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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JORGE PALATO, as an individual and on behalf of all others similarly situated, Plaintiff, vs. HYDRO-AIRE AEROSPACE CORP., a California corporation; and DOES 1 through 100, Defendants.	Case No. 24STCV19936 [*Case Assigned for all purposes to the Hon. Carolyn B. Kuhl, SSC-12*] **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: February 11, 2026 Time: 10:30 a.m. Dept.: SSC-12

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 February 11, 2026 at 10:30 a.m. in Department SSC-12 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Jorge Palato ("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 Jorge Palato 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 Class Action and PAGA Settlement Agreement (herein "Settlement");
5. Approving an award of $111,666.67 in attorneys' fees to Class Counsel;
6. Approving an award of $39,374.87 in costs to Class Counsel;
7. Approving an award of $11,000.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving an incentive payment of $7,500.00 to Plaintiff Jorge Palato for his services as Class Representative;
9. Approving an award of $13,000.00 to the Labor & Workforce Development Agency ("LWDA");
10. Approving an award of $7,000.00 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, Paul K. Haines, Milan Moore, Tiara Gose-Hardy, Plaintiff Jorge Palato,[1] and Taylor Mitzner of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: January 16, 2026

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman

Attorneys for Plaintiff
JORGE PALATO

[1] The declaration of Plaintiff Ivan Loreno was originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jorge Palato ("Plaintiff") submits this memorandum of points and authorities in support of his motion for final approval of the class action settlement (the "Settlement") with Defendant Hydro-Aire Aerospace Corp. (hereinafter "Hydro-Aire" or "Defendant"). The Settlement Class is defined as: all current and former non-exempt employees who were employed by Hydro-Aire Aerospace Corp. in California during the Class Period. The Class Period is the period from August 7, 2020 to June 9, 2025.

In this non-reversionary Settlement, the average settlement payment to each Settlement Class Member is approximately $258.36. This is a favorable resolution of the highly disputed wage and hour claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted preliminary approval on September 10, 2025, nothing has changed to impact the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their projected Settlement payments, no Class Member has opted-out or submitted a written objection to the Settlement.

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

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 7, 2024, Plaintiff filed a putative class action against Defendant in this Court captioned *Jorge Palato v. Hydro-Aire Aerospace Corp.*, Case No. 24STCV19936. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. On August 7, 2024, Plaintiff submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendant advising of his intention of filing a PAGA claim based on the Labor Code violations alleged in his operative complaint. *Id*. On October

14, 2024, Plaintiff filed a First Amended Class Action and Representative Complaint. *Id*. The primary allegations are that Defendant: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to indemnify all necessary business expenditures; (7) failed to pay all final wages owed upon termination; (8) engaged in unfair competition; and (9) is liable for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"). *Id*.

A. <u>Plaintiff's Claims</u>

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. Specifically, Specifically, Plaintiff alleges that from the beginning of the statutory limitations period in August 2020 through about June 2021, Defendant required Plaintiff and Settlement Class Members to undergo temperature checks prior to clocking in for shifts. *Id*. Plaintiff alleges Defendant required Plaintiff and Settlement Class Members to arrive 10 to 15 minutes early to stand in line for a temperature check and were instructed to clock in only after the temperature check. *Id*. As such, Plaintiff and Settlement Class Members worked hours in excess of their scheduled shifts but were routinely unpaid for all of their time worked. *Id*.

Plaintiff also alleges that he and Settlement Class members were not provided with all required first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 13. Specifically, due to Defendant's policies and/or practices, Plaintiff alleges that the meal periods were either late or otherwise unlawful. *Id*. Based on Plaintiff's review of the time data produced in connection with mediation, Defendant's violation rate for first meal periods was approximately one percent or approximately 2,554 of the meal enabling shifts. *Id*.

Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to Defendant's rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 15. Specifically, Plaintiff alleges that he and the other non-exempt employees had to take rest breaks at designated areas and the time walking to and from such areas was part and parcel of their ten-minute breaks. *Id*. This meant that the employees were not authorized a full "net" ten minutes of break time. *Id*.

Plaintiff also alleges that Defendant failed to reimburse him and Settlement Class members for necessary business expenditures, including the use of their personal cellular phones for work activities, as required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Lidman Decl., ¶ 17. Plaintiff contends that Defendant required its non-exempt employees to use their personal cellular phones for work-related purposes to communicate with supervisors, but Defendant did not reimburse the putative class members for the cell phones and/or the data usage. *Id*.

As a result of the alleged unpaid wages and unpaid meal period and rest period premium wages described above, Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226 and is thus liable for civil penalties under the Labor Code Private Attorney General Act ("PAGA"). Lidman Decl., ¶¶ 19-21.

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

B. <u>Mediation and Settlement</u>

After agreeing to participate in private mediation, Defendant informally produced timekeeping and payroll data for the entire putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 24. After a detailed review of the time and payroll records for the putative class and other documents and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id*. This informal discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id*.

On April 10, 2025, after extensive research and analysis, a mediation was held with Steve Mehta, Esq., a well-respected wage and hour class action mediator. Lidman Decl., ¶ 25. 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. *Id*. Ultimately, the Parties agreed on a class-wide resolution. *Id*.

C. **Preliminary Approval of Settlement**

Plaintiff submitted the Class Action Settlement to the Court with his Motion for Preliminary Approval on June 30, 2025. Lidman Decl., ¶ 26. On September 10, 2025, the Court signed an Order Granting Preliminary Approval of the Settlement. *Id*.; Exh. A.

Plaintiff submitted the Settlement and the Court's Order Granting Preliminary Approval of the Settlement to the LWDA via the LWDA's website on June 30, 2025 and September 10, 2025, respectively. *See* Lidman Decl., ¶ 40; Exhs. D-E. Plaintiff will also provide the LWDA with a copy of the instant motion for final approval and supporting documents after the instant motion is filed and will file a supplemental proof of service prior to the hearing. *See* Lidman Decl., ¶ 39.

On October 24, 2025, Phoenix Settlement Administrators ("Phoenix") mailed the Notice via U.S. first class mail, in English and Spanish, to all 563 Settlement Class members on the Class List who had until December 8, 2025 to request exclusion and/or submit objections or disputes. *See* Declaration of Taylor Mitzner of Phoenix Settlement Administrators ("Mitzner Decl."), ¶¶ 5 and 9-11. As of the date of this filing, there have been **no requests for exclusion**, **no objections**, and **no disputes** received. *Id*. at ¶¶ 9-11. Plaintiff now respectfully submits the Settlement for this Court's final approval.

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

A. **Settlement Class Definition**

The Settlement Class encompasses: all current and former non-exempt employees who were employed by Hydro-Aire Aerospace Corp. in California during the Class Period. Lidman Decl., ¶ 27. The Class Period is the period from August 7, 2020 to June 9, 2025. *Id*.

B. **Monetary Terms of the Settlement**

The Settlement provides for Defendant to pay a Gross Settlement Amount ("GSA") of $335,000.00. *See* Mitzner Decl., ¶ 12. The Net Settlement Amount of $145,458.46 available to pay Settlement Class Members was determined by subtracting the requested Class Counsel attorneys' fees ($111,666.67), and Class Counsel costs ($39,374.87), requested Enhancement Payment to Plaintiff Palato ($7,500.00), the PAGA Amount ($20,000.00), and the requested Settlement Administration Costs ($11,000.00) from the Gross Settlement Amount ($335,000.00). *Id*.

Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4.

Based upon the calculations stipulated in the Settlement, the highest Individual Settlement Share to be paid is approximately $521.63, the lowest Individual Settlement Share to be paid is approximately $2.05, while the average Individual Settlement Share to be paid is approximately $258.36. Settlement Class Members will be issued payment of their Individual Settlement Shares subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share (the net payment is their "Individual Settlement Payment"). Mitzner Decl., ¶ 13.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties, Seven Thousand Dollars ($7,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees, and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Settlement, ¶ 3.2.5.1. There are four hundred forty-five (445) Aggrieved Employees who worked a total of sixteen thousand four hundred forty-nine (16,449) pay periods during the PAGA Period. The highest Individual PAGA Payment to be paid is approximately $20.43, and the average Individual PAGA Payment to be paid is approximately $15.73. Mitzner Decl., ¶ 14.

For purposes of calculating applicable taxes and withholdings, 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). Settlement, ¶ 3.2.4.1. The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. *Id*. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). *Id*.

Pursuant to the Settlement, Defendant has agreed to fund the employer-side taxes due separately and apart from the Gross Settlement Amount. Mitzner Decl., ¶ 15.

C. <u>Summary of Notice Process</u>

1. Mailing of Notice Packets

On October 10, 2025, Defendant provided Phoenix with data files that contained names, last known mailing addresses, Social Security numbers, dates of employment, and workweeks for each Class Member during the Class Period. Mitzner Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Class Notice to 563 Settlement Class Members on October 24, 2025 in English and Spanish. *Id*. at ¶ 5. Following the initial mailing, 0 Class Notices were returned to Phoenix by the Post *Id*. at ¶ 7.

The deadline for Settlement Class Members to submit objections, requests for exclusion, or disputes was December 8, 2025. Mitzner Decl., ¶¶ 9-11. As of the date of this filing, there were no requests for exclusion, no objections, and no disputes. *Id*. at ¶¶ 9-11. Accordingly, as of the date of this Motion, the participation rate amongst the Settlement Class Members is 100 percent and the average estimated payment is $283.90 with the highest estimated payment to a Settlement Class Member being $573.18, the lowest estimated payment to a Settlement Class Member being $2.25. *Id*. at ¶ 13.

D. <u>Timing of Payments</u>

Defendant shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting such funds to the Administrator within 30 days after the Effective Date.[2]

Class Members will have 180 days to cash their settlement checks before the checks are voided. Settlement ¶ 4.4.3.

For any Participating Class Member whose Individual Class Payment check is uncashed and cancelled after the void date of 180 days, and for any Aggrieved Employee whose Individual PAGA

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[2] "**Effective Date"** means the earliest date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final and no longer appealable. "Final and no longer appealable," as used in the definition of Effective Date shall mean the later of: (a) the day after the last date by which a notice of appeal, writ, or other appellate proceeding to the applicable Court of Appeal of the order and judgment approving the Settlement Agreement may be timely filed (i.e., 61 days from notice of entry of judgment); (b) if an appeal, writ, or other appellate proceeding is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving the Settlement Agreement passes, and no further review is requested; or (c) if an appeal, writ, or other appellate proceeding is filed and the order approving the Settlement Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving the Settlement Agreement is affirmed. Settlement 1.19.

Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Controller's Unclaimed Property Fund, in the name of the Participating Class Member and/or Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). Settlement ¶ 4.4.3.

E. Notice of Judgment

As stated in the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval mailed to class members, the final judgment entered by the Court and any changes to the Final Approval hearing date or location will be posted on the Settlement Administrator's website at palate-hydro-aire-aerospace-corp.phoenixcases.com. *See* Mitzner Decl., ¶5, Exh. A.

IV. ARGUMENT

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

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

Here, this Court found that the Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on September 10, 2025. *See* Lidman Decl., ¶ 25; Exh. A. After the Court entered an order granting preliminary approval, no events have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement Class Member has requested exclusion from the Settlement, no Settlement Class Member has objected to any portion of the Settlement, and no Settlement Class Member has disputed the Settlement. *See* Mitzner Decl., ¶¶ 9-11. This Court should therefore confirm its conditional certification of the Settlement Class.

B. <u>This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims</u>

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

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

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

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

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case. *Id*. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 250 (2001). Because 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)).

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

As detailed in Plaintiff's Preliminary Approval Motion, there is significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example, with respect to Plaintiff's claim for unpaid time, Defendant contends that it compensated Settlement Class members for all of their time worked, and any unpaid time was *de minimis* and therefore non-compensable. Lidman Decl., ¶ 12. Defendant also contends that employees did not spend any significant period of time waiting for temperature checks. *Id*. Defendant further asserts that it was complying with government requirements to conduct temperature checks and, being that it was to the benefit of the government instead of Defendant, Plaintiff and Settlement Class Members are not owed by Defendant. *Id*.

As for Plaintiff's meal period claims, Defendant counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendant. Lidman Decl., ¶ 14. Defendant also points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Id*.; See *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Defendant also contends individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id*.

As for Plaintiff's rest period claims, 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., ¶ 16. Further, Defendant argues that the maximum exposure incorrectly assumes a 100% rest period violation rate and Plaintiff's rest period claim is 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*.

As for Plaintiff's reimbursement claim, Defendant contends that it prohibits employees from using their cell phones while working. Defendant further contends it had previously reimbursed Plaintiff and the Settlement Class members for their use of their cellular phones for business purposes and required Plaintiff and the Settlement Class Members to sign written agreements stating that they would not answer phone calls from Defendant outside of business hours. Lidman Decl., ¶ 18. Further, Defendant argues that any expenses incurred were minimal given the affordability of cellular usage plans. *Id*. Defendant also argues that this claim is not suitable for class treatment because it would require individualized determinations as to whether each employee used a personal cellular phone for business purposes and how often. *Id*.

As for Plaintiff's claim for wage statement violations, Defendant argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other putative class member "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 20.

Lastly, Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 22; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. *Id*. ; *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203

Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000).

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

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

Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4.

This method of distribution compensates Settlement Class Members based on the estimated extent of their injuries, as Settlement Class Members who worked more workweeks, would have been subject to more of the alleged wage and hour violations than those who worked fewer weeks and ensuring that settlement payments previously received by Settlement Class Members are taken into account. Thus, the formula for compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

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

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk*, *supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a 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, none of the Class Notices were returned undeliverable. Mitzner Decl., ¶ 7. As of the filing of this Motion, of the 563 delivered Class Notices, not a single Settlement Class Member has objected to the Settlement and no Settlement Class

Member has elected to opt-out of the Settlement. *Id*. at ¶ 11. 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).

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 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities*

Litigation, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.") (citation omitted).

Laffitte also held that trial courts have discretion to assess reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court calculates class counsel's lodestar (hours worked multiplied by hourly rate) and determines whether the "lodestar multiplier" needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 ("[w]e hold further that 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.")

Here, Class Counsel's fee request of $111,666.67 (one-third of the Gross Settlement Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First, "regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008); *see also*, *e.g.*, *Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27, 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour class actions…"); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience in similar wage and hour class action matters. *See* Lidman Decl., ¶ 31. 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 $138,732.50 which is 1.24 times more than the $111,666.67 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. *Id*.

Name	**Rate**	**Hours**	**Pre-Multiplier Lodestar**
Scott M. Lidman (27th Year Attorney)	$900	61.2	$55,080.00
Paul K. Haines (18th Year Attorney)	$800	20.5	$16,400.00
Milan Moore (9th Year Attorney)	$650	52.9	$34,385.00
Tiara Gose-Hardy (6th Year Attorney)	$525	56.7	$29,767.50
Paralegals	$200	15.5	$3,100.00
Total Lodestar			**$138,732.50**

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., ¶ 35, Exh. C. Based on the *Laffey* Matrix, the hourly rate for a 20+ year attorney is $1,141, the hourly rate for an 18th year attorney is $948, the hourly rate for a 9th year attorney is $839, and the hourly rate for a 6th year attorney is $581. *Id*. 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 percent, 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* Mitzner Decl., ¶¶ 9-11. Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl., ¶ 38.

Additionally, the *average* settlement payment in this case of approximately $258.36 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 and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation for over 1 year. Lidman Decl., ¶ 33. During this time, Class Counsel have expended a total of $38,924.87 in actual costs, have devoted substantial time to this litigation, and expect to incur approximately $450.00 in future costs for filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and messenger fees, postage fees, and/or online fees to retrieve conformed copies of documents for a total of $39,374.87.[3] *Id.*; Exh. B. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, drafting discovery requests and reviewing discovery responses, reviewing Defendant's documents and policies, analyzing Settlement Class Members' timekeeping data and payroll records, drafting a mediation brief, preparing for and attending mediation, negotiating and revising the long-form Settlement Agreement, preparing the Motions for Preliminary and Final Approval, overseeing the settlement administration process, communicating with Settlement Class Members, and otherwise litigating this case. *See* Lidman Decl., ¶ 29. Moreover, Class Counsel have expended time, effort, and money that they could have expended on less risky cases instead. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great. Lidman Decl., ¶ 32.

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with substantial experience litigating claims for meal and rest period violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-5. They have been certified as class counsel in numerous other cases. *Id*. Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 32. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. *Id*. Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

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[3] This includes total costs incurred by both law firms. At the time of the execution of the settlement agreement, Plaintiffs had estimated a maximum of $25,000 in fees. However, the firms had not received the invoice from their retained expert at the time in the amount of $25,019.00. A true and correct copy of the invoice is attached to the declaration of Scott M. Lidman as **Exhibit F** and filed concurrently herewith.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding Defendant's requirement to "provide" meal periods and "authorize and permit" rest periods, what is and is not excludable pay in calculating the regular rate of pay, and the propriety of statutory penalties, to name just a few. Lidman Decl., ¶ 31. Lastly, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl., ¶ 37. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should be approved.

D. <u>The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable</u>

Class Counsel seek to be reimbursed a total of $39,374.87 in litigation costs. Class Counsel's request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Lidman Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co*., 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class Member has objected to them, Plaintiff respectfully requests the Court should grant the request for actual costs incurred.

E. <u>The Court Should Finally Approve the Requested Administration Costs</u>

Plaintiff also requests that the Court approve $11,000.00 in administration costs to the Settlement Administrator, Phoenix Settlement Administrators. As detailed in the declaration of Taylor Mitzner on Behalf of Phoenix Settlement Administrators submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process.

See Mitzner Decl., ¶ 2. Among other things, Phoenix calculated each Settlement Class Member's individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted Class Notices for mailing, mailed Class Notices to all 563 Settlement Class Members in English and Spanish, kept the parties informed of any objections or requests for exclusion, maintained an informational website, and have otherwise administered the Settlement. *See* Mitzner Decl., ¶¶ 2-15. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be finally approved.

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

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 the request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Settlement Class Members. *See* Lidman Decl., ¶ 39; Declaration of Jorge Palato ("Palato Decl."), ¶¶ 6-10. Plaintiff gathered documents for use in the lawsuit, and worked with Class Counsel to prepare discovery requests, for mediation, to discuss the case, the merits, the defenses, and the settlement reached. *See* Lidman Decl., ¶ 37; Palato Decl., ¶¶ 6, 8. The Class has benefited from Plaintiff's actions as the average settlement amount is $258.36.

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Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize him and/or affect future employment. *See* Lidman Decl., ¶ 39; Palato Decl., ¶ 7. Plaintiff also understood the risk that he could be liable for Defendant's costs if he lost the case. *See* Lidman Decl., ¶ 39; Palato Decl., ¶ 7. Plaintiff accepted these risks and burdens because he wanted Defendant to compensate its current and former employees for unpaid wages. Palato Decl., ¶ 7. Plaintiff estimates he spent 6-8 hours on activities related to this case. *Id*. at ¶ 8.

Moreover, Plaintiff has agreed to release, in addition to the released claims included within the Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendant and the Released Parties. Lidman Decl., ¶ 39. Plaintiff's release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code.

Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff, no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See* Mitzner Decl., ¶ 10. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved.

V. CONCLUSION

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

Dated: January 16, 2026

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman

Attorneys for Plaintiff
JORGE PALATO