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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

VICENTE GONZALEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

NORCO PLASTICS, INC., a California
corporation; BEYOND STAFFING
SOLUTIONS, INC., a California corporation;
MOONSTONE PEO, INC., a Texas
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CIVSB2026519

*[Assigned for all purposes to the Hon. David Cohn,
Dept. S-26]*

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

Date: June 22, 2023

Time: 10:00 a.m.

Dept.: S-26

Action Filed: August 7, 2020

Trial Date: None

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June
3 22, 2023 at 10:00 a.m. in Department S-26 of the above-entitled Court, located at 247 West Third Street,
4 San Bernardino, California 92415, Plaintiff Sadamatsu Vicente Gonzalez (“Plaintiff”), the surviving
5 father and legal successor-in-interest to deceased Plaintiff Vicente Gonzalez (“deceased Plaintiff
6 Gonzalez”), individually and on behalf of a class of similarly situated individuals, will and hereby does
7 move this Court for:

- 8 1. Preliminary approval of the proposed class settlement of this lawsuit;
- 9 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification
10 of the following Settlement Class defined as follows:
11 All current and former non-exempt, hourly employees who worked for Defendant
12 Norco Plastics, Inc. (including any and all individuals who: (i) worked for Defendant
13 Norco Plastics, Inc. directly or (ii) worked for and/or provided services for Defendant
14 Norco Plastics, Inc. through a staffing agency) in California at any time from August
15 7, 2016 through date of preliminary approval of the Settlement.
- 16 3. Preliminary appointment of Plaintiff Sadamatsu Vicente Gonzalez as Class Representative;
- 17 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
18 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
- 19 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
20 and to permit an enhancement award to Plaintiff, Settlement Administration costs, civil
21 penalties payable to the California Labor Workforce Development Agency, and attorneys’
22 fees and costs to Class Counsel;
- 23 6. Appointment of Simpluris, Inc. as the third-party Settlement Administrator for mailing
24 notices;
- 25 7. Leave to file the Second Amended Class and Representative Action Complaint, which is
26 attached as **Exhibit C** to the Settlement Agreement;
- 27 8. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
28 Class Action and Settlement and Notice of Settlement Award) which is attached to the
Settlement as **Exhibit D** and an order that it be disseminated to the proposed Settlement
Class Members as provided in the Settlement Agreement; and

9. Approval of the proposed Advertisement for Chino Champion which is attached to the proposed order as **Exhibit A** and an order that it be run a total of 8 weekly cycles and also posted at Defendant's facility.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, deceased Plaintiff Gonzalez, and Eric Springer of Simpluris, Inc. and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: May 8, 2023

Respectfully submitted,
LIDMAN LAW, APC

By:

Scott M. Lidman
Attorney for Plaintiff
SADAMATSU VICENTE GONZALEZ,
Successor-in-interest for deceased Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Vicente Gonzalez, now deceased, (“deceased Plaintiff Gonzalez”) brought this class and
4 representative action against Defendant Norco Plastics, Inc. (hereinafter “Norco” or “Defendant”)
5 alleging various wage and hour and related violations. After the Parties agreed to attend a private
6 mediation, they exchanged information and data, and also agreed to expand the scope of the mediation¹.
7 Therefore, deceased Plaintiff Gonzalez’s primary claims/allegations which are being settled subject to
8 Court approval are that Norco: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime
9 wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all
10 legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely
11 pay all wages upon separation of employment; (7) engaged in unlawful business practices; and (8) is
12 liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

13 After the death of deceased Plaintiff Gonzalez, the Court granted the Parties’ joint request to have
14 deceased Plaintiff Gonzalez’s father and legal successor-in-interest, Sadamatsu Vicente Gonzalez
15 (hereinafter, “Plaintiff”) be substituted in for deceased Plaintiff Gonzalez as the named plaintiff and class
16 representative in the instant action. As such, Plaintiff has stepped into the shoes of deceased Plaintiff
17 Gonzalez as the named Plaintiff and now Plaintiff respectfully requests that this Court preliminarily
18 approve this non-reversionary, class action settlement,² in which Norco has agreed to pay Four Hundred
19 Twenty Thousand Dollars and Zero Cents (\$420,000.00) on behalf of the following Settlement Class:

20 All current and former non-exempt, hourly employees who worked for Defendant
21 Norco Plastics, Inc. (including any and all individuals who: (i) worked for Defendant
22 Norco Plastics, Inc. directly, or (ii) worked for and/or provided services for Defendant
Norco Plastics, Inc. through a staffing agency) in California at any time from August
7, 2016 through date of preliminary approval of the Settlement.

23 Significantly, Settlement Class members do not need to file a claim to benefit from the Settlement
24 because all Settlement Class members will automatically receive a payment unless they affirmatively opt-

26 ¹ The proposed Second Amended Class and Representative Action Complaint (“SAC”) is attached to the Settlement as Exhibit
27 C.

28 ² The Amended Stipulation of Class Action and PAGA Settlement (“Settlement”) is attached to the Declaration of Scott M.
Lidman as Exhibit 1. The proposed Notice Packet (which is comprised of the Notice of Pendency of Class Action and
Settlement and Notice of Settlement Award) which is attached to the Settlement as Exhibit D. All defined terms in this motion
have the same definitions as used in the Settlement.

1 out. After deducting administration costs, Plaintiff's service award, attorneys' fees and costs, and the
2 PAGA Payment, the remaining Net Settlement Amount ("NSA") of approximately \$228,200.00 will be
3 distributed to all Settlement Class members who do not opt-out of the Settlement. There were
4 approximately 294 Settlement Class members as of the date of mediation. With a Net Settlement Amount
5 of \$228,200.00, this means that the average payment to participating Settlement Class members is
6 estimated to be approximately **\$776.19**.

7 Additionally, Five Thousand and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been
8 designated as the "PAGA Amount" as described above. There were approximately 95 PAGA Employees
9 as of the date of mediation. As such, the average individual PAGA Employee settlement payment is
10 projected to be approximately **\$52.63**.

11 This proposed Settlement is well-within the range of possible approval in light of the significant
12 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
13 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff
14 respectfully requests that the Court grant preliminary approval of the Settlement.

15 **II. SUMMARY OF THE LITIGATION**

16 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH** 17 **NEGOTIATIONS**

18 **1. The Parties**

19 Norco operates plastic injection molding machines ranging from 30 Tons to 1800 Tons. It
20 describes itself as offering world-class services and "turn-key" manufacturing, utilizing the most advanced
21 equipment, robotics and systems to maximize its production efficiency and provide outstanding value to
22 its customers. See Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Deceased Plaintiff Gonzalez,
23 a former employee, was employed by Norco through a staffing agency as an hourly, non-exempt employee
24 from approximately March 2019 until approximately January 2020, at which time he was terminated.
25 Declaration of Vincente Gonzalez ("Gonzalez Decl."), ¶ 2.

26 **2. Procedural History**

27 On August 7, 2020, deceased Plaintiff Gonzalez filed a class action Complaint against Defendant
28 in Los Angeles County Superior Court, in the matter entitled *Vicente Gonzalez v. Norco Plastics, Inc., a*

1 *California corporation; Beyond Staffing Solutions, Inc., a California corporation; Moonstone PEO, Inc.,*
2 *a Texas corporation; and Does 1 through 100, inclusive, Case No. 20STCV30269 alleging class action*
3 *claims against Defendant and defendants Beyond Staffing Solutions, Inc. (“Beyond”) and Moonstone*
4 *PEO, Inc. (“Moonstone”). Lidman Decl., ¶ 10. On December 3, 2020, pursuant to a stipulation between*
5 *the Parties, the Los Angeles County Superior Court transferred the Action to San Bernardino County*
6 *Superior Court, bearing Case No. CIVSB2026519. Id.*

7 After having exhausted his administrative remedies with the California Labor & Workforce
8 Development Agency (“LWDA”) by way of a letter submitted to the LWDA on September 28, 2020 (a
9 true and correct copy of which is attached to the Settlement as **Exhibit A**), on December 28, 2020,
10 deceased Plaintiff Gonzalez filed a First Amended Complaint (“FAC”) against Defendant, Beyond and
11 Moonstone, which added a PAGA claim. *Id.*

12 On April 30, 2021, pursuant to a request by deceased Plaintiff Gonzalez and after proper service
13 of the FAC on Moonstone, the San Bernardino County Superior Court entered a default against
14 Moonstone. *Id.*

15 On June 11, 2021, pursuant to a request by deceased Plaintiff Gonzalez and after proper service of
16 the FAC on Beyond, the San Bernardino County Superior Court entered a default against Beyond. *Id.*

17 On July 21, 2021, Norco filed an Answer to deceased Plaintiff Gonzalez’s FAC, and also filed a
18 Cross-Complaint in the Action against Beyond and Moonstone. *Id.* Norco’s Cross-Complaint asserts
19 claims against Beyond and Moonstone for: (i) express indemnity against Beyond; (ii) breach of contract
20 against Beyond; (iii) breach of duty to defend against Beyond; (iv) implied indemnity against Beyond and
21 Moonstone; and (v) contribution against Beyond and Moonstone; (vi) declaratory relief against Beyond
22 and Moonstone. *Id.* Defendant contends in its cross-complaint that to the extent there is any liability
23 (which Defendant denies), it is the responsibility in whole or in part of cross-defendants Beyond and
24 Moonstone. Moreover, the time for Beyond and Moonstone to respond to the cross-complaint has lapsed
25 and defaults have been requested by Defendant against these cross-defendants to the cross-complaint. *Id.*

26 On February 3, 2022, deceased Plaintiff Gonzalez submitted a supplemental letter to the LWDA
27 asserting a claim against Defendant based on the failure to provide meal periods (a true and correct copy
28 of which is attached to the Settlement as **Exhibit B**). Lidman Decl., ¶ 33.

1 Subsequently, after the Parties reached the instant settlement and executed the relevant and
2 operative settlement agreement prior to preliminary approval, on, January 26, 2023, deceased Plaintiff
3 Gonzalez passed away. Therefore, on April 26, 2023, pursuant to the Parties' joint request, the Court
4 ordered that the surviving father and legal successor-in-interest to deceased Plaintiff Gonzalez, Sadamatsu
5 Vicente Gonzalez, be permitted to substitute in as the named plaintiff and proposed class representative
6 in the present action so that the action may proceed accordingly. Lidman Decl., ¶ 37.

7 **3. Discovery**

8 After agreeing to participate in early mediation, Norco informally produced time records and
9 payroll data for a sampling of the putative class, as well as its wage and hour policies and other relevant
10 documents and information relevant to the claims alleged in advance of mediation. Lidman Decl., ¶ 11.
11 After the detailed review of the payroll and time records and other documents and policies produced by
12 Norco, Class Counsel drew on their extensive experience in similar cases to assess the strengths and
13 weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of
14 Plaintiff's claims and Norco's defenses thereto, if a settlement could not be reached.

15 **4. Arms-Length Negotiations**

16 On February 1, 2022, a mediation was held with Steven G. Mehta, a well-respected wage and hour
17 class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their
18 opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the
19 claims and defenses. *Id.* Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* As
20 part of the Settlement, the Parties agreed that, subject to Court approval, Plaintiff would file a Second
21 Amended Complaint which adds a claim for failure to provide all legally required meal periods. *Id.* In
22 the weeks that followed, the parties finalized the terms of settlement and executed the Joint Stipulation of
23 Class Action and PAGA Settlement ("Settlement"). *Id.* Therefore, in order to effectuate the terms of the
24 Settlement, Plaintiff also seeks leave from the Court to file the Second Amended Complaint Class and
25 Representative Action Complaint, which is attached as **Exhibit C** to the Settlement.

26 Moreover, after executing the Settlement and advising the Court of the potential notice issues
27 (detailed below), Norco and deceased Plaintiff Gonzalez executed an Amended Settlement ("Amended
28 Settlement") prior to the death of deceased Plaintiff Gonzalez. *Id.*

1 **III. ARGUMENT**

2 **A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

3 California Rule of Court 3.769 conditions settlement of a class action on court approval, which is
4 generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil
5 Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial court to
6 determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler*
7 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine “whether a proposed
8 settlement is fundamentally fair, adequate, and reasonable”).

9 As further explained below, the Settlement Class satisfies the criteria for certification of a
10 settlement class under California law because: (1) the Settlement Class is so numerous that joinder would
11 be impractical; (2) common questions of law and fact predominate over individual questions such that
12 class certification is the most efficient and desirable way to maintain this litigation; (3) deceased Plaintiff
13 Gonzalez’s claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and his
14 counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ. Proc. §
15 382.

16 **1. Numerosity is Satisfied.**

17 Here, the proposed Settlement Class consists of approximately 294 members (as of the time of
18 mediation), and is therefore sufficiently numerous as to make joinder impracticable. *See* Lidman Decl.,
19 ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of
20 a trust sufficiently numerous). Thus, numerosity is satisfied.

21 Further, a class is “ascertainable” where the members “may be readily identified without
22 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*
23 (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined
24 as “All current and former non-exempt, hourly employees who worked for Defendant Norco Plastics, Inc.
25 (including any and all individuals who: (i) worked for Defendant Norco Plastics, Inc. directly, or (ii)
26 worked for and/or provided services for Defendant Norco Plastics, Inc. through a staffing agency) in
27 California at any time from August 7, 2016 through date of preliminary approval of the Settlement” which
28 can be ascertained through Norco’s employment records. Lidman Decl., ¶ 14.

1 **2. Commonality is Satisfied.**

2 The focus in a certification dispute is not the merits, but rather on what types of questions,
3 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court*
4 *(Rocher)* (2004) 34 Cal.4th 319, 327.

5 Here, Settlement Class members’ claims arise from Norco’s common, uniform policies and
6 practices that applied to Settlement Class members during the class period. Lidman Decl., ¶ 15.
7 Specifically, Plaintiff alleges that Norco’s common and uniform policies and practices resulted in the
8 following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages
9 owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally
10 required rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to pay all
11 wages upon termination; (7) unfair competition; and (8) liability for civil penalties under the PAGA. As
12 a result of the common and uniform policies and practices that applied to all Settlement Class members,
13 their claims involve common questions of law and fact, including but not limited to:

- 14 1. Whether Norco paid all overtime wages owed;
15 2. Whether Norco paid all minimum wages owed;
16 3. Whether Norco provided all legally compliant meal periods;
17 4. Whether Norco authorized and permitted all legally required rest periods;
18 5. Whether Norco failed to furnish accurate, itemized wage statements;
19 6. Whether Norco failed to pay all wages owed upon separation of employment; and
20 7. Whether Norco’s conduct constituted unlawful and/or unfair business practices.

21 These alleged practices result in common questions as to the affected Settlement Class members.
22 *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

23 **3. Typicality is Satisfied.**

24 The typicality requirement is satisfied where class representatives have claims that are typical of
25 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
26 1347 (finding typicality satisfied where the named plaintiff purchased the same goods as the putative
27 class in a consumer class action).

1 Here, deceased Plaintiff Gonzalez's claims are typical of those held by the members of the
2 proposed Settlement Class. As such, Plaintiff as his legal successor-in-interest, can adequately represent
3 the Settlement Class. First, deceased Plaintiff Gonzalez was employed by Norco through a staffing
4 agency during the Class Period as a non-exempt employee and was subject to Norco's wage and hour
5 policies at issue in this case. Gonzalez Decl., ¶ 2. Second, deceased Plaintiff Gonzalez was allegedly
6 injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For
7 example, deceased Plaintiff Gonzalez asserted that he was not paid all minimum, overtime wages, was
8 not provided all meal periods, was not authorized and permitted all rest periods, received inaccurate
9 itemized wage statements, similar to those received by the Settlement Class members, and was not paid
10 all of his wages upon separation of employment with Norco. *Id.* Given that Norco's policies and practices
11 applied to all non-exempt employees, Settlement Class members possess a similar interest and have
12 suffered similar alleged injuries as deceased Plaintiff Gonzalez. Accordingly, because deceased Plaintiff
13 Gonzalez's claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

14 **4. Adequacy is Satisfied.**

15 The adequacy requirement examines conflicts of interest between named parties and the class(es)
16 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
17 Cal.App.4th 676, 697.

18 Here, there was no apparent conflicts of interest between deceased Plaintiff Gonzalez and the
19 Settlement Class through the date of settlement. Deceased Plaintiff Gonzalez understood that the action
20 and settlement was for him and the other non-exempt employees of Norco Plastics. Gonzalez Decl., ¶ 7.
21 He took on certain risks and burdens for the benefit of the other non-exempt employees including being
22 liable for Norco Plastics' costs. *Id.* At the time of settlement, Deceased Plaintiff Gonzalez understood
23 that as a class representative he was responsible for representing the interests of all members of the
24 settlement class and had to put the interests of the Class before his own. Gonzalez Decl., ¶ 10.

25 Additionally, there are no apparent conflicts of interest between Plaintiff and the Settlement Class
26 he seeks to represent. Indeed, Plaintiff's interests are aligned with those of the Settlement Class members,
27 as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel does
28 not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of America* (1976) 60

1 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not
2 qualified and the named plaintiff had no interests antagonistic to those of the proposed class).

3 Further, Class Counsel have extensive experience in wage and hour class action litigation and
4 have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Elizabeth Nguyen (“Nguyen
5 Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; and Declaration of Milan Moore
6 (“Moore Decl.”), ¶¶ 2-4.

7 **B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE**
8 **PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR,**
9 **ADEQUATE, AND REASONABLE**

10 Settlement is the preferred means of dispute resolution, particularly in complex class action
11 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
12 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
13 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
14 Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an
15 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168
16 Cal.App.4th 116, 130.

17 **1. The Preliminary Approval Standard is Met**

18 To make a fairness determination, the Court should consider several factors, including: “the
19 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk
20 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
21 completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford*
22 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to
23 engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba*
24 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. As discussed below, the proposed Settlement
25 is fair, adequate, and reasonable in light of the overall balance of factors in this case.

26 **a. The Strength of Plaintiff’s Case**

27 Although Plaintiff maintains that the claims at issue are meritorious, Plaintiff acknowledges that
28 there are substantial risks and uncertainty in proceeding with litigation. As described below, Norco

presented multiple defenses to Plaintiff's claims, both on the merits and class certification. Thus, while Plaintiff was and is prepared to litigate these claims through certification, and ultimately trial, success was far from certain.

b. Risk, Expenses, Complexity, and Duration of Further Litigation

Although the parties engaged in informal discovery throughout this action, the parties still had significant formal discovery to complete, including written discovery, party depositions, putative class member depositions, and expert discovery had the matter not settled. Lidman Decl., ¶ 32. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

Plaintiff had not yet filed his motion for class certification and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial.

d. Overview of the Settlement Agreement

If the Court approves this Settlement, Norco will pay a Gross Settlement Amount ("GSA") of \$420,000.00. Nguyen Decl., ¶¶ 13, Exh. 1 (Amended Settlement, ¶ 6). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$420,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$140,000.00
Minus Court-approved, verified costs (up to \$20,000):	\$20,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00

1	Minus Settlement Administration Costs:	\$6,800.00
2	Minus PAGA payment:	\$20,000.00
3	Net Settlement Amount (“NSA”):	\$228,200.00

4 With the exception of the Settlement Administrator’s fees, if required by the Settlement
5 Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement
6 fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and
7 PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement
8 Administrator within thirty (30) calendar days after the “Effective Date” which is defined as the latter of:
9 (a) the Court’s final approval of the settlement if no objections by or on behalf of Settlement Class
10 members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal
11 has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. *See Settlement,*
12 ¶ 6.B.

13 After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award
14 to Plaintiff, Settlement Administrator costs, and the PAGA payment, the Settlement requires Norco to pay
15 a Net Settlement Amount (“NSA”) of at least **\$228,200.00** to all Settlement Class members who do not
16 timely opt out. Lidman Decl., ¶ 13, Exh. 1.

17 According to Norco, there are approximately 294 total Settlement Class members (who worked a
18 total of approximately 12,524 workweeks during the relevant time period) and 95 PAGA Employees (who
19 worked a total of approximately 5,758 pay periods during the relevant time period). Lidman Decl., ¶ 14.
20 From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class
21 member’s Settlement Award based on the following formula:

22 The Net Settlement Amount shall be allocated to Settlement Class members who
23 worked during the Class Period, as follows: each participating Settlement Class
24 member shall receive a proportionate settlement share based upon the number of
25 workweeks worked as a non-exempt employee during the Class Period, the
26 numerator of which is the Settlement Class member’s total workweeks worked as a
27 non-exempt employee during the Class Period, and the denominator of which is the
28

total workweeks worked as non-exempt employees by all Settlement Class members
(who do not opt out) who worked during the Class Period.

Settlement, ¶ 7.B.i.

Additionally, Five Thousand and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of workweeks worked as a non-exempt employee during this time period, and the denominator of which is the total number of workweeks worked by all PAGA Employees. Amended Settlement, ¶ 7.B.ii.

Thus, the average Individual Settlement Payment is projected to be approximately **\$776.19** and the average individual PAGA Employee settlement payment is projected to be approximately **\$52.63**. Lidman Decl., ¶ 14.

Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packet to opt-out or object to the Settlement, thereby providing ample time to review the Notice Packet without unduly delaying the Settlement. *See* Settlement, ¶ 12.C. Those Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Norco, Beyond and Moonstone³ included within the Settlement, for the period between August 7, 2016 through date of preliminary approval of the Settlement. *See* Amended Settlement, ¶ 4. However, the release will only be effective on the date that Norco fully funds the Gross Settlement Amount. Settlement, ¶ 4.F.

e. The Parties Engaged in Fair and Honest Negotiations.

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance

³ Notwithstanding the fact that Plaintiff, the Class Members and the PAGA Employees, are releasing Norco as well as Beyond and Moonstone, Norco is specifically retaining by and through the Settlement any and all claims it has or may have against Beyond and Moonstone, including any claims asserted in the Cross-Complaint filed in the Action on or about July 21, 2021. Nothing in the Settlement, nor the Judgment if and when the Court finally approves the Settlement, shall prevent Defendant from proceeding with its claims in the Cross-Complaint or any other claims it has or may have against Beyond and/or Moonstone. Any action or inaction, recovery or no recovery, by Defendant against Beyond and/or Moonstone as to the Cross-Complaint shall not affect the Settlement. *See* Settlement, ¶ 5.

1 of a mediator. In connection with mediation, Norco produced timekeeping and payroll data. Counsel for
2 Deceased Plaintiff Gonzalez conducted an analysis of the payroll data and time records produced by
3 Norco to calculate Defendants' potential exposure for the various claims. Lidman Decl., ¶ 11. After the
4 detailed review of the payroll and time records and other documents and policies produced by Norco,
5 Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses
6 of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's
7 claims and Norco's defenses thereto, if a settlement could not be reached. *Id.*

8 On February 1, 2022, the parties participated in mediation with Steven G. Mehta, Esq. a
9 preeminent wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties
10 vigorously debated their opposing legal positions, the likelihood of certification of the various claims,
11 and the legal basis for the claims and defenses. Ultimately, the parties agreed in principle on a class-
12 wide resolution. *Id.* As part of the Settlement, the Parties agreed that, subject to Court approval, deceased
13 Plaintiff Gonzalez would file a Second Amended Complaint which adds a claim for failure to provide all
14 legally required meal periods. *Id.* In the weeks that followed, the parties (including deceased Plaintiff
15 Gonzalez prior to his death) finalized the terms of settlement and executed the operative Settlement.
16 Lidman Decl., ¶ 12, Exhibit 1.

17 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of
18 factual investigation and data analysis; the exchange of substantial information and class data, including
19 timekeeping and payroll records; arm's length negotiations by counsel; and mediation before an
20 experienced wage and hour class action mediator. *See* Lidman Decl., ¶¶ 11-12; *see also Kullar, supra*,
21 168 Cal.App.4th at 130. Thus, these factors support preliminary approval.

22 Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential
23 treatment to the class representative or segments of the class, and is within the range of possible approval,
24 as discussed in detail below. The Settlement will provide monetary relief to Settlement Class members.
25 The amounts proposed for Class Counsel' attorneys' fees and costs, and service award are all reasonable
26 and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies,
27 this factor supports preliminary approval.

28 //

1 **f. Amount Offered in Settlement Given Realistic Value of Claims**

2 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the
3 face of disputed claims. Plaintiff's analysis of the maximum and realistic expected recoveries for each of
4 the theories of liability pled and settled (including those additional claims to be pled in the proposed
5 Second Amended Complaint) is set forth below:

6 Norco Failed to Pay for All Hours Worked: Deceased Plaintiff Gonzalez alleged that he and
7 Settlement Class members were not fully compensated for all minimum wages and overtime wages for
8 their time worked. Lidman Decl., ¶ 16. Specifically, as a result of having 3 shifts, deceased Plaintiff
9 Gonzalez alleged that Norco required him and other non-exempt employees to report to work
10 approximately five (5) minutes prior to the start of their scheduled shifts and to continue working after
11 the end of their scheduled shifts. *Id.* Based on his review of the records produced in connection with
12 mediation, deceased Plaintiff Gonzalez alleged that a majority of the start and stop time for each employee
13 appear to be the exact time of their scheduled start and stop time. *Id.* Accordingly, deceased Plaintiff
14 Gonzalez estimated 10 minutes of unpaid time each shift, or approximately 50 minutes per workweek.
15 As such, deceased Plaintiff Gonzalez calculated Norco's exposure for unpaid wages as follows at the
16 overtime rate: \$234,731 ((12,524 workweeks x .833 (50 mins/week) x \$22.50 (average overtime rate))).
17 *Id.*

18 Norco contends that Settlement Class members were employed by staffing agencies and it cannot
19 be held liable as a joint employer. Lidman Decl., ¶ 17. Further, Norco contends that Settlement Class
20 Members were compensated for all of their time worked. *Id.* Further, Norco contends that any unpaid
21 time was *de minimis* and therefore non-compensable. *Id.* Norco further asserts that Plaintiff would be
22 unable to certify any off-the-clock class given the individualized inquiries that would be required. *Id.* In
23 light of these defenses, Plaintiff discounted the maximum exposure by 35% for the risk of non-
24 certification, and an additional 35% to account for Norco's defenses on the merits, to arrive at an
25 estimated exposure of \$99,173.85. *Id.*

26 Norco Failed to Provide All Legally Required Meal Periods: Deceased Plaintiff Gonzalez alleged
27 that he and Settlement Class members were not provided all legally required meal periods due to Norco's
28 meal period policies and practices. Lidman Decl., ¶ 18. Specifically, as a result of the work demands

1 imposed by Defendant and the need to wait in line to clock in and out, deceased Plaintiff Gonzalez alleged
2 that he was often provided with a meal period less than thirty minutes in violation of California law.
3 Therefore, based on a violation rate of approximately 50%, deceased Plaintiff Gonzalez calculated
4 Norco's maximum exposure the alleged meal period violations at approximately \$469,650 ((12,524
5 workweeks x 5 shifts/week x .50 (violation rate) x \$15.00 hourly rate)). *Id.*

6 Norco again contends that that Settlement Class members were employed by staffing agencies and
7 it cannot be held liable as a joint employer. Lidman Decl., ¶ 19. It also counters that deceased Plaintiff
8 Gonzalez's exposure analysis on this claim is overreaching because it has always provided non-exempt
9 employees with an opportunity to take legally compliant meal periods and deceased Plaintiff Gonzalez did
10 not allege a meal period claim in his operative complaint at the time of mediation. *Id.* Norco also contends
11 that any non-compliant meal periods reflected in employee timekeeping records during the time period for
12 which employees recorded meal periods were solely the result of employee choice, rather than any policy
13 or practice of Norco. Norco points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53
14 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal
15 periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure"
16 standard). Finally, Norco contends Plaintiff's meal period claim is not suited for class certification, since
17 individual inquiries would be required to assess which employees took non-compliant meal periods, how
18 many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-
19 compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff
20 discounted the maximum exposure by 45% for the risk of non-certification, and an additional 35% to
21 account for Norco's defenses on the merits to arrive at an estimated exposure of \$167,899.88. *Id.*

22 Norco Failed to Authorize and Permit All Rest Periods: Deceased Plaintiff Gonzalez alleged that
23 he and Settlement Class members were also not authorized and permitted to take all required rest periods
24 due to Norco's rest period policies and practices that fail to authorize and permit all rest periods for every
25 four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 20. Specifically, deceased Plaintiff
26 Gonzalez alleged that Norco's rest period practice prohibited employees from leaving the work premises
27 during rest periods. *Id.* By prohibiting its non-exempt employees from leaving the work premises during
28 rest periods, deceased Plaintiff Gonzalez alleged Norco fails to relinquish control in violation of California

1 law and resulted in at least one rest period violation on every shift in excess of 3.5 hours. *Id.* Accordingly,
2 Plaintiff calculated Norco’s maximum exposure for rest period violations at \$939,300 ((12,524 workweeks
3 x 5 shifts (over 3.5 hours/week) x \$15.00 (average hourly rate)). *Id.*

4 Norco contends that that Settlement Class members were employed by staffing agencies and it
5 cannot be held liable as a joint employer. Lidman Decl., ¶ 21. It also contends it has always maintained
6 and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized
7 and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21.
8 Further, Norco argues that Plaintiff’s rest period claim is inherently unsuited for class treatment as it
9 requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and
10 permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials.
11 *Id.* Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and
12 an additional 55% to account for Norco defenses on the merits to arrive at an estimated exposure of
13 \$169,074.00. *Id.*

14 Norco Issued Inaccurate Itemized Wage Statements: Deceased Plaintiff Gonzalez further alleged
15 that Norco issued inaccurate wage statements in violation of Labor Code § 226 because the wage
16 statements failed to include the address of the legal entity that this is the employer and also failed to include
17 any of the deductions or net pay received. Lidman Decl., ¶ 22. Further, deceased Plaintiff Gonzalez
18 alleged that the wages statements were non-compliant as a result of the alleged unpaid minimum wages,
19 overtime wages, and meal and rest period premium wages described above. *Id.* Plaintiff’s data analysis
20 reflected that there were approximately 2,879 wage statements issued during the relevant time period. *Id.*
21 Therefore, deceased Plaintiff Gonzalez calculated Norco’s maximum exposure for wage statement
22 violations at approximately \$285,450 (\$50.00 x 49 current employees + \$100 x 2,830 subsequent wage
23 statements). *Id.*

24 Norco contends that that Settlement Class members were employed by staffing agencies and it
25 cannot be held liable for wage statements that it did not issue. Lidman Decl., ¶ 23. Norco further argues
26 that its alleged wage statement violations could not be shown to be “knowing and intentional,” and that
27 Plaintiff could not show that deceased Plaintiff Gonzalez nor any other employee “suffer[ed] injury” as a
28 result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of

1 penalties. *Id.* As such, Plaintiff discounted the calculated exposure by 40% for a risk of non-certification
2 and an additional 35% for a risk of being unsuccessful on the merits, to arrive at an estimated total of
3 \$111,325.50. *Id.*

4 Norco is Liable for Waiting Time Penalties: Deceased Plaintiff Gonzalez alleged that Norco is also
5 liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all
6 wages upon separation. Lidman Decl., ¶ 24. Based on the data provided by Norco, there were
7 approximately 200 Settlement Class members who have separated their employment with Norco during
8 the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, deceased Plaintiff
9 Gonzalez calculated Norco’s maximum exposure for waiting time penalties at approximately \$720,000
10 (200 former employees x \$15.00/hour x 30 days x 8 hours/day). *Id.*

11 Norco asserts it has strong defenses to the waiting time claim because there exist good-faith
12 disputes as to deceased Plaintiff Gonzalez’s underlying claims, precluding imposition of penalties.
13 Lidman Decl., ¶ 25. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due
14 will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017)
15 (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting
16 time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
17 30% for the risk of non-certification, and an additional 35% to account for Norco’s defenses on the merits,
18 to arrive at an estimated exposure of \$327,600.00. *Id.*

19 Norco is Liable for PAGA Civil Penalties: Deceased Plaintiff Gonzalez also sought civil penalties
20 under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 26. He
21 calculated Norco’s maximum exposure at \$287,900 (2,879 pay periods x \$100 initial violation rate). *Id.*;
22 *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate
23 applies until employer is notified that it is violating a Labor Code provision).

24 Norco argues that the PAGA claim will fail for the same reasons that the underlying claims will
25 fail. Lidman Decl., ¶ 27; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the
26 underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Norco also maintains
27 that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any
28 PAGA penalties if it were to find Norco liable for any of the various claims. *See* Lab. Code § 2699(e)(2);

1 *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of
2 PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011
3 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff
4 discounted the maximum exposure figure by 35% for a risk of being unsuccessful on the merits, and an
5 additional 30% to account for the possibility of this Court reducing penalties, to arrive at an estimated
6 exposure of \$130,994.50. *Id.*

7 **g. The Settlement Is Within the Range of Possible Approval**

8 Using these estimated figures for each of the claims described above, Plaintiff predicted the
9 realistic total recovery for the Settlement Class would be approximately \$1,006,067.772. Lidman Decl.,
10 ¶ 28. The proposed settlement of \$420,000.00 therefore represents approximately 42% of the reasonably
11 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
12 will provide tangible monetary relief to Settlement Class members, and will still provide an average
13 recovery to Settlement Class members of approximately **\$776.19** and an average individual PAGA
14 Employee settlement payment to be approximately **\$52.63**.

15 The settlement is reasonable especially in light of the significant litigation risks and will provide
16 tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability
17 exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v.*
18 *UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving
19 settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d
20 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural*
21 *Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a
22 proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery
23 that might be available to the Settlement Class members at trial”). Thus, Plaintiff submits that the
24 proposed settlement is within the range of possible approval, such that notice should be provided to the
25 Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again
26 assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out
27 or object.

28 //

1 **h. The Experience and Views of Counsel**

2 “Parties represented by competent counsel are better positioned than courts to produce a
3 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
4 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
5 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
6 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
7 Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
8 review of Norco’s policies and timekeeping and payroll records, and drew on their extensive experience
9 in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Lidman Decl., ¶¶ 10-26.
10 The Settlement was also reached with the assistance of an experienced and respected wage and hour class
11 action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See Kullar,*
12 *supra*, 168 Cal.App.4th at 130.

13 **i. Attorneys’ Fees and Costs**

14 California courts recognize an appropriate method for awarding attorneys’ fees in class actions is
15 to award a percentage of the “common fund” created as a result of a settlement. *See e.g., Laffitte v. Robert*
16 *Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding “the percentage of fund method survives in California
17 class action cases”). Class Counsel’s request for fees of one-third of the GSA is well within the range of
18 reasonableness, and indeed is considered the typical rate for common fund settlements. Historically,
19 courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the
20 case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

21 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
22 is estimated to be \$140,000.00, and up to \$20,000.00 in verified costs reimbursement. *See* Amended
23 Settlement, ¶ 6.C; Lidman Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for
24 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
25 *Id.* Further, prior to his death, deceased Plaintiff Gonzalez provided written approval of the split of
26 attorneys’ fees in this action. Lidman Decl., ¶ 30. Class Counsel has incurred substantial attorney fees
27 conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, reviewing
28 Norco’s documents and policies, analyzing Settlement Class members’ timekeeping data and payroll

1 records, preparing for and attending mediation, negotiating and revising the long-form Settlement,
2 preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 29. Class Counsel expect to
3 expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process
4 and fielding questions from Settlement Class members, preparing the final approval papers and attending
5 the Final Approval hearing. *Id.*

6 Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall
7 percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely
8 positive results obtained for the class, and the efficiency with which the Parties conducted the litigation.
9 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and
10 verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar
11 analysis.

12 **j. Administration Costs**

13 Simpluris, Inc. ("Simpluris") fees and expenses are estimated not to exceed \$6,800.00. *See*
14 Declaration of Eric Springer in support of Plaintiff's Motion for Preliminary Approval filed concurrently
15 herewith ("Springer Decl."). This request is reasonable in light of the proposed class size of approximately
16 294 Settlement Class members and the costs and expenses associated with administering the notices and
17 distributing the awards. Additionally, Simpluris will translate the Notice Packet and mail the Notice in
18 both English and Spanish to Settlement Class members.

19 **k. Class Representative Service Award**

20 "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class
21 representatives for work done on behalf of the class [and] to make up for financial or reputational risk
22 undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,
23 1393-94.

24 Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of
25 seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for the services
26 that both he and deceased Plaintiff Gonzalez provided and will continue to provide to the Settlement
27 Class, and for deceased Plaintiff Gonzalez's general release of all claims against Defendant. Lidman
28 Decl., ¶ 31, Exh. 1 (Settlement, ¶ 9). As will be fully briefed at the time of final approval, the requested

1 service award is intended to recognize the time and effort that deceased Plaintiff Gonzalez expended on
2 behalf of the Settlement Class prior to his death, including providing substantial factual information and
3 documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and
4 theories at issue in the litigation. Specifically, Plaintiff is the legal successor-in-interest to deceased
5 Plaintiff Gonzalez, substituted into this action as the named plaintiff (with the Court's permission),
6 understands that as the named plaintiff and proposed class representative going forward, he is stepping
7 into the shoes of his son in order to seek approval of a settlement that benefits the current and former
8 employees of Norco. , Moreover, prior to his passing, deceased Plaintiff Gonzalez agreed to a general
9 release of all claims and waiver of Civil Code § 1542. *See* Lidman Decl., ¶ 31; Amended Settlement ¶
10 9, Gonzalez Decl., ¶ 9.

11 **L. PAGA Penalty**

12 The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor
13 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or
14 \$15,000.00. Settlement ¶ 6.C.5. This \$20,000.00 represents roughly 5% of the \$420,000.00 Gross
15 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.
16 *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx),
17 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or
18 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D.
19 Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
20 *Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class
21 action claims and PAGA claims under which no money was allocated to the PAGA claims).

22 **I. Payroll Taxes**

23 The Settlement provides that Norco's payroll taxes shall be paid separately from, and in addition
24 to, and the Class Settlement Amount. Settlement ¶ 6.D.

25 **n. Uncashed Funds**

26 The Settlement provides that Settlement Class members with 180 days from the date the
27 Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks
28 were not cashed within 180 days after mailing will be distributed, subject to the Court's approval, and

1 consistent with Code of Civil Procedure Section 384 to Inland Counties Legal Services located at 455 N.
2 D Street San Bernardino, CA 92401. Amended Settlement ¶ 7.F. The Parties have agreed to designate
3 Inland Counties Legal Services as the *cy pres* recipient as it provides legal services at no cost to
4 individuals with limited incomes, disabilities or are 60 years or older. Further, it is local to Defendant's
5 facility thus providing benefits to the locale around which many of the class members worked and lived.
6 The Parties have also confirmed that they do not have any interest in the proposed *cy pres* recipient.
7 Lidman Decl., ¶ 35..

8 **C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

9 Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies.
10 The Settlement will provide monetary relief to Participating Settlement Class members. The amounts
11 proposed for Class Counsel's attorneys' fees and costs, and enhancement award are all reasonable and
12 appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
13 factor supports preliminary approval.

14 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE**
15 **TO SETTLEMENT CLASS MEMBERS**

16 Before the final approval hearing, the Court requires adequate notice of the settlement be given
17 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
18 Packet by first-class regular U.S. Mail, postage prepaid, using last known mailing address information
19 provided by Norco. *See* Amended Settlement, ¶ 12. This manner of giving notice is the "best notice
20 practicable" under the circumstances because it provides "individual notice to all members who can be
21 identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here,
22 Plaintiff proposes that the Settlement be administered by Phoenix Settlement Administrators ("PSA"), an
23 experienced class action settlement administrator to mail the Notice Packets in both English and Spanish.
24 *See generally* Springer Decl. and attached exhibits. Settlement Class members' addresses will be
25 ascertainable through Norco's personnel and payroll records, which Norco will provide to Simpluris
26 within thirty (30) calendar days of preliminary approval of the Settlement. *See* Amended Settlement ¶
27 12.A. Within ten (10) business days of receipt of the Settlement Class members' addresses, Simpluris
28 will run the addresses through the United States Postal Service Notice of Change of Address database

1 (which provides updated addresses for any individual who has moved in the previous four years and has
2 notified the U.S. Postal Service of a forwarding address) and mail the notices to Settlement Class. *See*
3 Settlement ¶ 12.B. To the extent that any notices are returned, Simpluris will perform a “skip trace” to
4 track any Class Member’s current mailing address. *See* Amended Settlement ¶ 12.F.

5 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it
6 advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties,
7 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
8 procedures by which to do so, explains the recovery formula and expected recovery amount for each
9 Settlement Class member, provides them the opportunity to contest their total workweeks included in the
10 notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out.
11 *See* Lidman Decl., Exh. 1 (Amended Settlement, Exh. A). The proposed Notice Packet will also notify
12 Settlement Class members of the final approval hearing date and provides Settlement Class members the
13 contact information for Class Counsel, and advises Settlement Class members that they may enter an
14 appearance through counsel if they wish to. Additionally, the Notice Packet advised the class member
15 that Plaintiff is the legal successor-in-interest to deceased Plaintiff Gonzalez, and will continue to proceed
16 with the case as the class representative going forward. This manner of giving notice satisfies California
17 Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class
18 members.

19 **E. NOTICE TO CLASS MEMBERS VIA PUBLICATION**

20 A subset of the potential class members were not directly hired by Defendant Norco, but rather
21 were procured by Norco on a temporary basis from Beyond Staffing Solutions, Inc, a staffing agency.
22 Norco sent multiple letters to Beyond Staffing Solutions, Inc. requesting these potential class members’
23 contact information, but Beyond Staffing Solutions, Inc. never responded to these letters. Having not
24 received a response to informal requests, Defendant Norco issued a Subpoena for Production of
25 Business Records on or about February 25, 2022. Beyond Staffing Solutions, Inc. failed to produce
26 records before the deadline of March 22, 2022, and Defendant Norco re-served the Subpoena on or
27 about March 29, 2022. To date, Defendant Norco has not received the requested information. As such,
28 Defendant Norco filed a Motion to Compel Compliance With Subpoena for Production of Business
Records From Beyond Staffing Solutions, Inc.

1 On July 11, 2022, the Court granted Defendant Norco Plastics, Inc.'s Motion to Compel Compliance
2 With Subpoena for Production of Business Records From Beyond Staffing Solutions, Inc. ("Norco's
3 Motion to Compel"). To date, Beyond has not responded to the subpoena nor complied with the Court
4 order compelling production.

5 Pursuant to California Rule of Court 3.766(f), the Court has the discretion and authority to order
6 means of notice to class members as it deems fair and appropriate under the particular circumstances of
7 a case. That Rule states:

8 If personal notification is unreasonably expensive or the stake of individual class members
9 is insubstantial, or if it appears that all members of the class cannot be notified personally,
10 the court may order a means of notice reasonably calculated to apprise the class members
11 of the pendency of the action-for example, publication in a newspaper or magazine;
12 broadcasting on television, radio, or the Internet; or posting or distribution through a trade
13 or professional association, union, or public interest group.

14 Therefore, given these particular circumstances of this case and the Court's authority, in addition
15 to mailing the Notice Packet to Settlement Class members, the Parties propose running an advertisement
16 in the Chino Champion, a weekly newspaper that is local to Norco Plastic's facility. The Chino
17 Champion has a weekly print readership of approximately 45,000 and an online readership of up to
18 60,000. The advertisement would run for 8 weekly cycles or a total of 2 months and will direct
19 Settlement Class members to call the settlement administrator to have a Notice Packet mailed to them.
20 In addition to having the advertisement in the weekly newspaper, the Parties will also have a copy of the
21 advertisement posted at Defendant's facility located at 14325 Monte Vista Ave, Chino, CA 91710. The
22 Parties believe this is the most efficient and practical way to provide notice to Settlement Class members
23 who may not otherwise receive notice. A copy of the proposed advertisement is attached to the
24 Proposed Order submitted concurrently herewith as Exhibit A.

25 **F. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

26 Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately
27 scheduled to follow the deadline by which Settlement Class members must file objections to the
28 Settlement or opt-out. *See* California Rule of Court 3.769.

29 **IV. CONCLUSION**

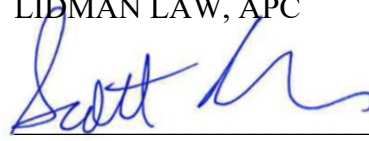
For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the

1 proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order Granting
2 Preliminary Approval of Class Action Settlement submitted concurrently herewith.

3
4 Dated: May 8, 2023

Respectfully submitted,
LIDMAN LAW, APC

5
6 By:



Scott M. Lidman
Attorney for Plaintiff
SADAMATSU VICENTE GONZALEZ,
Successor-In-Interest to Plaintiff Vicente Gonzalez