,</i>	
901 F. Supp. 294 (N.D. Cal. 1995)	24
<i>Vizcaino v. Microsoft Corp.,</i>	
290 F.3d 1043 (9th Cir. 2002)	21
<i>Williams v. Centerplate, Inc.,</i>	
2013 WL 4525428 (S.D. Cal. 2013).....	21

1	<i>Williams v. Costco Wholesale Corp.,</i>	
2	No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 (S.D. Cal. July 7, 2010).....	19
3	State Cases	
4	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
5	85 Cal.App.4th 1135 (2000)	17
6	<i>Bell v. Farmers Ins. Exchange,</i>	
7	115 Cal.App.4th 715, 726 (2004)	24
8	<i>Brinker Restaurant Corp. v. Superior Court,</i>	
9	53 Cal. 4th 1004 (2012)	16
10	<i>Chavez v. Netflix, Inc.,</i>	
11	162 Cal.App.4th 43 (2008)	19, 20
12	<i>City of Oakland v. Oakland Raiders,</i>	
13	203 Cal.App.3d 78 (1988)	20
14	<i>Clark v. Am. Residential Servs. LLC,</i>	
15	175 Cal.App.4th 785 (2009)	24
16	<i>Coalition for L. County Planning etc. Interest v. Bd. of Supervisors,</i>	
17	76 Cal.App.3d 241 (1977)	20
18	<i>Consumer Privacy Cases,</i>	
19	175 Cal.App.4th 545 (2009)	20
20	<i>Dunk v. Ford Motor Co.,</i>	
21	48 Cal.App.4th 1794 (1996)	15, 17
22	<i>Golba v. Dick's Sporting Goods, Inc.,</i>	
23	238 Cal.App.4th 1251 (2015)	24
24	<i>Ketchum v. Moses,</i>	
25	24 Cal.4th 1122 (2001)	20
26	<i>Laffitte v. Robert Half Int'l, Inc.,</i>	
27	1 Cal.5th 480 (2016)	18, 19, 20
28	<i>Malibu Outrigger Bd. of Governors v. Superior Court,</i>	
	103 Cal.App.3d 573 (1980)	14

1	<i>Mallick v. Superior Court,</i>	
2	89 Cal.App.3d 434 (1979)	15
3	<i>Maria P. v. Riles,</i>	
4	43 Cal.3d 1281 (1987)	18
5	<i>Richmond v. Dart Industries, Inc.,</i>	
6	29 Cal.3d 462 (1981)	14
7	<i>Serrano v. Priest</i>	
8	20 Cal.3d 25 (1977)	18, 20
9	<i>Serrano v. Unruh</i>	
10	32 Cal.3d 621 (1982)	18
11	<i>Stambaugh v. Superior Court,</i>	
12	62 Cal.App.3d 231 (1976)	14
13	<i>Thayer v. Wells Fargo Bank,</i>	
14	92 Cal.App.4th 819 (2001)	20
15	<i>Wershba v. Apple Computer, Inc.,</i>	
16	91 Cal.App.4th 224 (2001)	15, 18
17	<i>Westside Community for Independent Living, Inc. v. Obledo,</i>	
18	33 Cal.3d 348 (1983)	18
19	Statutes	
20	Cal. Civ. Proc. § 382.....	8, 14
21	Lab. Code § 218.5.....	18
22	Lab. Code § 226.....	9
23	Lab. Code § 226(a)	9
24	Lab. Code § 226(e)	17, 18
25	Lab. Code § 2699(g)	18
26	Lab. Code § 2802.....	10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Cheryl Garay (“Plaintiff”) submits this memorandum of points and authorities in support
4 of his motion for final approval of the class action settlement (the “Settlement”) with Defendant Marna
5 Health Services, Inc. doing business as Hillcrest Nursing Home (“Defendant”). The Settlement Class is
6 defined as: current and former non-exempt, hourly employees of Defendant Marna Health Services, Inc.
7 dba Hillcrest Nursing Home who worked at any time in California during the Class Period. For purposes
8 of the Settlement, the “Class Period” shall mean the time period of June 11, 2020 through August 9, 2025.

9 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
10 Member is approximately \$786.35. This is a favorable resolution of the highly disputed wage and hour
11 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
12 preliminary approval on December 2, 2025, nothing has changed to impact the propriety, fairness,
13 adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and
14 of their projected Settlement payments, and as of the date of this filing, no one has opted-out or submitted
15 a written objection to the Settlement.

16 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the Class
17 continues to meet the requirements for class certification for settlement purposes under Code of Civil
18 Procedure section 382; (2) the Settlement warrants final approval because it is a fair, adequate, and
19 reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class
20 Counsel’s attorneys’ fees and costs, Plaintiff’s Service Award, payment to the Labor Workforce
21 Development Agency (“LWDA”), and settlement administration costs are all fair, adequate, and
22 reasonable. For these reasons, Plaintiff respectfully requests that this Court enter the [Proposed] Order
23 of Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith.

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 On June 11, 2024, Plaintiff filed the instant putative class action complaint against Defendant in
26 San Bernardino County Superior Court alleging the following class action claims against Defendant: (1)
27 failure to pay all overtime wages owed; (2) failure to pay all minimum wages owed; (3) failure to provide
28 meal periods; (4) failure to authorize and permit all rest periods; (5) failure to reimburse necessary

business expenses; (6) failure to provide accurate, itemized wage statements; (7) failure to pay all wages upon termination; and (8) unfair competition. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. After having exhausted her administrative remedies with the California Labor & Workforce Development Agency (“LWDA”) by way of a letter submitted to the LWDA on June 11, 2024, on August 16, 2024, Plaintiff filed a First Amended Complaint which added a cause of action seeking civil penalties under the PAGA. *Id.*

A. Plaintiff’s Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of liability are related to Defendant’s alleged failure to pay for all time worked and failure to provide Settlement Class Members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶¶ 11-24. Plaintiff alleges that Defendant failed to compensate its non-exempt employees for all time worked. *Id.* at ¶ 11. Specifically, Plaintiff alleges that Defendant rounded and/or paid its employees for scheduled hours – not actual hours worked, despite Plaintiff and other non-exempt employees performing work duties both before and after their scheduled shifts. *Id.* As a result, Plaintiff contends that Defendant failed to pay her and other non-exempt employees all minimum and overtime wages owed. *Id.*

Plaintiff alleges that he and Settlement Class Members were not provided with all legally-required meal periods in compliance with California law due to Defendant’s unlawful meal period policies/practices. Lidman Decl., ¶ 13. Due to work demands, Plaintiff was often prevented from taking meal periods that commenced before the end of the 5th hour of work. *Id.*

Defendant contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 15. Defendant argues that Plaintiff’s rest period claims are inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.*

Plaintiff further alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226. Lidman Decl., ¶ 17. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours

1 worked and the rate at which they were being paid. *Id.*

2 Plaintiff alleges that Defendant required her and the other Settlement Class Members to use their
3 personal cellular phone for business purposes and purchase medical tools. Lidman Decl., ¶ 19. Despite
4 knowing that putative class members had incurred necessary business expenses to communicate with
5 Defendant through their own personal electronic devices and purchase medical tools, Defendant failed to
6 reimburse putative class members in violation of Section 2802 and *Cochran*. *Id.*

7 Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code
8 violations. Lidman Decl., ¶ 21.

9 As explained *infra* and in Plaintiff's Motion for Preliminary Approval, Defendant denies
10 Plaintiff's claims and asserts several affirmative defenses, both on the merits and with respect to class
11 certification.

12 **B. Mediation and Settlement**

13 In the instant action, the parties have engaged in formal discovery. On September 9, 2024, Plaintiff
14 served the following written discovery on Defendant: Form Interrogatories – General, Form
15 Interrogatories – Employment Law, Special Interrogatories, and Requests for Production. Lidman Decl.,
16 ¶ 24. On October 31, 2024, Defendant served its responses and objections to Plaintiff's discovery requests.
17 *Id.*

18 After agreeing to participate in private mediation, Defendant informally produced time records
19 and payroll data for a 20 percent sampling of the putative class. Lidman Decl., ¶ 11. After a review and
20 analysis of the data produced by Defendant, Class Counsel drew on their extensive experience in similar
21 cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* The discovery allowed the parties to
22 assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could
23 not be reached.

24 On June 10, 2025, after extensive research and analysis, including a detailed analysis of
25 Defendant's potential exposure by Plaintiff, a full-day mediation was held with Steve Mehta, Esq., a well-
26 respected wage and hour class action mediator. Lidman Decl., ¶ 25. During mediation, the parties
27 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and
28 the legal basis for the claims and defenses. *Id.* Ultimately, through a mediator's proposal, the parties

1 agreed on a class-wide resolution in principle. *Id.* In the weeks that followed, the parties finalized the
2 terms of settlement and executed the Stipulation of Settlement (“Settlement”). *Id.*

3 **C. Preliminary Approval of Settlement**

4 Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary
5 Approval on August 21, 2025. Lidman Decl., ¶ 26. On December 2, 2025, the Court signed an Order
6 Granting Preliminary Approval of the Settlement. *Id.*; Exh. A.

7 Plaintiff submitted the Settlement and the Court’s Order Granting Preliminary Approval of the
8 Settlement to the LWDA via the LWDA’s website on August 21, 2025 and December 2, 2025,
9 respectively. *See* Lidman Decl., ¶ 42; Exhs. D and E. Plaintiff will also provide the LWDA with a copy
10 of the instant motion for final approval and supporting documents after the instant motion is filed and
11 will file a supplemental proof of service prior to the hearing. Lidman Decl., ¶ 42.

12 On January 15, 2026 and June 17, 2026, the Settlement Administrator mailed the Court-approved
13 Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement and
14 Notice of Settlement Award) in English to the 565 Settlement Class Members, who had until August 17,
15 2026 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Mayra Gonzalez
16 of Phoenix Settlement Administrators (“Gonzalez Decl.”), ¶ 8. As of the date of this filing, there have
17 been **no objections**, **1 resolved dispute**, and **no opt-outs** received. *Id.* at ¶¶ 13-15.

18 Plaintiff now respectfully submits the Settlement for this Court’s final approval.

19 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

20 **A. Settlement Class Definition**

21 After the preliminary approval was granted, the Settlement Administrator advised the total number
22 of workweeks worked is 21,885, confirming the escalator clause was not triggered. Gonzalez Decl., ¶
23 19. As a result, the Settlement Class is defined as: all current and former non-exempt, hourly employees
24 of Defendant Marna Health Services, Inc. dba Hillcrest Nursing Home who worked at any time in
25 California during the Class Period. For purposes of the Settlement, the “Class Period” shall mean the
26 time period of June 11, 2020 through August 9, 2025. Lidman Decl., ¶27.

1 **B. Monetary Terms of the Settlement**

2 The Settlement provides for Defendant to pay a Gross Settlement Amount of \$758,900.00.
3 Gonzalez Decl., ¶ 16. The Net Settlement Amount is the amount remaining from the Gross Settlement
4 Amount after deducting requested attorneys' fees (\$252,966.66) and verified costs (\$15,395.09),
5 proposed Class Representative Service Award to Plaintiff (\$7,500.00), Settlement Administration costs
6 (\$8,750.00), and PAGA payment (\$30,000.00). *Id.* Based on these requested amounts, the Net Settlement
7 Amount is calculated to be approximately **\$444,288.25**. *Id.*

8 The Individual Settlement Awards shall be determined as follows:

- 9 i. The Net Settlement Amount shall be allocated to Settlement Class Members who worked
10 during the Class Period, as follows: each participating Settlement Class Member shall
11 receive a proportionate settlement share based upon the number of workweeks worked
12 during the Class Period, the numerator of which is the Settlement Class Member's total
13 workweeks worked during the Class Period, and the denominator of which is the total
14 workweeks worked by all Settlement Class Members who worked during the Class Period.
15 *See Settlement, ¶ 6.B.i.*
- 16 ii. PAGA Amount: Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the
17 Gross Settlement Amount has been designated as the "PAGA Amount" as described above.
18 Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the
19 number of any periods that he or she worked during the PAGA Period, and which will be
20 calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the
21 PAGA Employee's number of pay periods worked during this time period, and the
22 denominator of which is the total number of pay periods worked by all PAGA Employees
23 during the PAGA Period. *See Settlement, ¶ 6.B.ii.*

24 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
25 allocated as follows: 80% as penalties and interest; and 20% as wages. *Settlement, ¶ 6.E.*

26 Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the
27 Gross Settlement Amount. *See Gonzalez Decl., ¶ 18.* Defendant agrees to deposit the employer's share
28 of payroll taxes with Phoenix Settlement Administrators by the date on which the third and final
installment payment is due.

29 **C. Summary of Notice Process**

30 **1. Mailing of Notice Packets**

31 On December 22, 2025, Defendant provided Phoenix with data files containing the names, last
32 known addresses, phone numbers, social security numbers, the dates of employment during the Class
33 Period, the number of workweeks worked by each Settlement Class member while employed during the

1 Class Period, and the number of workweeks worked by each PAGA Employee during the PAGA Period.
2 Gonzalez Decl., ¶ 4. After performing address updates and verifications, Phoenix mailed the Notice
3 Packet to the 454 Settlement Class Members on January 15, 2026 in English. *Id.* at ¶ 8. Subsequently,
4 on June 17, 2026, Phoenix mailed Class Notices to an additional of 115 Settlement Class Members that
5 were inadvertently omitted from the class list. Following the initial mailing, 95 Notice Packets were
6 returned to Phoenix by the Post Office. *Id.* at ¶ 9. After Phoenix performed a Skip Trace, 87 Notice
7 Packets were re-mailed. *Id.* As of the date of filing this final approval motion, 8 Notice Packets remain
8 undeliverable because no forwarding address was provided and/or no new address could be located
9 through Skip Trace. *Id.*

10 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
11 disputes is August 17, 2026. Gonzalez Decl., ¶ 8. As of the date of this filing, there were no objections,
12 no disputes, and no opt-outs. *Id.* at ¶¶ 7-9. Accordingly, as of the date of this Motion, the participation
13 rate amongst the Settlement Class Members is 100% and the average estimated payment is \$786.35 with
14 the highest estimated payment to a Settlement Class Member being \$5,466.76 and the lowest estimated
15 payment to a Settlement Class Member being \$2.84. *Id.* at ¶¶ 7-13.

16 **D. Timing of Payments**

17 The Gross Settlement Amount (and employer-side taxes separate from the Gross Settlement
18 Amount) shall be deposited by Defendant into a qualified settlement fund set up by the Settlement
19 Administrator for the benefit of participating Settlement Class Members. Defendant shall fund the Gross
20 Settlement Payment in three separate payments: (1) \$455,340.00 shall be deposited within 65 calendar
21 days following final approval; (2) \$151,780.00 shall be deposited within 90 calendar days of the first
22 payment; and (3) \$151,780.00 shall be deposited within 60 calendar days of the second payment.
23 Should the Escalator Clause (defined below) be triggered and the Gross Settlement Amount increased
24 as a result, any additional funds owed by Defendant shall be deposited at the time of the third payment.
25 Settlement ¶ 5.B.

26 After disbursement, Settlement Class Members will have 180 days to cash their checks. *See*
27 Settlement ¶ 5.E. Funds remaining unclaimed will be distributed to the California State Controller's Office
28 – Unclaimed Property Fund in the name of the Settlement Class Member. *Id.*; Lidman Decl., ¶28.

1 **E. Notice of Judgment**

2 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class
3 members, the final judgment entered by the Court and any changes to the Final Approval hearing date or
4 location will be posted on the Settlement Administrator's website at [garay-v-marna-](http://garay-v-marna-health.phoenixcases.com)
5 health.phoenixcases.com. See Gonzalez Decl., ¶6, Exh A.

6 **IV. ARGUMENT**

7 **A. This Court Should Confirm its Conditional Certification of the Class for Settlement**
8 **Purposes Because It Meets All of the Requirements for Class Certification Under**
9 **Code of Civil Procedure § 382**

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

16 Here, this Court found that the Class meets all the requirements for class certification for
17 settlement purposes when it granted preliminary approval of the Settlement on December 2, 2025. See
18 Lidman Decl., ¶ 26; Exh. A. After the Court entered an order granting preliminary approval, no events
19 have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement
20 Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement
21 Class Members have objected to any portion of the Settlement and no Settlement Class Member has
22 elected to opt-out of the Settlement. See Islas Decl., ¶¶ 13-15. This Court should therefore confirm its
23 conditional certification of the Settlement Class.

24 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and**
25 **Reasonable 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*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a
28 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*

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

6 **1. The Settlement was Reached at Arm's Length, Through Experienced Counsel**
7 **and An Experienced Mediator, and Was Based on Sufficient Information to**
8 **Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and**
9 **Risks of Continued Litigation**

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

19 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of
20 further litigation, the risk of maintaining class action status through trial, the amount
21 offered in settlement, the extent of discovery completed and the stage of the
22 proceedings, the experience and views of counsel, the presence of a governmental
23 participant, and the reaction of the class members to the proposed settlement.

24 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
25 to each case. *Id.* "In the context of a settlement agreement, the test is not the maximum amount plaintiffs
26 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of
27 the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because
28 settlements inherently involve compromise, even settlements providing for substantially narrower relief
than likely would be obtained if the suit were successfully litigated can be reasonable because, "the public
interest may indeed be served by a voluntary settlement in which each side gives ground in the interest
of avoiding litigation." *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455
F.2d 101, 109 (7th Cir. 1972)).

1 Here, the Settlement resulted from extensive arm's length settlement negotiations between
2 qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate,
3 and reasonable for all Settlement Class Members. While Plaintiff maintains that his claims are
4 meritorious, Plaintiff acknowledges that his position includes substantial risks and uncertainty, which
5 justifies a downward departure from the maximum exposure that Plaintiff's calculated each claim carried.

6 As detailed in Plaintiff's Preliminary Approval Motion, there is significant risk of non-certification
7 and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example, with respect
8 to Plaintiff's unlawful rounding claims, Defendant contends that it used a timekeeping system that rounded
9 evenhandedly and alleges that the rounding did not result in systemic underpayment of wages, and thus
10 no violation of law occurred. Lidman Decl., ¶ 12. Defendant further asserts that Plaintiff would be unable
11 to certify an unpaid wages class given that its policies comply with the law and the individualized inquiries
12 that would be required. *Id.*

13 As for Plaintiff's meal period claims, Defendant counters that it has always provided non-exempt
14 employees with an opportunity to take legally compliant meal periods, and any non-compliant meal
15 periods reflected in employee timekeeping records were solely the result of employee choice, rather than
16 any policy or practice of Defendant. Lidman Decl., ¶ 14. Defendant also points out that under *Brinker*
17 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the
18 opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so.
19 *Id.*

20 As for Plaintiff's rest period claims, Defendant contends it has always maintained and enforced
21 lawful rest period policies and practices, and that Settlement Class Members were authorized and
22 permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 16.
23 Defendant argues that Plaintiff's rest period claims are inherently unsuited for class treatment as it requires
24 an individualized inquiry into whether each Settlement Class member was in fact authorized and permitted
25 to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.*

26 As for Plaintiff's claim for wage statement penalties, Defendant argues that its alleged wage
27 statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show
28

1 that she or any other employee “suffer[ed] injury” as a result of the alleged wage statement violations, as
2 required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 18.

3 As for Plaintiff’s claim for reimbursement claim, Defendant asserts that, given the wide array of
4 cellular phone plans, any expenses would be *de minimis*. Lidman Decl., ¶ 20.

5 Lastly, since Plaintiff’s PAGA claim is a derivative claim based on the underlying claims,
6 Defendant argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims
7 will fail. Lidman Decl., ¶ 22. Defendant also maintains that, given its good faith defenses, this Court
8 would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant
9 liable for any of Plaintiff’s claims. *Id.*

10 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also
11 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
12 litigation. Lidman Decl., ¶ 23. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted
13 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages
14 figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
15 adequate, and reasonable in view of them.

16 **2. The Settlement Fairly, Reasonably, and Adequately Compensates Class**
17 **Members Because Each Participating Class Member Will Be Paid Based on the**
Extent of His or Her Injury

18 Individual settlement payments will be calculated based on the number of workweeks worked by
19 each Settlement Class Member during the Class Period. *See* Settlement, ¶ 6.B. This method of
20 distribution compensates Settlement Class Members based on the estimated extent of their injuries, as
21 Settlement Class Members who worked more workweeks, would have been subject to more of the alleged
22 wage and hour violations than those who worked fewer weeks. Thus, the formula for compensating
23 Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties
24 that could be recovered by them.

25 **3. The 100% Participation Rate and Absence of Any Objections Further Confirms**
That the Settlement is Fair, Adequate, and Reasonable

26 Class members’ response to a settlement is relevant in evaluating whether it merits final approval.
27 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
28 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85

Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a “particularly impressive” favorable response from class members). Here, as of the filing of this Motion, not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member have elected to opt-out of the Settlement. In addition, 8 of the 565 Notice Packets were returned undeliverable. Gonzalez Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check

Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover their attorneys’ fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman Decl., ¶ 38.

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

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

Id. at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in

1 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
2 equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache*
3 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
4 attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method
5 and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery;
6 and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities*
7 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored
8 in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
9 counsel for success and penalizes it for failure.") (citation omitted).

10 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools
11 such as the "lodestar cross-check," whereby the trial court calculates class counsel's lodestar (hours
12 worked multiplied by hourly rate) and determines whether the "lodestar multiplier" needed to bring the
13 lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may
14 utilize the lodestar cross-check, it need not do so. *Id.* at 506 ("[w]e hold further that trial courts have
15 discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the
16 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
17 requested percentage fee.")

18 Here, Class Counsel's fee request of \$252,966.66 (one-third of the Gross Settlement Amount) is
19 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
20 "regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
21 average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
22 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
23 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively
24 small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour
25 class actions..."); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
26 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
27 attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience
28 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 32. Thus, the percentage sought by

Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

Next, as stated, under the lodestar method the court computes the “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“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, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). 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,” a 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*, 175 Cal.App.4th 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of **\$176,530** which results in a multiplier of 1.43 compared to the \$252,966.66 fee request. *See* Lidman Decl., ¶ 34. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (27th Year Attorney)	\$900	75.4	\$67,860
Paul K. Haines (18th Year Attorney)	\$800	26.1	\$20,880
Milan Moore (9th Year Attorney)	\$650	93.3	\$60,645

Tiara Gose-Hardy (6th Year Attorney)	\$525	45.8	\$24,045
Paralegals	\$200	15.5	\$3,100
Total Lodestar			\$176,530

The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. Lidman Decl., ¶ 37, Exh. C.

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees).

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class Member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Gonzalez Decl., ¶¶ 13-15. Additionally, the *average* settlement payment in this case of approximately \$786.35 is in line with, and above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation

1 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
2 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
3 compensation for over one year. Lidman Decl., ¶ 30. During this time, Class Counsel have expended a
4 total of \$14,850.09 in actual costs and have devoted substantial time to this litigation and expect to incur
5 approximately \$545.00 in future costs for filing the instant motion, filing the final declaration regarding
6 distribution of settlement, service and messenger fees, postage fees, and/or court costs for future court
7 appearances for a total of \$15,395.09.² Lidman Decl., ¶ 31; Exh. B. Class Counsel's efforts have included
8 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
9 Defendant's documents and policies, propounding formal written discovery, analyzing Settlement Class
10 Members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and
11 revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. *See* Lidman
12 Decl., ¶ 30. Moreover, Class Counsel have expended time, effort, and money that they could have
13 expended on less risky cases instead. Given the considerable potential for adverse outcomes in this case,
14 including, but not limited to losing on class certification and/or merits issues, the contingent risk borne
15 by Class Counsel was great. Lidman Decl., ¶¶ 30-33.

16 Class Counsel's previous experience in litigating wage and hour class actions also supports the
17 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
18 hour class action litigation, with substantial experience litigating claims for meal and rest period
19 violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration of Paul K. Haines ("Haines
20 Decl."), ¶¶ 3-8. They have been certified as class counsel in numerous other cases. *Id.* Their experience
21 in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendant
22 and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 32. Practice in the narrow field of wage
23 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and
24 federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to
25 compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-
26 third of the Gross Settlement Amount is reasonable.

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² This includes total costs incurred by both law firms.

1 Other factors also show that the fee amount requested in this case is reasonable under the
2 circumstances. This case involved nuanced legal issues including questions surrounding Defendant’s
3 requirement to “provide” meal periods and “authorize and permit” rest periods, and the propriety of
4 statutory penalties, to name just a few. Lidman Decl., ¶¶ 11-24. Thus, Class Counsel’s requested fee
5 award is fair, reasonable, and adequate and should be approved.

6 **D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and**
7 **Reasonable**

8 Class Counsel seek to be reimbursed a total of \$15,395.09³ in litigation costs. Class Counsel’s
9 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
10 See Lidman Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
11 approved by courts. See, e.g., *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
12 “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*,
13 No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)(“costs of reproducing pleadings, motions
14 and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees*
15 *of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59
16 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497
17 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
18 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because
19 the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement
20 Class Member has objected to them, Plaintiff respectfully requests the Court should grant the request for
21 actual costs incurred.

22 **E. The Court Should Finally Approve the Requested Administration Costs**

23 Plaintiff also requests that the Court approve \$8,750.00 in administration costs to the Settlement
24 Administrator, Phoenix. As detailed in the declaration of Mayra Gonzalez on Behalf of Phoenix submitted
25 herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating
26 the Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class
27

28 ³ Class Counsel have expended a total of \$14,850.09 in actual costs and anticipates incurring costs in the amount
of \$545.00 for filing fees, service and messenger fees, and/or postage fees.

Member's individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 565 Settlement Class Members in English, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Gonzalez Decl., ¶¶ 2-20. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. Plaintiff's Requested Service Award Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that She Assumed on Behalf of the Class

Courts routinely approve service payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 service payment). In analyzing the requested service payment, courts consider the following factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804.

Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of \$7,500.00 because request is reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf of Settlement Class Members. Lidman Decl., ¶ 39; Declaration of Cheryl Garay ("Garay Decl."), ¶¶ 6-11. Plaintiff gathered documents for use in the lawsuit, and worked with Class Counsel on the case, including preparing for mediation and discussing the case, the merits, the defenses, and settlement. *See* Lidman Decl., ¶ 41; Garay Decl., ¶¶ 6-10. The class has benefited from Plaintiff's actions as the average settlement amount is \$786.35.

Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize her and/or affect future employment. Garay Decl., ¶ 8. Plaintiff also understood the risk that she could be liable for Defendant's costs if she lost the case. *Id.* at ¶ 7. Plaintiff accepted

1 these risks and burdens because she wanted Defendant to compensate their current and former employees
2 for unpaid wages. *Id.* at ¶¶ 7-8. Plaintiff estimates she spent between 6-9 hours on activities related to
3 this case. *Id.* at ¶ 10.

4 Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff,
5 no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See*
6 Gonzalez Decl., ¶ 15. Thus, the service award to Plaintiff is appropriate and justified as part of the
7 Settlement and should be finally approved.

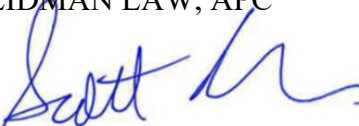
8 **V. CONCLUSION**

9 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant Plaintiff's
10 motion in its entirety and adopt the [Proposed] Order of Final Approval of Class Action Settlement and
11 Final Judgment submitted herewith.

12
13 Dated: August 31, 2026

Respectfully submitted,
LIDMAN LAW, APC

14
15 By:



16 Scott M. Lidman
17 Attorney for Plaintiff
18 CHERYL GARAY
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