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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HECTOR GARCIA, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

FORGIATO INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 24STCV31730

[*Assigned for all purposes to the Hon. Elaine Lu, Dept. SSC-9*]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: January 7, 2027
Time: 8:30 a.m.
Dept.: SSC-9

Briefing Schedule
Motion Due: November 20, 2026
Opposition Due: December 10, 2026
Reply Due: December 24, 2026

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 January 7, 2027 at 8:30 a.m. in Department 9 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Hector Garcia ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Confirmation of the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirmation of the appointment of Plaintiff Hector Garcia as Class Representative for settlement purposes;
3. Confirmation of 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. The granting of final approval of the Second Amended Class Action and PAGA Settlement Agreement and Class Notice (hereinafter the "Settlement");
5. Approval of an award of $57,666.66.00 in attorneys' fees to Class Counsel;
6. Approval of an award of $20,696.54 in costs to Class Counsel;
7. Approval of an award of $7,500.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approval of a service award of $7,500.00 to Plaintiff Hector Garcia for his services as Class Representative;
9. Approval of an award of $20,000.00 to the Labor & Workforce Development Agency ("LWDA") and Aggrieved Employees;
10. The entering of final judgment in the form of the [Proposed] Order and Final Judgment Granting Plaintiff's Motion for Final Approval of Class Action Settlement filed concurrently herewith.

This Motion is made on the following grounds: (l) the Settlement Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the

Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested awards of attorneys' fees and costs, service award, PAGA Penalties to the LWDA and Aggrieved Employees, and settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith should be entered so as to give finality to, and allow for disbursements from, the Settlement.

This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the supporting declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Plaintiff Hector Garcia[1], Taylor Mitzner of Phoenix Settlement Administrators, and the exhibits attached thereto; the Settlement; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Respectfully submitted,

Dated: November 20, 2026 LIDMAN LAW, APC

By: 

Scott M. Lidman

Attorneys for Plaintiff
HECTOR GARCIA

[1] The declaration of Plaintiff 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 Hector Garcia ("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 Forgiato Inc. ("Defendant") on behalf of the Settlement Class defined as: "All individuals whom Defendant Forgiato Inc. classified as non-exempt employees and who worked for Defendant in California at any time during the Class Period." The Class Period means the period of time starting on December 2, 2020 and ending on May 21, 2026.

In this non-reversionary Settlement, all participating Settlement Class members will receive **automatic** payments without the need to submit a claim form, resulting in an estimated average settlement payment of $414.14 to each participating Settlement Class member. This is a favorable resolution of the highly disputed wage and hour claims in this case and considering the significant litigation risks that Plaintiff faced.

Since this Court granted preliminary approval on July 22, 2026, nothing has changed to impact the propriety, fairness, adequacy and reasonableness of the Settlement. At the time of filing this Motion, none of the 144 Settlement Class members have opted out of the Settlement and not a single Settlement Class member has filed an objection to any portion of the Settlement.

As explained below, the Court should grant Plaintiff's motion in its entirety because: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure § 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 Class Representative Service Award, payment to the Labor Workforce Development Agency ("LWDA") and Aggrieved Employees, and settlement administration costs are all fair, adequate, and reasonable.

In light of the foregoing, Plaintiff respectfully requests that this Court enter the [Proposed] Order and Final Judgment Granting Plaintiff's Motion for Final Approval of Class Action Settlement submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

On December 2, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (i) failure to pay all minimum wages owed; (ii) failure to pay all overtime wages owed; (iii) failure to provide meal periods; (iv) failure to authorize and permit rest periods; (v) failure to provide accurate, itemized wage statements; (vi) failure to indemnify all necessary business expenditures; (vii) failure to pay all wages owed upon termination; and (viii) unfair competition. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Pursuant to Labor Code section 2699.3, subd.(a), on December 2, 2024, Plaintiff gave timely written notice to Defendant and the LWDA by sending notice required by the Private Attorneys General Act of 2004 ("PAGA"). *Id*. On May 13, 2025, Plaintiff filed a First Amended Complaint adding a single cause of action for civil penalties under the PAGA. *Id*.

Thus, Plaintiff's claims/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) is subject to waiting time penalties; (8) engaged in unfair competition; and (9) is liable for civil penalties under the PAGA. Lidman Decl., ¶ 11.

A. Plaintiff's Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary theory of liability is related to Defendant's timekeeping policies and practices. Lidman Decl., ¶¶ 23-36. Specifically, there is evidence that Plaintiff and the Class Members were not fully compensated for all of their time worked because Defendant rounded the hours of its non-exempt employees. Lidman Decl., ¶ 23. Plaintiff alleges Defendant would keep track of his hours and the hours of the other non-exempt employees and would unlawfully shave their work time and/or round their work time such that Plaintiff and Settlement Class Members would not be fully paid for all time worked. *Id.*

Based on the data provided in preparation for mediation, there is evidence that Plaintiff and Class Members were not provided with all legally-compliant meal periods. Lidman Decl., ¶ 25. Specifically, Plaintiff alleges that first meal periods often began after the end of the fifth hour of work and second meal periods were rarely provided. *Id*.

/ /

Plaintiff alleges that he and Class Members were also not authorized and permitted to take all required rest periods due to Defendant's rest period policies and practices. Lidman Decl., ¶ 27. Specifically, Plaintiff alleges that due to work demands, non-exempt employees were not authorized and permitted to take duty-free net 10-minute rest periods when they worked shifts in excess of 3.5 hours. *Id.* Plaintiff alleges that his rest periods were often interrupted by Defendant and he was prevented from taking second rest periods due to the amount of work demanded. *Id*.

Plaintiff alleges that Defendant required him and Class Members to use their personal cellular phone for business purposes. Lidman Decl., ¶ 29. Despite knowing that putative class members had incurred necessary business expenses to communicate with Defendant through their own personal electronic devices, Defendant failed to reimburse putative class members in violation of Section 2802 and *Cochran. Id*.; See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1144.

Plaintiff further alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum wages and overtime wages, and meal and rest period premium wages described above. Lidman Decl., ¶ 31.

Plaintiff alleges that Defendant is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all wages upon separation. Lidman Decl., ¶ 33.

Lastly, Plaintiff seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 35.

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. Mediation and Settlement

In advance of mediation, Defendant produced a 20% sampling of timekeeping and earnings statements for the putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 12. Defendant provided an arbitration agreement purportedly signed by its non-exempt employees. *Id*. Defendant also provided a declaration attesting to its financial condition and ability to pay a class-wide settlement. *Id*.

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Plaintiff contends that the records produced were representative of the entire Settlement Class and are statistically significant and reliable for purposes of evaluating a potential settlement. Lidman Decl., ¶ 13; *see e.g., Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016). Indeed, from the time and earnings data, Plaintiff was able to analyze instances of rounding and meal period violations. Lidman Decl., ¶ 13. Further, if all Settlement Class members brought lawsuits for unpaid wages and/or meal period violations, they would rely on timekeeping records similar to the ones in the mediation production which also supports a finding that it is statistically reliable. *Id*.

Defendant also provided relevant information including, without limitation, class size for the relevant time periods. Lidman Decl., ¶ 14. The key data point coupled with the representative data sampling enabled Plaintiff to extrapolate to the entire class and aided in Plaintiff's creation of a class-wide exposure model for claims at issue, including unpaid wages due to rounding, meal and rest period violations and premiums owed, and penalties potentially owed for alleged unpaid minimum and overtime wages, and meal and rest period violations. *Id*.

After the detailed review of the data and documents produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Lidman Decl., ¶ 15. This informal discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses. *Id*.

On October 21, 2025, a mediation was held with Henry Bongiovi, Esq., an experienced and well-respected wage and hour class action mediator. Lidman Decl., ¶ 16. 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, through a mediator's proposal and conditioned on Defendant's declaration as to the status of its financial condition, the parties agreed on a class-wide resolution. *Id*. In the months that followed, the parties finalized the terms of settlement and executed the Class Action and PAGA Settlement Agreement. *Id*.

C. <u>Preliminary Approval of Settlement</u>

Plaintiff filed with the Court his Motion for Preliminary Approval, along with the Settlement, on March 20, 2026. Lidman Decl., ¶ 17. On March 20, 2026, Plaintiff also submitted the Settlement and Motion for Preliminary Approval to the LWDA. *Id*., Exh. 1.

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The Court required the parties to amend the settlement agreement and Plaintiff to submit a supplemental brief. Lidman Decl., ¶ 18. The parties executed an Amended Class Action and PAGA Settlement Agreement and submitted the amendment to the Court and LWDA along with the supplemental briefing on May 14, 2026. *Id*.

The Court required the parties to further amend the settlement agreement and Plaintiff to submit a supplemental brief. Lidman Decl., ¶ 19. The parties executed a Second Amended Class Action and PAGA Settlement Agreement and submitted the amendment to the Court and LWDA along with the supplemental briefing on July 10, 2026. *Id*.

Subsequently on July 22, 2026, the Court granted preliminary approval of the class action settlement, approving the settlement. Lidman Decl., ¶ 20, Exh. 2 (Minute Order Granting Preliminary Approval). Plaintiff submitted to the LWDA the Minute Order Granting Preliminary Approval on July 27, 2026. Lidman Decl., ¶ 21, Exh. 3.

On August 4, 2026, the Court-approved Class Notice was sent in English and Spanish to 144 Settlement Class members. *See* Declaration of Taylor Mitzner of Phoenix Settlement Administrators ("Mitzner Decl."), ¶ 5. The Settlement Class members had until October 5, 2026 to submit disputes, objections, and/or requests for exclusion. Mitzner Decl., ¶¶ 8-10. As of the date of this filing, there have been **no objections, no disputes** and **no opt-outs.** *Id*. 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 approved at the preliminary approval stage encompassed "all individuals whom Defendant Forgiato Inc. classified as non-exempt employees and who worked for Defendant in California at any time during the Class Period." Settlement, ¶ 1.5. The Class Period means the period of time starting on December 2, 2020 and ending on May 21, 2026. Settlement, ¶ 1.12.

B. Monetary Terms of the Settlement

The Settlement requires Defendant to pay a Gross Settlement Amount ("GSA") of $173,000.00. Settlement, ¶ 4.1. The Net Settlement Amount ("NSA") is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees ($57,666.66) and verified costs

($20,696.54), proposed Class Representative Service Award to Plaintiff ($7,500.00), Settlement Administration costs ($7,500.00), and PAGA Penalties ($20,000.00). Settlement, ¶ 1.29. Based on these requested amounts, the NSA is calculated to be approximately $59,636.80. Mitzner Decl., ¶ 13.

An Individual Class Payment 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, ¶ 4.2.4.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties ($7,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Settlement, ¶ 4.2.7.1. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. *Id.*

Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). Settlement, ¶ 4.2.5. The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. *Id*. Eighty percent (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*. The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. *Id.*

C. Summary of Notice Process

1. Mailing of Notice Packets

On June 29, 2026, Defendant provided Phoenix Settlement Administrators ("PSA") with the Class Data, that is the name, last-known mailing address, Social Security number of each Class Member, and the number of Class Period Workweeks and PAGA Pay Periods worked by each Settlement Class Member. Mitzner Decl., ¶ 3; Settlement, ¶ 1.8. After performing address updates and verifications, PSA mailed the Class Notice to the 144 Settlement Class members on August 4, 2026. Mitzner Decl., ¶¶ 4-5. Following the initial mailing, eight (8) Class Notices were returned to PSA as undeliverable. Mitzner Decl., ¶ 6. PSA was able to update eight (8) mailing addresses for the eight (8) Class Notices returned

and re-mailed the Notice. *Id*. As of the date of filing this final approval motion, zero (0) Class Notices remain undeliverable. Mitzner Decl., ¶ 7.

Settlement Class members had until October 5, 2026 to submit objections, requests for exclusion, or disputes. Mitzner Decl., ¶¶ 8-10.

As of the date of this filing, there were no objections, no disputes, and no opt-outs. Mitzner Decl., ¶¶ 8-10. Accordingly, as of the date of the filing of this Motion, the participation rate amongst the Settlement Class members is 100 percent and the average estimated payment is $414.14, with the highest estimated payment to be $887.81 and the lowest estimated payment to be $3.14. Mitzner Decl., ¶ 14.

D. Funding and Timing of Payments

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator by no later than 14 days after the Effective Date, but no earlier than February 15, 2026. Settlement, ¶ 5.3. The Effective Date means the date by when 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. Settlement, ¶ 1.18. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; or (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. *Id*.

The Guarantor is jointly and severally liable for payment of the Gross Settlement Amount and personally guarantees payment of the Gross Settlement Amount of $173,000.00 and any amounts necessary to fully pay Defendant's share of payroll taxes. Settlement, ¶ 5.4. Should the Guarantor be required to make payment of the Gross Settlement Amount and Defendant's share of payroll taxes, all funds shall be transmitted to the Administrator by no later than 30 days after the Effective Date, but no earlier than February 15, 2026. *Id*.

The Administrator will mail checks within 14 days after Defendant fully funds the Gross Settlement Amount. *See* Settlement, ¶ 5.5.

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E. Uncashed Funds

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement ¶ 5.5.3.

The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. Settlement ¶ 5.5.1. The Administrator will cancel all checks not cashed by the void date. *Id*.

F. Notice of Judgment

As stated in the Notice mailed to Settlement Class members, the final judgment entered by the Court will be posted by the Settlement administrator on the Settlement Administrator's website at garcia-v-forgiato.phoenixcases.com. See Mitzner Decl., Exh. A.

IV. ARGUMENT

A. This Court Should Confirm its Conditional Certification of the Settlement 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 § 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's claims; and (4) the representative will fairly and adequately represent the class's interests. *See Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470.

Here, this Court found that the Settlement Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on July 22, 2026. *See* Lidman Decl., ¶ 20; Exh. 2. Subsequent to the Court's order granting preliminary approval, as of the date of the filing of this Motion, no events have cast doubt on the propriety of this determination and, in fact, the reaction of the Settlement Class members thus far to the Settlement has been strongly in support of

the Settlement, with no Settlement Class Members objecting to any portion of the Settlement and no Settlement Class Members electing to opt-out of the Settlement. *See* Mitzner Decl., ¶¶ 8-10. 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, 438 (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 to:

> [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 and give due regard to "what is otherwise a private consensual agreement between the parties." *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 maintain 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 Motion for Preliminary Approval, 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 unpaid wages claim, Defendant contends that its timekeeping practices were lawful, and any unpaid time was *de minimis* and therefore non-compensable. Lidman Decl., ¶ 25. Defendant further asserts that Plaintiff would be unable to certify an unpaid wages class given that a number of the Class Members signed arbitration agreements and given the individualized inquiries that would be required. *Id*.

As for Plaintiff's meal period claim, Defendant counters that it has always maintained a lawful meal period policy and 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., ¶ 27. Defendant 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 it has always done so. *Id*.; *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendant contends Plaintiff's meal period claim is not suited for class certification given that a number of the Class Members signed arbitration agreements, and that 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 claim, Defendant contends it has always maintained and enforced lawful rest period policies and practices, and that Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 29. Defendant also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as a number of Class Members signed arbitration agreements, and it requires an individualized inquiry into whether each 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 failure to reimburse claim, Defendant asserts that it provided cellular phones to employees whose job duties required the use of a cell phone. Lidman Decl., ¶ 31. Further, Defendant argues that during the relevant time period it had a reimbursement policy. *Id*. Defendant contends that Plaintiff's reimbursement claim is inherently unsuited for class treatment as a number of Class Members signed arbitration agreements. *Id*.

As for Plaintiff's wage statement claim, 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 employee "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., ¶ 33. Further, a number of the Class Members signed arbitration agreements. *Id*.

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As for Plaintiff's waiting time penalties claim, Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 35; *see also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Also, a number of the Class Members signed arbitration agreements. *Id*.

As for Plaintiff's claim for PAGA penalties, Defendant argues that Plaintiff's PAGA claim will fail because there is evidence Plaintiff's claim falls outside of the statute of limitations period. Lidman Decl., ¶ 37. Further, it will fail for the same reasons that his underlying claims will fail. *Id*.; *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. Lidman Decl., ¶ 37; *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. As detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff carefully vetted the claims at issue and conducted a detailed statistical analysis of the extrapolated class-wide data to arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable in view of them.

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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 settlement payments are calculated based on the number of workweeks worked by each Settlement Class member. *See* Settlement, ¶ 4.2.4. This method of distribution compensates Settlement Class members based on the estimated extent of their injuries, as Settlement Class members who worked more workweeks, who would have been subject to more of the alleged wage and hour violations than those who worked fewer shifts. 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% Participation Rate 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, as of the filing of this Motion, not a single Settlement Class Member has objected to the Settlement or has elected to opt-out, and none of the 144 Class Notices remain undeliverable. Mitzner Decl., ¶¶ 8-10. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

C. <u>The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check</u>

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 is $57,666.66 (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 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., ¶ 39. 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 can enhance 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*, *supra*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of $100,372.50 which results in a multiplier of 1.74 compared to the $57,666.66 fee request. Lidman Decl., ¶ 43. A summary showing the number of hours of work performed by each attorney and paralegals is set forth below. 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., ¶ 44, Exh. 4.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (27th Year Attorney)	$950	41.7	$39,615.00
Paul K. Haines (19th Year Attorney)	$975	19.6	$19,110.00
Milan Moore (10th Year Attorney)	$725	27.1	$19,647.50
Tiara Gose-Hardy (7th Year Attorney)	$625	33.2	$18,875.00
Paralegals	$250	12.5	$3,125.00
Total Lodestar			**$100,372.50**

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., ¶¶ 8-10. Additionally, the *average* settlement payment in this case of approximately $414.14 is 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 *17 (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 two years of work. Lidman Decl., ¶ 43. During this time, Class Counsel have expended $20,246.54, in actual costs, have devoted substantial time to this litigation and expect to incur approximately $450.00 in future costs for filing the instant motion, filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and messenger fees, and/or postage fees. Lidman Decl., ¶ 41, Exh. 4. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records, drafting a mediation brief, preparing for and attending mediation, negotiating and revising the long-form settlement agreement, preparing the Motion for Preliminary Approval and supplemental briefs, preparing amended settlement agreements, overseeing the settlement administration process, and otherwise litigating this case. *See* Lidman Decl., ¶ 40. 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.

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 of misclassification, unpaid wages, 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; and Declaration of Tiara Gose-Hardy

("Gose-Hardy Decl."), ¶¶ 2-4. 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., ¶ 42. 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 Class Settlement Amount is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues. Lidman Decl., ¶¶ 24-37, 42. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should be approved.

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

Class Counsel seek reimbursement of $20,696.54 (including anticipatory fees and expenses related to the instant motion and other future activity in this case) 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., ¶ 41; Exh. 4. 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 as of the date of filing no Settlement Class member has objected to them, Plaintiff respectfully requests the Court grant the request for actual costs incurred.

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E. The Court Should Finally Approve the Requested Administration Costs

Plaintiff also requests that the Court approve $7,500.00 in administration costs to the Settlement Administrator, Phoenix Settlement Administrators ("PSA"). As detailed in the declaration of Taylor Mitzner on Behalf of PSA submitted herewith, PSA 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, PSA calculated each Settlement Class member's individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted the Class Notices for mailing, mailed Class Notices to all 144 Settlement Class members in English and Spanish, maintained an information website, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Mitzner Decl., ¶¶ 2-15.

For these reasons, PSA's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. This Court Should Finally Approve Plaintiff's Requested Service Award Because They Are Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that He 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).

Here, Plaintiff seeks a service award of $7,500.00, and believes this request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Settlement Class members. Lidman Decl., ¶ 48; Declaration of Hector Garcia ("Garcia Decl."), ¶¶ 7-12. Plaintiff gathered documents for use in the lawsuit and attended several meetings with Class Counsel discussing the case, the merits, the defenses, and the overall fairness of the settlement reached. *Id*. 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., ¶¶ 8-10. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved. The class

has benefited from Plaintiff's actions, as the average settlement amount is $414.14.

Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize him and/or affect his future employment. Garcia Decl., ¶ 8. Plaintiff also understood the risk that he could be liable for Defendant's costs if he lost the case. *Id*. Plaintiff accepted these risks and burdens because he wanted Defendant to compensate its current and former employees for unpaid wages. *Id*. Plaintiff estimates he spent 8 to 10 hours on activities related to this case. Garcia Decl., ¶ 9.

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. Settlement, ¶ 6.1; Garcia Decl., ¶ 10. Plaintiff's release includes unknown claims and, as a result, he is waiving all rights and benefits afforded by Section 1542 of the California Civil Code. *Id*.

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 Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment submitted herewith.

Dated: November 20, 2026

Respectfully submitted,
LIDMAN LAW, APC

By: _____
Scott M. Lidman
Attorney for Plaintiff
HECTOR GARCIA