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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

MARIO TINACO, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

QUIK STOP MARKETS, INC., and DOES 1-
100,

Defendants.

Case No. RG20061119

ASSIGNED FOR ALL PURPOSES TO THE
HON. EVELIO GRILLO, DEPT. 21

[CLASS ACTION]

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION OF SETTLEMENT
CLASS, APPROVAL OF NOTICE OF
SETTLEMENT, AND SETTING OF
HEARING FOR FINAL APPROVAL**

Date: January 7, 2022

Time: 10:00 a.m.

Judge: Hon. Evelio Grillo

Dept.: 21

Reservation No.: 889320354981

Complaint filed: May 14, 2020

Trial date: None set

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I. INTRODUCTION

Plaintiff Mario Tinaco, on behalf of the State of California, and on behalf of himself and all others similarly situated (“Plaintiff”), seeks preliminary approval of the settlement of this wage and hour class action lawsuit against Defendant Quik Stop Markets, Inc. (“Defendant” or “Quik Stop”).¹ Plaintiff and his counsel have achieved an exceptional result for the members of the Class, who are current and former employees of Defendant throughout the State of California. The Settlement resolves hundreds of claims that almost certainly never would have been prosecuted as individual actions, and in so doing provide an excellent benefit to the members of the Class.

The basic terms of the Settlement are as follows: (1) the Total Settlement Amount is \$6,950,000; (2) no portion of the Total Settlement Amount will revert to Defendant; (3) a Net Settlement Amount of approximately \$4,514,076.33 will be available for distribution to Participating Class Members²; (4) Plaintiff requests, and Defendant does not oppose, an individual service award of a maximum of \$15,000 for his efforts on behalf of the Class; (5) a sum of \$100,000 for PAGA penalties³; (6) the actual costs and expenses of the Settlement Administrator⁴; (7) one-third of the Total Settlement Amount, or \$2,316,666.67, for attorneys’ fees; and (8) reimbursement of actual costs to Class Counsel, which are estimated at \$13,364. The average net award for each of the 2,100 putative Class Members is an impressive \$2,139.37.⁵ Class Counsel submit that this is an exceedingly strong recovery for a wage and hour class action.

The proposed Settlement satisfies all of the criteria for preliminary settlement approval

¹ A true and correct copy of the Settlement Agreement (“Settlement”) is attached as **Exhibit 1** to the Declaration of Attorney Carolyn Hunt Cottrell.

² Class Members who do not opt-out are designated as “Participating Class Members” under the Settlement. Participating Class Members need not submit a claim form in order to receive payment under the Settlement.

³ Of this amount, \$75,000.00 is to be paid to California Labor and Workforce Development Agency (“LWDA”), while \$25,000.00 would be distributed to Participating Class Members as part of the Net Settlement Amount.

⁴ The Parties have selected Atticus as the Settlement Administrator. Atticus has submitted a bid of \$15,893 to render all services required by the Settlement. For purposes of calculating and discussing the estimated Net Settlement Amount to be available to Settlement Class Members, Plaintiff uses the bid amount as the cost of settlement administration.

⁵ This figure assumes that the Class Members have an equal amount of workweeks and that no Settlement Class Members opt out.

1 under California law and falls well within the range of reasonableness. See Declaration of Carolyn
2 Hunt Cottrell in Support of Plaintiff’s Motion for Preliminary Approval of Class Action
3 Settlement, Conditional Certification of Settlement Class, Approval of Notice of Settlement, and
4 Setting of Hearing for Final Approval (“Cottrell Decl.”), ¶¶ 52-76. Accordingly, Plaintiff requests
5 that the Court (1) grant preliminary approval of the proposed Settlement; (2) appoint Atticus as
6 Settlement Administrator for the proposed Settlement and approve the estimated costs of
7 settlement administration; (3) appoint Schneider Wallace Cottrell Konecky LLP as Class Counsel
8 for the Class; (5) appoint Plaintiff Mario Tinaco as Representative of the Class; (6) provisionally
9 certify the Class for settlement purposes only⁶; (7) preliminarily approve a service award of
10 \$15,000 to Plaintiff for his efforts on behalf of the Class; (8) preliminarily approve an allocation of
11 \$100,000.00 for PAGA penalties; (9) preliminarily approve an award of attorneys’ fees to Class
12 Counsel in the amount of one-third of the Total Settlement Amount, or \$2,316,666.67, plus
13 reimbursement of Class Counsel’s out-of-pocket expenses, estimated at \$13,364; (10) approve the
14 Notice of Proposed Class Action Settlement and Final Approval Hearing (“Class Notice”) and
15 Notice of Estimated Settlement Award (collectively, the “Class Notice Packet”)⁷; and (11) approve
16 the proposed implementation schedule, set forth in the Notice of Motion, for relevant dates and
17 deadlines regarding the administration and approval of the Settlement.

18 **II. RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

19 **A. Factual Background**

20 Plaintiff and the proposed Class Members are Defendant’s current and former non-exempt
21 employees who work or worked as cashiers and attendants at Defendant’s gas stations and
22 convenience stores throughout California. Second Amended Class Action Complaint (“SAC”),
23

24 ⁶ The Class is defined as all current and former non-exempt, hourly employees of Quik Stop
25 Markets, Inc. employed in California at any time from May 14, 2016 through August 17, 2021. See
26 Settlement, ¶¶ I.C., I.K. Pursuant to the terms of the Settlement, Defendant has provided a
declaration, attached to the Cottrell Decl. as **Exhibit 6**, stating that the number of putative Class
Members in the relevant Class Period is 2,110.

27 ⁷ True and correct copies are attached as **Exhibits 2 and 3** to the Cottrell Decl, respectively. The
28 Class Notice provides detailed information regarding the case and the Settlement, and the Notice
of Estimated Settlement Award informs Class Members of their estimated awards and allows them
to submit address changes and disputes.

¶ 3. Quik Stop Markets, Inc. is registered as an active corporation with the California Secretary of State and does business in the State of California. SAC, ¶ 16. Quik Stop Markets, Inc. operates fueling stations, convenience stores, and food marts in several of the United States of America, including California. *Id.*

Plaintiff alleges that Defendant requires Putative Class members to work off-the-clock and routinely denies legally compliant meal and rest periods leading to off-the-clock, minimum wage, and overtime violations. SAC, ¶¶ 4-6.

In addition to serving customers as the store's cashiers, Plaintiff and Putative Class members' job duties include restocking shelves and coolers with goods, preparing and serving hot and cold food, counting register drawers, cleaning equipment and displays, mopping floors, taking trash to the dumpster, and generally keeping an orderly store and property. SAC, ¶ 25. Because many of Quik Stop's stores are open 24 hours and never close, Plaintiff and Putative Class members work shifts, often alone, around the clock at all hours of the day and night. *Id.*

Accordingly, Plaintiff and Putative Class members cannot leave the store or the cash register unattended, even to use the bathroom, if customers are present. SAC, ¶¶ 25-26. Without any relief, Plaintiff and Putative Class members cannot complete all the cleaning and food preparation duties until another employee arrives for the next shift. *Id.* The need to complete these tasks before leaving for the day results in either disciplinary action if left unfinished or substantial time worked beyond scheduled hours. *Id.* As a result, Plaintiff and Putative Class members work beyond the scheduled ending time of their shifts and yet, Defendant only pays Plaintiff and Putative Class members as if they had worked their scheduled hours. *Id.*

When this uncompensated time is factored in, Plaintiff and Putative Class members often work over eight hours per day, necessitating the payment of overtime compensation for some of the time that they work. SAC, ¶ 27. However, Defendant fails to pay Plaintiff and Putative Class members appropriate overtime premiums for such time. *Id.* Because Defendant only pays its employees an hourly rate at or just barely above the required minimum wage, such uncompensated time also yields a regular rate that is less than the minimum wage required by California law. SAC, ¶ 39.

1 The same conditions and circumstances that require substantial work off-the-clock also
2 prevent Plaintiff and Putative Class members from taking appropriate meal and rest breaks. SAC,
3 ¶ 28. Because there are rarely other employees present to relieve Plaintiff and Putative Class
4 members, they are unable to take duty-free breaks of any kind. *Id.* Even if they could, the
5 workload is too great to take meal and rest breaks without further extending the workday beyond
6 scheduled shifts. *Id.* Defendant does not pay missed break premiums to Plaintiff and the Putative
7 Class members in lieu of missed or non-compliant breaks. *Id.*

8 Defendant also does not provide Plaintiff and Putative Class members with full payment of
9 all wages owed at the end of employment. SAC, ¶ 30. Consequently, Defendant is subject to
10 waiting time penalties. *Id.* Moreover, Plaintiff and Putative Class members receive wage
11 statements that do not reflect all hours worked, premium pay for missed meal and rest breaks, nor
12 applicable overtime premiums. SAC, ¶ 29.

13 Defendant further fails to provide Plaintiff and Putative Class members with suitable
14 seating. SAC, ¶ 31. Plaintiff and Putative Class members spend a substantial portion of every shift
15 working behind a sales counter in Defendant's stores. SAC, ¶ 32. There is ample space behind
16 each counter for the presence and use of a stool or seat by Plaintiff and Putative Class members,
17 yet Defendant does not allow Plaintiff and Putative Class members to sit when it does not
18 interfere with the performance of their duties. SAC, ¶¶ 32-33.

19 As a result of these policies, Plaintiff has alleged class action and PAGA claims against
20 Defendant to challenge its alleged policies and practices of failing to compensate Putative Class
21 members for all hours worked, including at California minimum wage and overtime rates; failing
22 to authorize and permit Putative Class members to take duty-free meal and rest breaks and pay
23 premium compensation for missed breaks; failing to provide suitable seating; and related
24 violations for failing to provide Putative Class members accurate, itemized wage statements and
25 failing to timely pay Putative Class members wages owed upon the termination of employment.
26 SAC, ¶ 2.

1 **B. Procedural History**

2 Plaintiff filed this action on May 14, 2020. Cottrell Decl., ¶ 12. The initial complaint
3 asserted claims individually and on behalf of the Putative Class against Defendant Quik Stop for
4 alleged violations of California wage and hour laws. *Id.*

5 Plaintiff provided notice to the LWDA of his intent to pursue PAGA claims against
6 Defendant on March 19, 2020. *Id.*, ¶ 13.⁸ The LWDA did not issue a response. *Id.* On May 26,
7 2020, following the expiration of the 65-day PAGA notice period, Plaintiff filed an Amended
8 Class Action Complaint to add causes of action arising under the PAGA. *Id.*, ¶ 14.

9 Shortly after the litigation was filed, the Parties agreed to attend early mediation. *Id.*, ¶ 15.
10 On June 18, 2021, the Parties participated in mediation with Deborah Crandall Saxe, Esq., a
11 respected mediator in employment law. *Id.*, ¶ 16.

12 Before the mediation, Defendant provided informal discovery including timekeeping and
13 payroll information, as well as data concerning the entire Putative Class including number of
14 workweeks, pay periods, and other information. Defendant also provided relevant written policies
15 and employee handbook information in use during the relevant Class Period, as well as paystubs
16 for Plaintiff. *Id.*, ¶ 17. Class Counsel used the timekeeping and payroll data produced by
17 Defendant to determine the size and scope of the Putative Class and perform an in-depth analysis
18 of Defendant's exposure. The exposure analysis drove Plaintiff's negotiations with Defendant at
19 mediation. *Id.*, ¶ 18.

20 At the mediation, the Parties agreed to resolve all claims asserted and executed a Term
21 Sheet, which served as the basis of the Parties' Settlement Agreement. *Id.*, ¶ 19. On September 9,
22 2021, all Parties and their counsel fully executed the final long-form Settlement Agreement,
23 submitted for approval herewith. *Id.*, ¶ 20.

24 Pursuant to the terms of the Settlement Agreement, the Parties jointly stipulated to the
25 filing of a Second Amended Complaint alleging claims under the California Labor Code and
26

27
28 ⁸ A true and correct copy of Plaintiff's PAGA Notice is attached as **Exhibit 4** to the Cottrell Decl.

1 relevant Wage Orders for failure to provide suitable seating. *Id.*, ¶ 21. The Court entered the
2 Parties' joint stipulation and Second Amended Complaint on October 8, 2021. *Id.*, ¶ 22.

3 On October 12, 2021, Plaintiff submitted an amended PAGA notice to the LWDA adding
4 allegations concerning Defendant's failure to provide suitable seating. *Id.*, ¶ 23.⁹

5 **III. CLASS-ACTION SETTLEMENT APPROVAL PROCEDURE**

6 A class action may not be dismissed, compromised, or settled without the approval of the
7 court. (See California Civil Code § 1781(f); California Rule of Court 3.769; *see also* Federal Rule
8 of Civil Procedure 23(e).¹⁰) California Rule of Court 3.769 describes three distinct steps for
9 approval of class action settlements by California courts: (1) preliminary approval of the proposed
10 settlement after submission of a motion for preliminary approval, the proposed class action
11 settlement, and the proposed class notice; (2) mailing of notice of the settlement to all affected
12 members of the settlement class; and (3) a final settlement approval hearing at which members of
13 the settlement class may be heard regarding the settlement, and at which evidence and argument
14 concerning the fairness, adequacy, and reasonableness of the settlement is presented. This
15 procedure is similar to the procedure and criteria for approval of class actions under federal law.¹¹

16 With this motion, the Parties request that the Court take the first step in the settlement
17 approval process and grant preliminary approval. The purpose of the Court's preliminary
18 evaluation of the proposed Settlement is to determine whether it is within the "range of
19 reasonableness" and, thus, whether notice to the Class of the terms and conditions of the
20 settlement, and the scheduling of a formal fairness hearing, are worthwhile. (*Newberg on Class*
21 *Actions*, §11:26.)

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23
24 ⁹ A true and correct copy of Plaintiff's PAGA Notice is attached as **Exhibit 5** to the Cottrell Decl.
25 ¹⁰ This Motion cites Federal Rule of Civil Procedure Rule 23 and federal case law construing it as
26 authority for class certification and class settlement approval in California courts. The California
Supreme Court has authorized and urged California's trial courts to use these federal resources for
guidance in considering class action issues. (*Green v. Obledo* (1981) 29 Cal.3d 126, 145-46.)

27 ¹¹ It is also endorsed by the nation's leading class action commentator, Professor Herbert Newberg,
28 for safeguarding class members' procedural due process rights and enabling the court to fulfill its
role as the guardian of the interests of the class. (See *Newberg on Class Actions*, § 11:24 (4th Ed.
2002); *Manual for Complex Litigation*, §21:63 (4th Ed. 2006).)

1 The Settlement proposed herein is based on arm's-length negotiations that were guided by
2 Class Counsel's investigation and the evaluation of informal discovery. Cottrell Decl., ¶ 54. The
3 negotiations included extensive communications between Class Counsel and counsel for
4 Defendant and a mediation conference supervised by an experienced and respected mediator. *Id.*,
5 ¶ 73. The proposed Settlement provides an excellent monetary recovery for the Class, and it
6 satisfies all of the required due process protections. *Id.*, ¶¶ 74-76, 98-104. Thus, the proposed
7 Settlement is fair, reasonable, and adequate, and Plaintiff therefore requests that this Court grant
8 preliminary approval.

9 IV. TERMS OF THE SETTLEMENT

10 A. Monetary Terms

11 The Settlement provides for a Total Settlement Amount of \$6,950,000. Defendant agrees to
12 pay the employer's share of payroll taxes separately. *Id.*, ¶ 24. With the motion for final approval,
13 Class Counsel will seek fees of no more than one-third of the Total Settlement Amount, or
14 \$2,316,666.67, and actual costs, which are estimated at approximately \$13,364. *Id.*, ¶ 26. The
15 Settlement also sets aside the costs of settlement administration, \$15,000.00 for a service award to
16 Plaintiff for his service to the Class, and \$100,000 for PAGA penalties.¹² *Id.*, ¶¶ 27-28. If five
17 percent (5%) or more of the Class Members opt out of the Settlement, Defendant may, at its
18 election, within thirty (30) days after the expiration of the period to submit valid elections to opt
19 out, rescind the Settlement and all actions taken in furtherance of it will be null and void. *Id.*, ¶ 29;
20 Settlement, ¶ III.F.5.

21 B. Settlement Awards for Eligible Class Members

22 The estimated Net Settlement Amount available to Class Members totals \$4,514,076.33.
23 Cottrell Decl., ¶ 30. The Net Settlement Amount is to be allocated among and paid to Participating
24 Class Members (i.e., those Class Members who do not opt out of the Settlement) proportionally
25 based on the workweeks that they worked for Defendant as a percentage of the total workweeks
26 worked by all Participating Class Members, during the period from May 14, 2016 through August
27 17, 2021. *Id.*, ¶ 31; Settlement, ¶¶ III.C., I.K. Participating Class Members are not required to

28 ¹² See Footnotes 3, 4.

1 submit an opt-in form or claim form in order to receive payment under the Settlement. Settlement,
2 ¶ III.C.1.

3 **C. Settlement Administration**

4 The Parties have selected Atticus as the Settlement Administrator. Cottrell Decl., ¶ 38. The
5 Settlement Administrator will satisfy due process requirements in notifying Class Members of the
6 Settlement and processing any opt-outs, objections, or disputes regarding workweeks that may
7 arise. *Id.*, ¶¶ 37-41; Settlement, ¶¶ III.D, III.F.3., III.F.4.; *see* Section VI, *infra*. If the Settlement
8 is finally approved, Atticus will administer payments to the Participating Class Members,
9 including calculation of payroll taxes and preparation of tax reporting documents for the
10 Participating Class Members. Cottrell Decl., ¶¶ 33-35; Settlement, ¶¶ III.C.3., III.D.

11 **D. Preliminary Approval of the Settlement Is Appropriate**

12 The decision to approve or reject a proposed settlement is committed to a court’s broad
13 discretion. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.) To grant
14 preliminary approval of a class action settlement, courts need find only that the settlement falls
15 within the range of possible final approval, also described as “the range of reasonableness.” (*See,*
16 *e.g., North County Contractor’s Assn., Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal.App.4th 1085,
17 1089-90; *see also Newberg on Class Actions* at §11:25.)

18 To make this determination, courts must consider several relevant factors, including “the
19 strength of [the] plaintiffs’ case, the risk, expense, complexity and likely duration of further
20 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
21 the extent of discovery completed and the stage of the proceedings, [and] the experience and views
22 of counsel.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The list of factors is
23 not exclusive and the court is free to engage in a balancing and weighing of the factors depending
24 on the circumstances of each case.” (*Wershba*, 91 Cal.App.4th at 245.)

25 **1. The terms of the proposed Settlement are fair, reasonable, and adequate.**

26 Courts make an initial evaluation of the fairness, reasonableness, and adequacy of the
27 proposed settlement on the basis of information already known, supplemented as necessary by
28 briefs, motions, or information presented by the settling parties. (*See Manual for Complex*

1 *Litigation* at § 21:632.) Courts must ensure that “the agreement is not the product of fraud or
2 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
3 whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir.
4 1998) 150 F.3d 1011, 1027.) A presumption of fairness exists where: (1) the settlement is reached
5 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel
6 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
7 percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at 1802.) The first three of these
8 conditions are satisfied here, and Plaintiff expects that the fourth condition will also be satisfied.
9 See Cottrell Decl., ¶¶ 52-76.

10 A preliminary review of the Settlement reveals the fairness of its terms. *See id.*, ¶ 53. The
11 estimated Net Settlement Amount of \$4,514,076.33, derived from a Total Settlement Amount of
12 \$6,950,000, will result in fair and just relief to the Class Members. *Id.* The result is not only within
13 the reasonable standard, but Class Counsel believes it is exceptional when considering the nature
14 of Plaintiff’s claims and the difficulty and risks presented by continuing this litigation. *Id.*

15 **2. The Settlement was reached after extensive investigation, discovery, and**
16 **analysis of the class claims.**

17 California courts recognize that “a presumption of fairness exists where . . . [a] settlement
18 is reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245.) Preliminary
19 approval is warranted where the Court is provided sufficient information regarding the discovery
20 process and the facts developed (*see Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th
21 116, 129-31), so that the Court may form “an understanding of the amount that is in controversy
22 and the realistic range of outcomes of the litigation.” (*Clark v. Am. Residential Servs. LLC* (2009)
23 175 Cal.App.4th 785, 801.)

24 Here, to facilitate settlement negotiations, Class Counsel investigated the applicable law
25 and the facts in this case and extensively analyzed the potential damages that might be recovered
26 following the exchange of documents and information with Defendant. Cottrell Decl., ¶ 54.
27 Defendant provided informal discovery including timekeeping and payroll information, as well as
28 data concerning the entire Putative Class including number of workweeks, pay periods, and other

1 information. *Id.* Defendant also provided relevant written policies and employee handbook
2 information in use during the relevant Class Period, as well as paystubs for Plaintiff. *Id.* Class
3 Counsel used the timekeeping and payroll data produced by Defendant to determine the size and
4 scope of the Putative Class and perform an in-depth analysis of Defendant's exposure. *Id.*, ¶ 55.
5 The exposure analysis drove Plaintiff's negotiations with Defendant at mediation. *Id.*

6 Based on Defendant's declaration, attached to the Cottrell Decl. as **Exhibit 6**, the 2,110
7 putative Class Members worked a total of approximately 61,291 workweeks. *Id.*, ¶ 56. The vast
8 majority of the shifts were longer than 5 hours. *Id.* The average rate of pay was approximately
9 \$12.36. *Id.* On average, the Class Members worked for Defendant for approximately 47 pay
10 periods (same as workweeks). *Id.*

11 Applying these inputs and further data points to Defendant's policies, Plaintiff prepared a
12 damages analysis that provided the estimated recovery for each cause of action. *Id.*, ¶ 57. The
13 input variables in the analysis can be adjusted to reflect differing assumptions for the level of
14 violations that Plaintiff could prove. *Id.* Assuming that Plaintiff and the Class fully prevail on the
15 off-the-clock claims and prove that they are owed for 15 minutes of unpaid time per each shift, at
16 only the regular rate, Plaintiff estimates the total damages for off-the-clock work at approximately
17 \$666,581. *Id.*, ¶ 58. Assuming that Plaintiff and the Class fully prevail on the meal and rest break
18 claims and prove that they are owed premium pay for meal and rest break violations on every
19 shift of a length triggering the requirement to provide and/or authorize such breaks, Plaintiff
20 estimates the total premium pay damages at approximately \$4,656,160. *Id.* Totaling these
21 amounts provides total damages for substantive (non-derivative, non-penalty) violations of
22 approximately \$5,322,741, based on the aggressive assumptions presented here. *Id.*

23 Plaintiff assesses Defendant's exposure for derivative violations (waiting time penalties
24 and wage statement penalties) at approximately \$6,469,836. *Id.*, ¶ 59. Defendant's total exposure,
25 for both substantive and derivative claims, is estimated at approximately \$31,020,551. *Id.* These
26 figures provided benchmarks for Plaintiff and Class Counsel to gauge settlement offers, compared
27 to a hypothetical maximum that assumes complete success on every claim and overcoming each
28

1 of Defendant's defenses. *Id.* Accordingly, the Settlement was agreed upon following an extensive
2 review of the facts and law in this case. *Id.*; *Kullar*, 168 Cal.App.4th at 129-31.

3 **3. Litigation of this action not only would delay recovery, but would be**
4 **expensive, time-consuming, and would involve substantial risk.**

5 If this case were to go to trial as a class action, it is estimated that Class Counsel's fees and
6 costs would exceed \$1,000,000. *Id.*, ¶ 60. Litigating the class claims in this action would require
7 substantial additional preparation and discovery and ultimately would involve the depositions of
8 Class Members and experts, the presentation of percipient and expert witnesses at trial, as well as
9 the consideration, preparation, and presentation of voluminous documentary evidence and the
10 preparation and analysis of expert reports. *Id.*

11 Class Counsel concluded that a settlement that provides a material percentage of Plaintiff's
12 full damages estimate would be a beneficial and just result for the Class. *Id.*, ¶ 61. The proposed
13 \$6,950,000 Settlement achieves this result. *Id.* The Total Settlement Amount accounts for over
14 100% of Plaintiff's estimates of Defendant's exposure for substantive violations, and 22.40% of
15 Plaintiff's estimates of Defendant's exposure for substantive and derivative violations. *Id.* The
16 \$4,514,076.33 Net Settlement Amount accounts for 84.81% of Plaintiff's estimates of Defendant's
17 exposure for substantive violations, and 14.55% of Plaintiff's estimates of Defendant's exposure
18 for substantive and derivative violations. *Id.* In light of the challenges that Plaintiff would likely
19 face, as discussed below, the proposed Settlement is extremely reasonable. *Id.* In contrast to the
20 risk and uncertainty of continued litigation, the Settlement will yield a prompt, certain, and
21 substantial recovery for Class Members. *Id.*, ¶ 62. Such a result will benefit the Parties and the
22 court system. *Id.*

23 **4. Defendant would continue to contest liability on all issues.**

24 The reasonableness of the Settlement is further underscored by the fact that Defendant has
25 legal and factual grounds available to defend this action. *Id.*, ¶ 63. Defendant takes the position
26 that this case is not suitable for class or representative treatment and that it fully complied with its
27 obligations regarding payment of wages and provision of meal and rest breaks, among other
28 defenses. *Id.* In particular, Defendant vigorously disputed at mediation that Class Members were

1 required to work off-the-clock at all. *Id.*, ¶ 64. In addition, Defendant asserts that Plaintiff and
2 Class members were subject to on-duty meal period agreements. *Id.* Defendant further contends
3 that it maintains written policies and procedures relating to wage and hour issues that are facially
4 compliant with California law, and disputes that Plaintiff and the Class Members are entitled to
5 damages, penalties, or other relief sought. *Id.*

6 **5. Additional risks Plaintiff considered.**

7 Plaintiff would face other significant risks if the litigation were to proceed to trial. *Id.*, ¶ 65.
8 Before such merits inquiries, however, Plaintiff would have to file a Motion for Class
9 Certification. *Id.*, ¶ 66. This would require extensive investigation and outreach efforts by Class
10 Counsel to obtain supporting evidence, and would likely be vigorously contested by Defendant
11 with significant risk that the motion would be denied. *Id.* In the experience of Class Counsel,
12 putative class actions for off-the-clock claims have traditionally been difficult to certify.¹³ *Id.*
13 Plaintiff's theory of off-the-clock work is based in large part on indirect pressures to work unpaid
14 time, driven by the overtime approval policy and efficiency requirements of single-staffed shifts
15 or locations. *Id.*, ¶ 67. Such pressures may be found to vary from worker to worker or location to
16 location. *Id.* Plaintiff would face considerable risk that the Court would find that individual issues
17 predominate over common questions of law and fact. *Id.*

18 Even assuming that the motion is granted, Plaintiff would then have to establish Class-wide
19 liability, and prove up various issues regarding damages and penalties. *Id.*, ¶ 68. Proving liability
20 and damages issues would also be complicated by any individualized differences in wage and
21 hour experiences across the Class, and would be vigorously disputed by Defendant. *Id.* In
22 particular, Plaintiff and Class Counsel would be confronted with a lack of documentary evidence
23 regarding off-the-clock time, as the amounts of time were rarely logged or tracked. *Id.* Obtaining
24
25

26 ¹³ (See, e.g., *In re AutoZone, Inc., Wage & Hour Employment Practices Litig.* (N.D. Cal. 2012)
27 289 F.R.D. 526, 539, aff'd, No. 17-17533, 2019 WL 4898684 (9th Cir. Oct. 4, 2019); *Kilbourne v.*
28 *Coca-Cola Co.* (S.D. Cal. July 29, 2015) No. 14CV984-MMA BGS, 2015 WL 5117080, at *14;
York v. Starbucks Corp., (C.D. Cal. Nov. 23, 2011) No. CV 08-07919 GAF PJWX, 2011 WL
8199987, at *30.)

1 class certification, establishing liability, and proving damages would likely take years, and would
2 necessitate expert witness testimony and significant additional litigation. *Id.*

3 Additionally, Plaintiff's derivative claims regarding waiting time penalties and wage
4 statements rise and fall with Plaintiff's other wage payment claims. *Id.*, ¶ 69. For example,
5 Plaintiff would recover nothing under § 203 if he was unable to prove the underlying claims or
6 defeat a "good faith" dispute defense. (See Cal. Code Regs. Tit. 8, § 13520 [good faith dispute,
7 based in law or fact, precludes award of waiting time penalties].) Cottrell Decl., ¶ 70. While
8 Plaintiff believes that he would have prevailed on these issues and others, Plaintiff recognizes the
9 risk that a fact finder may have found for Defendant on one or more of these issues and or found
10 damages to be significantly less than what Plaintiff claims. *Id.*, ¶ 71.

11 Defendant, represented by experienced employment lawyers, raised the above arguments,
12 and more, in mediation and would have done so in continued litigation. *Id.*, ¶ 72. Despite
13 Plaintiff's confidence in his ability to prove his claims on a Class-wide basis, any one of the
14 above defenses, if decided in favor of Defendant, could have reduced or even eliminated any
15 potential damages award. *Id.*

16 **6. Class Counsel are experienced class action litigators.**

17 Class Counsel are experienced and respected class action litigators. See *Id.*, ¶¶ 5-7. Based
18 on Class Counsel's knowledge and expertise in this area of law, Class Counsel believes this
19 Settlement will provide an excellent benefit to the Class Members. *Id.*, ¶ 74.

20 **7. The proposed Settlement is well within the range of reasonableness.**

21 The Settlement calls for a Net Settlement Amount of approximately \$4,514,076.33 for all
22 Class Members. *Id.*, ¶ 75. This amount will be available to the approximately 2,110 Class
23 Members, exclusive of attorneys' fees and costs, administrative costs and other expenses, and the
24 service award. *Id.* This amount provides an estimated average recovery of \$2,139.37 per Class
25 Member, assuming one hundred percent (100%) participation in the Settlement.¹⁴ *Id.*

26 This is a recovery that easily falls within the range of reasonableness. (See, e.g., *In Re Mego*
27 *Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 [“It is well-settled law that a cash

28 ¹⁴ See Footnote 5.

1 settlement amounting to only a fraction of the potential recovery does not per se render the
2 settlement inadequate or unfair.”)[citation omitted].). Cottrell Decl., ¶ 76. It is equally well-settled
3 that a proposed settlement is not to be measured against a hypothetical ideal result that might have
4 been achieved. (See, e.g., *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
5 Cal.App.4th 1135, 1150 [quoting *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d
6 1234, 1242 with approval: “This court has aptly held that ‘it is the very uncertainty of outcome in
7 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.
8 The proposed settlement is not to be judged against a hypothetical or speculative measure of what
9 might have been achieved by the negotiators.”]). The excellent result easily satisfies these
10 standards.

11 **E. The Service Award to the Plaintiff for His Efforts on Behalf of the Class Is**
12 **Reasonable**

13 Courts award service payments to advance public policy by encouraging individuals to
14 come forward and perform their civic duty in protecting the rights of the class, as well as to
15 compensate class representatives for their time, effort and inconvenience. (*In Re California*
16 *Indirect Purchases* (1998) 1998 WL 1031494, *11.) It is well-established that representative
17 plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk
18 they have incurred in conferring a benefit on other members of the class. (*Munoz v. BCI Coca-*
19 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.)

20 Plaintiff Mario Tinaco took the significant risk of coming forward to represent the interests
21 of his fellow employees. Cottrell Decl., ¶ 77. He has subjected himself to risk with regards to
22 future employment opportunities and his reputation in the community by his participation in this
23 action. *Id.*, ¶ 78. His service as the named Plaintiff in a wage and hour class action lawsuit may be
24 discerned by potential employers and members of the community, creating a very real risk of
25 future repercussions, particularly with respect to his future job opportunities. *Id.*

26 Throughout this litigation, Plaintiff worked with Class Counsel and assisted in the
27 development of the case. *Id.*, ¶ 79. He provided detailed and extensive information during Class
28 Counsel’s initial investigation and the preparation of the pleadings. *Id.* Moreover, he provided

1 important information during the lead-up to mediation, including detailed background regarding
2 his understanding of Defendant's policies, procedures, and timekeeping systems. *Id.* Plaintiff
3 remained on call during the mediation to provide Class Counsel with timely and important
4 information. *Id.*, ¶ 80. Plaintiff has taken part in the Settlement decision and remained apprised of
5 the case at all times during Class Counsel's pre-suit investigation of these claims and during
6 approximately one and one-half years of litigation. *Id.*, ¶ 81.

7 As a result of Plaintiff's efforts and his willingness to step forward, the Class Members will
8 receive significant recoveries if the Settlement is approved. *Id.*, ¶ 82. On the other hand, if Plaintiff
9 did not serve as a Class Representative or assist in the prosecution of this case, the matter would
10 never have been brought on a class basis. *Id.* The Class Members would not be getting any
11 recovery, and Defendant's alleged conduct would have gone unchecked. *Id.* Plaintiff has
12 committed his time to this case and assumed significant risk to obtain the favorable result. *Id.*, ¶¶
13 77-82. Payment to the Plaintiff in the amount of \$15,000.00 is reasonable in light of the efforts he
14 made and the risks he took in filing and prosecuting this action to obtain this \$6,950,000
15 Settlement. *Id.*, ¶ 83.

16 **F. The Proposed Payment of Attorneys' Fees and Costs Is Reasonable and Should**
17 **Be Preliminarily Approved.**

18 Plaintiff seeks reasonable attorneys' fees and expenses from the \$6,950,000 Total
19 Settlement Amount. *Id.*, ¶ 84. Under the terms of the Settlement, Class Counsel may seek an award
20 of up to one-third of the Total Settlement Amount, or \$2,316,666.67. *Id.* The requested attorneys'
21 fees are reasonable when compared to Class Counsel's lodestar amount, currently estimated to be
22 \$395,543. *Id.*, ¶ 85. This amount would only increase with preparation and attendance at the
23 preliminary and final approval hearings, further correspondence with Class Members, and
24 Settlement administration and oversight. *Id.*

25 In this case, there was no guarantee of compensation or reimbursement. *Id.*, ¶ 86. Rather,
26 Class Counsel have undertaken all the risks of this litigation on a completely contingent fee basis.
27 *Id.* The inherent risk of proving liability and damages on a Class-wide basis and Defendant's
28 representation by skillful counsel confront Class Counsel with the prospect of recovering nothing

1 or close to nothing for their commitment to and investment in the case. *Id.* Nevertheless, Plaintiff
2 and Class Counsel have committed themselves to developing and pressing Plaintiff’s legal claims
3 to enforce the employees’ rights and maximize the Class recovery. *Id.*, ¶ 87. This commitment and
4 the risks involved are precisely the reasons for multipliers in contingency fee cases.¹⁵ *Id.* As
5 Participating Class Members will receive a significant payment if the Settlement is approved,
6 Class Counsel seek a reasonable fee award for their efforts and the risk they have assumed. *Id.*

7 Attorneys who litigate on a wholly or partially contingent basis expect to receive
8 significantly higher effective hourly rates in cases where compensation is contingent on success,
9 particularly in hard-fought cases where, like in the case at bar, the result is uncertain. *Id.*, ¶ 88.
10 This does not result in any windfall or undue bonus. *Id.* In the legal marketplace, a lawyer who
11 assumes a significant financial risk on behalf of a client rightfully expects that his or her
12 compensation will be significantly greater than if no risk was involved (*i.e.*, if the client paid the
13 bill on a monthly basis), and that the greater the risk, the greater the “enhancement.” *Id.* Adjusting
14 court-awarded fees upward in contingent fee cases to reflect the risk of recovering no
15 compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent
16 with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought
17 to enforce important public interest policies and that clients who have meritorious claims will be
18 better able to obtain qualified counsel. *Id.*

19 Fee awards in class actions average around one-third of the recovery. (*Chavez v. Netflix,*
20 *Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11.)). Class Counsel’s fee request is well within the range
21 customarily approved by California and federal courts in comparable class actions.¹⁶ Cottrell

22 ¹⁵ (Posner, *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) (“A contingent fee must be
23 higher than a fee for the same legal services paid as they are performed... because the risk of
24 default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than
that of conventional loans”].)

25 ¹⁶ See, e.g., *Newberg on Class Actions* at §11:24; *Manual for Complex Litigation* at §14:6; *Van*
26 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 at 297-98 (“Class Counsel
27 have also cited 73 district court opinions in which fees in the range of 30-50 percent of the
common fund were awarded.”); *In Re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379
28 (33% fee award); *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026,
1027 (33% of total fund awarded); *In Re Activision Sec. Litig.* (N.D.Cal. 1989) 723 F. Supp. 1373,

Decl., ¶ 89. California Superior Courts frequently grant common fund awards of 30 percent (30%) or more.¹⁷ *Id.*

Furthermore, reasonable litigation expenses are ordinarily included in an award of attorneys' fees pursuant to California wage and hour law. Class Counsel's litigation costs are estimated at \$13,364. *Id.*, ¶ 90. All of the expenses were reasonable, were necessary to the prosecution, and are customarily billed to fee-paying clients. *Id.* Class Counsel also requests reimbursement for these expenses. *Id.*

V. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS FOR SETTLEMENT PURPOSES.¹⁸

This Court should certify the proposed Class pursuant to California Code of Civil Procedure § 382. California Code of Civil Procedure § 382 provides: "[W]hen the question is one

1375 (noting that fee awards in common fund cases "almost always hover[] around 30% of the fund created by the settlement") (cited with approval in *Lealao*, 82 Cal.App.4th at 49); *In Re Vitamins Antitrust Litig.* (D.D.C. 2001) 2001 WL 34312839 (34.6% of \$365 million recovery); *Laffitte v. Robert Half Int'l Inc.* (2014) 180 Cal. Rptr.3d 136, 149, *as modified* (Nov. 21, 2014) ("...the trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits.").

¹⁷ See, e.g., *Asalati v. Intel Corp.* (Santa Clara Super. Ct., Oct. 29, 2018) No. 16cv302615 (approving 33.3% fee award, at a multiplier of 3.98 over lodestar); *Ochoa v. Haralambos Beverage Co.* (Los Angeles Super. Ct., Feb. 1, 2007) No. BC319588 (approving 33.3% fee award with no mention of lodestar crosscheck); *Big Lots Overtime Cases* (San Bernardino Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004) (approving award of attorneys' fees of 33% of the recovery); *Barela v. Ralph's Grocery Company* (Los Angeles Super. Ct., No. BC070061, June 5, 1998) (same); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct., No. 99AS01716, Dec. 26, 2000) (same); *Miskell v. Auto. Club of Southern Cal.* (Orange County Super. Ct., No. 01CC09035, May 27, 2003) (same); *Sconce/Lamb Cremation Cases* (Los Angeles Super. Ct., JCC Proceeding No. 2085, March 24, 1992) (same); *Ojito v. Robertson's Ready Mix Concrete, Inc.*, (Super. Ct., Riverside County, Jan. 16, 2007) No. RIC420994 (approving 30% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.* (Alameda County Super. Ct., No. RG05210418, Nov. 27, 2006) (approving 33% fee award with no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.* (Los Angeles County Super. Ct., No. BC293134, Nov. 20, 2006) (approving 30.7% fee award from \$12.9 million dollar settlement with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarkets* (Stanislaus County Super. Ct., No. 312026, Aug. 3, 2004) (approving 33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.* (San Diego County Super. Ct., No. GIC795732, Feb. 10, 2004) (approving 33% fee award with no mention of lodestar crosscheck).

¹⁸ Defendant maintains that a class cannot be properly certified on Plaintiff's claims, but recognizes that a lesser standard of scrutiny applies when evaluating class action criteria for

1 of a common or general interest, of many persons, or when the parties are numerous, and it is
2 impracticable to bring them all before the court, one or more may sue or defend for the benefit of
3 all.” California has a strong public policy in favor of broad enforcement of wage and hour laws
4 for the benefit of workers and in favor of using the class action device. (*Sav-on Drug Stores, Inc.*
5 *v. Superior Court* (2004) 34 Cal.4th 319, 340.) The party seeking certification has the burden to
6 establish the existence of both an ascertainable class and a well-defined community of interest
7 among class members. (*Id.* at 326 [citations omitted].) [citations omitted] The ‘community of
8 interest’ requirement embodies three factors: (1) predominant common questions of law or fact;
9 (2) class representatives with claims or defenses typical of the class; and (3) class representatives
10 who can adequately represent the class.” (*Id.*)

11 The benefits and efficiencies of this proposed Settlement, when compared to continued
12 litigation of this case on either a class basis or through multiple individual suits, justifies
13 certification of the proposed Class. Cottrell Decl., ¶ 91. The Settlement specifically proposes a
14 Class for Settlement purposes only: all current and former non-exempt, hourly employees of Quik
15 Stop Markets, Inc. in California from May 14, 2016 through August 17, 2021. Settlement, ¶¶ I.C.,
16 I.K. Applying the standards outlined herein, the Court should certify the proposed Class.

17 **A. Plaintiff Satisfied the Ascertainability and Numerosity Requirements.**

18 In determining whether a class is “ascertainable,” courts “examine the class definition, the
19 size of the class, and the means of identifying the class members.” (*Reyes v. Board of*
20 *Supervisors*, (1987) 196 Cal.App.3d 1263, 1274-75.) Plaintiff has defined the Class according to
21 objective criteria. The Class Members are easily identifiable and can be easily located, and a
22 Class List has been provided as a result of a *Belaire-West* notice process. Cottrell Decl., ¶ 93.
23 Plaintiff satisfies the numerosity element as well. According to Defendant, the proposed Class in
24 this matter consists of 2,110 individuals. *Id.* With that many Class Members, joinder is
25 impracticable. (*Rose v. City of Hayward*, (1981) 126 Cal.App.3d 926, 934; *Collins v. Rocha*
26 (1972) 7 Cal.3d 232, 238.)

27
28 settlement purposes, and that courts take settlement into account in evaluating class certification.
Amchen Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1977).

1 **B. Common Questions of Law and Fact Predominate in This Action**

2 “[T]he focus in a certification dispute is on what type of questions – common or individual
3 – are likely to arise in the action[.]” (*Sav-on*, 34 Cal.4th at 427.) The California Supreme Court
4 has expressly held that predominance does not require that all questions of law and fact be
5 uniform for all members of the class. (*Id.* at 338.) Here, Plaintiff contends that Defendant’s Class-
6 wide policies and procedures raise common issues of law and fact that are applicable to the claims
7 of Plaintiff and Class Members. Cottrell Decl., ¶ 94. Where, as in this case, uniform policies and
8 procedures apply on a class-wide basis, “the legal question to be resolved is not an individual one.
9 To the contrary, the common legal question remains the overall impact of [Defendants’] policies
10 on its [employees]” (*Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299.)
11 Plaintiff alleges that Defendant has uniform policies applicable to all non-exempt employees.
12 Cottrell Decl., ¶ 94. For example, Quik Stop maintains a uniform policy and practice of single-
13 staffing locations and stores. *Id.* As a result, Putative Class members commonly report unpaid
14 time off-the-clock completing tasks that could not be completed during their regularly scheduled
15 shift because of inadequate staffing and customer demands. *Id.* For the same reasons, and as a
16 result of the same policies, non-exempt employees are never relieved of all duties and must be
17 available to assist customers or complete tasks throughout shifts, including during meal and rest
18 breaks. *Id.* In addition, Plaintiff and Putative Class members are subject to the same timekeeping,
19 payroll, compensation, and overtime policies, the same expense reimbursement policies, the same
20 seating policies, and the same hiring, training, and discipline processes. *Id.* Plaintiff alleges that
21 these standardized policies and procedures are dictated by Defendant and apply to all of the Class
22 Members. *Id.*

23 **C. The Typicality Requirement Is Satisfied**

24 Plaintiff also must establish that he is a typical member of the Class he seeks to represent.
25 (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 874.) A representative plaintiff’s claims are
26 “typical” if they arise from the same event, practice, or course of conduct that gives rise to the
27 claims of the other class members and if their claims are based on the same legal theory. (*Classen*
28

1 v. *Weller* (1983) 145 Cal.App.3d 27, 46-47.) The typicality requirement is not onerous and does
2 not require the claims to be identical. (*Id.*)

3 Here, Plaintiff contends that he, like other Class Members, was subject to the policies and
4 practices that form the basis of the claims asserted in this case. Cottrell Decl., ¶ 95. Plaintiff
5 claims that Defendant failed to pay for all hours worked; pay minimum wages or overtime
6 compensation; provide meal and rest periods; reimburse or indemnify employees for necessary
7 business expenses; provide suitable seating; provide accurate itemized wage statements; and pay
8 all wages due to discharged and quitting employees. *Id.* Like Plaintiff, the Class Members were
9 subjected to the same illegal policies and practices to which Plaintiff was subjected and the Class
10 claims are based on the same legal theory as Plaintiff’s individual claims. *Id.* Accordingly,
11 Plaintiff is a member of the Class he seeks to represent, and his claims are “typical” of those
12 asserted by other Class Members. *Id.*

13 **D. The Adequacy Requirement Is Satisfied**

14 A plaintiff is an adequate class representative if his or her claims are not inconsistent with
15 or antagonistic to the claims of the class members. (*See Johnson v. GlaxoSmithKline, Inc.* (2008)
16 166 Cal.App.4th 1497, 1509.) In the instant case, there is no conflict between Plaintiff and the
17 proposed Class. Plaintiff’s claims are in line with those of the Class and Plaintiff has prosecuted
18 this case with the interests of the Class in mind. Cottrell Decl., ¶ 96. Furthermore, Plaintiff has
19 selected counsel with extensive experience in class action and employment litigation, including
20 wage and hour class actions, and who do not have any conflict with the Class. *Id.* For the
21 foregoing reasons, Plaintiff is an adequate class representative, and Schneider Wallace Cottrell
22 Konecky LLP is appropriate Class Counsel. *Id.*, ¶ 97.

23 **VI. THE PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS.**

24 “Adequate notice is critical to court approval of a class settlement under Rule 23(e).”
25 (*Hanlon*, 150 F.3d at 1025.) A class action settlement notice “is satisfactory if it ‘generally
26 describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to
27 investigate and to come forward and be heard.’” (*Churchill Village LLC v. General Electric* (9th
28 Cir. 2004) 361 F.3d 566, 575.)

1 Here, all Class Members will be identified, and the Class Notice Packet will be sent via first
2 class mail to each Class Member at their last known addresses provided by Defendant. Settlement,
3 ¶ III.F.3.b. Prior to the initial mailing, the Settlement Administrator will check the addresses
4 provided by Defendant through the National Change of Address System. *Id.*, ¶ III.D. If the Notice
5 Packet is returned as undeliverable, the Settlement Administrator will perform a skip trace and
6 resend the Notice Packet. *Id.*, ¶ III.F.3.c.

7 The proposed Class Notice Packet is clear and straightforward, and provides information on
8 the case, the meaning and nature of the proposed Settlement, its terms and provisions, and the
9 rights of the Class Members to participate, opt out, and object. Cottrell Decl., ¶¶ 99-101. It
10 describes the monetary awards that the Settlement will provide to Participating Class Members and
11 the Class release. *Id.* It also provides the date, time, and location of the Final Approval Hearing,
12 and the identity and contact information for Class Counsel. *Id.* The proposed Class Notice Packet
13 also fulfills the requirement of neutrality in class notices. (*See Newberg on Class Actions* at
14 §§ 8:21 and 8:39; *Manual for Complex Litig.* at §§ 21:311 and 21:312.) Based on the foregoing,
15 the Class Notice Packet complies with the standards of fairness, completeness, and neutrality
16 required of a settlement class notice disseminated under authority of the Court. Cottrell Decl.,
17 ¶ 103.

18 **VII. THE PROPOSED IMPLEMENTATION SCHEDULE**

19 Plaintiff respectfully requests that the Court approve the proposed implementation
20 schedule for approval of the Settlement. The proposed implementation schedule is reflected in the
21 Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action Settlement,
22 Conditional Certification of Settlement Class, Approval of Notice of Settlement, and Setting of
23 Hearing for Final Approval, and is adopted in the proposed order accompanying this motion.

24 **VIII. CONCLUSION**

25 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion for
26 Preliminary Approval and enter an order consistent with the Proposed Order submitted herewith.
27
28

1 Dated: November 19, 2021

Respectfully submitted,

2
3 

4 Carolyn Hunt Cottrell

5 David C. Leimbach

Brett D. Watson

SCHNEIDER WALLACE COTTRELL

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7 Attorneys for Plaintiff, the Putative Class,
8 Aggrieved Employees, and the State of
9 California