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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RAUL NUNEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

TK SERVICES, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No. BC682512

*[Assigned for All Purposes to Hon. Kenneth R.
Freeman, SSC-14]*

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

Date: June 15, 2021
Time: 11:00 a.m.
Dept.: SSC-14

Action Filed: November 6, 2017
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 15, 2021, at 11:00 a.m. in Department SSC-14 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California, 90012, Plaintiff Raul Nunez ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

All current and former non-exempt, hourly employees of Defendant TK Services, Inc. who worked for Defendant in California at any time from November 6, 2013 through date of preliminary approval.

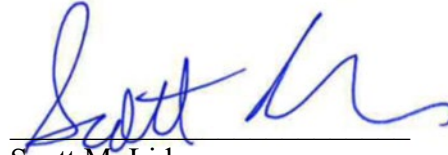
3. Permission for Plaintiff to file the proposed First Amended Complaint attached to the Stipulation of Settlement ("Settlement") as Exhibit A (and the Settlement is attached to the Declaration of Scott M. Lidman as Exhibit 1, filed concurrently herewith);
4. Preliminary appointment of Plaintiff Raul Nunez as Class Representative;
5. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
6. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit an enhancement award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys' fees and costs to Class Counsel;
7. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
8. Approval of 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 B and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

1 This Motion is based on this notice of motion, the memorandum of points and authorities, the
2 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Raul
3 Nunez, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto,
4 the pleadings and other papers filed in this action, and on any further oral or documentary evidence or
5 argument presented at the time of hearing.

6 Dated: March 10, 2021

Respectfully submitted,
LIDMAN LAW, APC

7
8
9 By:



Scott M. Lidman
Attorney for Plaintiff
RAUL NUNEZ

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1 **MEMORANDUM OF POINTS AND AUTHORITIES¹**

2 **I. INTRODUCTION**

3 Plaintiff Raul Nunez (“Plaintiff”) brought this class and representative action against Defendant
4 TK Services, Inc. (hereinafter “TK Services” or “Defendant”) alleging various wage and hour and
5 related violations. Plaintiff’s primary allegations are that TK Services: (1) failed to pay all overtime
6 wages owed; (2) failed to pay all minimum wages owed; (3) failed to pay all wages at the agreed-upon
7 rate; (4) failed to provide all legally required meal periods; (5) failed to pay all final wages upon
8 separation of employment; and (6) engaged in unlawful business practices. After the Parties agreed to
9 attend a private mediation, they exchanged information and data, and also agreed to expand the scope
10 of the mediation. Specifically, the Parties agreed that they would exchange data and mediation
11 additional claims for: (1) failure to authorize and permit all legally required rest periods; (2) failure to
12 provide accurate, itemized wage statements and (3) liability for civil penalties under the Labor Code
13 Private Attorneys General Act of 2004 (“PAGA”).²

14 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
15 class action settlement,³ in which TK Services has agreed to pay One Million Seven Hundred Fifty
16 Thousand Dollars and Zero Cents (\$1,750,000.00) on behalf of the following Settlement Class:

17 All current and former non-exempt, hourly employees of Defendant TK Services,
18 Inc. who worked for Defendant in California at any time from November 6, 2013
19 through date of preliminary approval of the Settlement.

20 Significantly, Settlement Class members do not need to file a claim to benefit from the

21 ¹ Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court
22 allow Plaintiff to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the
23 Court consider the attached memorandum of points and authorities which is 23 pages in length.

24 ² As part of this Motion, Plaintiff seeks to amend his operative pleading by way of a proposed First
25 Amended Class and Representative Action Complaint (“FAC”) to be filed as part of the Settlement,
26 which pleads all of the causes of action mediated and settlement with TK Services, including claims for
27 (i) failure to authorize and permit all legally required rest periods; (ii) failure to provide accurate,
28 itemized wage statements; and (iii) civil penalties under PAGA. See the proposed FAC attached to the
Stipulation of Settlement (“Settlement”) as Exhibit A.

³ The Stipulation of 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 B. All
defined terms in this motion have the same definitions as used in the Settlement.

1 Settlement because all Settlement Class members will automatically receive a payment unless they
2 affirmatively opt-out. After deducting administration costs, Plaintiff's service award, attorneys' fees
3 and costs, and payment of PAGA penalties to the California Labor and Workforce Development Agency
4 ("LWDA"), the remaining Net Settlement Amount ("NSA") of approximately \$1,071,666.67 will be
5 distributed to all Settlement Class members who do not opt-out of the Settlement. There are
6 approximately 400 Settlement Class members, rendering the average payment to participating
7 Settlement Class members to be approximately **\$2,679.17**.

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

12 **II. SUMMARY OF THE LITIGATION**

13 **A. THE PARTIES**

14 TK Services manufactures what it represents are the most dependable and durable refrigeration
15 and heating units (temperature control units) for truckers, trailers, rail cars and ocean-going containers
16 around the globe. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. TK Services further
17 provides maintenance and other services related to its temperature control units it manufactures. TK
18 Services maintains shops/branches/locations at which it manufactures, sells and services its temperature
19 control units in California in Los Angeles, San Diego, Fontana, Stockton, Redding, San Leandro and
20 Sacramento. *Id.* Plaintiff was employed by TK Services as a non-exempt employee from approximately
21 1987 through approximately February 26, 2016. *See* Declaration of Raul Nunez ("Nunez Decl."), ¶ 2.
During his employment, Plaintiff held various positions, the last of which was Shop Foreman. *Id.*

22 **B. BRIEF PROCEDURAL HISTORY**

23 On November 6, 2017, Plaintiff filed a putative class action complaint against TK Services in
24 Los Angeles County Superior Court. Lidman Decl., ¶ 10.

25 **C. CLAIMS ASSERTED AND NEGOTIATED AS PART OF PROPOSED 26 SETTLEMENT**

27 Plaintiff's primary allegations are that TK Services: (1) failed to pay all overtime wages owed;
28 (2) failed to pay all minimum wages owed; (3) failed to pay all wages at the agreed-upon rate; (4) failed
to provide all legally required meal periods; (5) failed to pay all final wages upon separation of

1 employment; and (6) engaged in unlawful business practices. After the Parties agreed to attend a private
2 mediation, they exchanged information and data, and also agreed to expand the scope of the mediation.
3 Specifically, the Parties agreed that they would exchange data and mediation additional claims for: (1)
4 failure to authorize and permit all legally required rest periods; (2) failure to provide accurate, itemized
5 wage statements and (3) liability for civil penalties under the Labor Code Private Attorneys General Act
6 of 2004 (“PAGA”).⁴ Therefore, on October 28, 2020, Plaintiff submitted a letter to the California
7 Labor & Workforce Development Agency (“LWDA”) and Defendant TK Services of his intention of
8 filing a PAGA claim based on the foregoing labor code violations. Lidman Decl., ¶ 35, Exh. 2.

9 Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the
10 LWDA on the same date he files this Motion and will submit a supplemental declaration showing the
11 submission. Lidman Decl., ¶ 36.

12 **III. DUNK/KULLAR ANALYSIS**

13 Settlement is the preferred means of dispute resolution, particularly in complex class action
14 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
15 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
16 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
17 Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an
18 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008)
19 168 Cal.App.4th 116, 130.

20 **A. INVESTIGATION AND DISCOVERY**

21 Throughout the three-year litigation, Plaintiff propounded two sets of written discovery,
22 including without limitation, Special Interrogatories, Form Interrogatories General and Employment,
23 and Requests for Production. Lidman Decl., ¶ 11. TK Services responded to the first set of written
24 discovery and produced nearly 20,000 pages of documents and information pertaining to Plaintiff and

25 ⁴ As part of this Motion, Plaintiff seeks to amend his operative pleading by way of a proposed First
26 Amended Class and Representative Action Complaint (“FAC”) to be filed as part of the Settlement,
27 which pleads all of the causes of action mediated and settlement with TK Services, including claims for
28 (i) failure to authorize and permit all legally required rest periods; (ii) failure to provide accurate,
itemized wage statements; and (iii) civil penalties under PAGA. See the proposed FAC attached to the
Stipulation of Settlement (“Settlement”) as Exhibit A.

1 the putative class. Further, the Parties completed the *Belaire-West* notice and TK Services produced
2 the contact information for the putative class members that did not opt-out. Additionally, over the
3 course of two days, Plaintiff took the deposition of TK Services' Person Most Knowledgeable.

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

11 **B. ARMS-LENGTH NEGOTIATIONS**

12 On October 6, 2020, after extensive research and analysis, a full-day mediation was held with
13 Jeffrey Krivis, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 12. During
14 mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification
15 of Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* Ultimately, through a
16 mediator's proposal, the parties agreed in principle on a class-wide resolution. *Id.* As part of the
17 Settlement, the Parties agreed that Plaintiff would file a First Amended Complaint which adds claims
18 for: (i) failure to authorize and permit all legally required rest periods; (ii) failure to provide accurate,
19 itemized wage statements; and (iii) liability for civil penalties under PAGA. *Id.* In the weeks that
20 followed, the parties finalized the terms of settlement and executed the Stipulation of Settlement
21 ("Settlement").

22 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

23 "Parties represented by competent counsel are better positioned than courts to produce a
24 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises*
25 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
26 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
27 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
28 Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
review of TK Services' policies and timekeeping and payroll records, and drew on their extensive

1 experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Lidman Decl.,
2 ¶¶ 10-30. The Settlement was also reached with the assistance of an experienced and respected wage
3 and hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement.
4 *See Kullar, supra*, 168 Cal.App.4th at 130.

5 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF**
6 **CLAIMS**

7 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in
8 the face of disputed claims. Plaintiff's analysis of the maximum and realistic expected recoveries for
9 each of the theories of liability pled is set forth below:

10 TK Services Failed to Pay for All Hours Worked: Plaintiff alleges that he and Settlement Class
11 members were not fully compensated for all of their time worked. Lidman Decl., ¶ 16. Specifically,
12 Plaintiff alleges TK Services would keep track of his hours and the hours of the other non-exempt
13 employees, and would unlawfully shave their work time and/or round their work time such that they
14 would not be fully paid for all time worked. *Id.* Plaintiff also alleges that this time shaving and/or
15 rounding practice utilized by TK Services was not-even handed over time and would almost exclusively
16 round and shave in TK Services' favor such that the employees were routinely underpaid for their time
17 worked. *Id.* Accordingly, Plaintiff's expert analyzed this rounding issue and found that it favored the
18 employer overwhelming, and then calculated a total wage underpayment of approximately
19 \$297,858.00. *Id.*

20 TK Services contends that it compensated Settlement Class members for all of their time
21 worked. Lidman Decl., ¶ 17. TK Services also contends that its rounding practices were lawful, and
22 any unpaid time was *de minimis* and therefore non-compensable. *Id.* TK Services further asserts that
23 Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be
24 required, and also that TK Services' rounding mechanism was, according to it, allegedly facially
25 neutral. Lidman Decl., ¶ 17. In light of these defenses, Plaintiff discounted the maximum exposure by
26 35% for the risk of non-certification, and an additional 35% to account for TK Services' defenses on
27 the merits, to arrive at an estimated exposure of \$125,845.01. *Id.*

28 TK Services Miscalculated the Regular Rate: Plaintiff alleges that TK Services failed to include
the payment of annual bonuses to Plaintiff and Settlement Class members in the regular rate of pay

1 when overtime was paid, resulting in a systematic underpayment of overtime wages. Lidman Decl., ¶
2 18. Therefore, over the course of the Class Period, the estimated underpayment in overtime wages
3 owed as a result of TK Services’ failure to include these forms of payment in the regular rate was
4 \$40,959.00. *Id.*

5 TK Services contends that Settlement Class members received all overtime wages to which they
6 were entitled. Lidman Decl., ¶ 19. TK Services further counters that any bonuses to putative class
7 members during the relevant time period were discretionary and did not need to be included in the
8 regular rate of pay for overtime purposes. *See* 29 C.F.R. §§778.208, 778.211 (excluding
9 “discretionary” bonuses from the regular rate); *see also* DLSE Manual § 49.1.2.4(3) (bonuses are
10 discretionary, and therefore excludable, if “both the fact that payment is to be made and the amount of
11 the payment” are discretionary). Therefore, based on these risks, Plaintiff discounted the maximum
12 exposure by 25% for the risk of non-certification, and an additional 30% to account for TK Services’
13 defenses on the merits, to arrive at an estimated exposure of \$21,503.48. *Id.*

14 TK Services Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and
15 Settlement Class members were not provided with all legally-compliant first meal periods beginning
16 before the end of the fifth hour of work. Lidman Decl., ¶ 20. Specifically, Plaintiff alleges that up to
17 December 1, 2017, TK Services did not record meal periods and would unlawfully deduct thirty (30)
18 minutes of work time for purported meal periods whether they were taken or not, and whether they were
19 less than 30 minutes or not. *Id.* Further, once TK Services began keeping track of meal periods, the
20 records showed that in approximately 47% of the meal-enabling shifts, there was either a late, short, or
21 missed meal period. *Id.* Therefore, Plaintiff calculated TK Services’ maximum exposure the alleged
22 meal period violations at approximately \$2,180,291.00 ((10,124 auto-deduct shifts x \$25.49 average
23 hourly rate) + (84,552 shifts with late, short, or missed meal periods x \$25.49 average hourly rate)). *Id.*

24 TK Services counters that it has always provided non-exempt employees with an opportunity to
25 take legally compliant meal periods, and any non-compliant meal periods reflected in employee
26 timekeeping records were solely the result of employee choice, rather than any policy or practice of TK
27 Services. Lidman Decl., ¶ 21. TK Services points out that under *Brinker Restaurant Corp. v. Superior*
28 *Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not

1 “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038
2 (rejecting “ensure” standard). Finally, TK Services contends Plaintiff’s meal period claim is not suited
3 for class certification, since individual inquiries would be required to assess which employees took non-
4 compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a
5 particular employee took a non-compliant meal period or missed a meal period during a particular shift.
6 Lidman Decl., ¶ 21. Accordingly, Plaintiff discounted the maximum exposure by 40% for the risk of
7 non-certification, and an additional 35% to account for TK Services’ defenses on the merits to arrive at
8 an estimated exposure of \$850,313.49. *Id.*

9 TK Services Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and
10 Settlement Class members were also not authorized and permitted to take all required rest periods due
11 to TK Services’ rest period policies and practices that fail to authorize and permit all rest periods for
12 every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 22. Specifically, Plaintiff alleges
13 that TK Services’ rest period policy as written in its Employee Handbook required non-exempt
14 employees to remain on the work premises during rest periods. *Id.* By prohibiting its non-exempt
15 employees from leaving the work premises during rest periods, Plaintiff alleges TK Services fails to
16 relinquish control in violation of California law and resulted in at least one rest period violation on every
17 shift in excess of 3.5 hours. *Id.* Accordingly, Plaintiff calculated TK Services’ maximum exposure for
18 rest period violations at \$5,212,272 (204,483 shifts over 3.5 hours x \$25.49 average hourly rate). *Id.*

19 TK Services contends it has always maintained and enforced lawful rest period policies and
20 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
21 periods in compliance with California law. Lidman Decl., ¶ 23. TK Services also contends that Plaintiff
22 did not allege a rest period claim in his operative complaint. *Id.* Further, TK Services argues that
23 Plaintiff’s rest period claim is inherently unsuited for class treatment as it requires an individualized
24 inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a
25 compliant rest period, which would devolve into an unmanageable series of mini-trials. Lidman Decl.,
26 ¶ 23. Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification,
27 and an additional 35% to account for TK Services defenses on the merits to arrive at an estimated
28 exposure of \$1,693,988.40. *Id.*

1 TK Services Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that TK
2 Services issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged
3 unpaid minimum wages, overtime wages, agreed-upon wages, and meal and rest period premium wages
4 described above. Lidman Decl., ¶ 24. Specifically, Plaintiff contends that this conduct violated Labor
5 Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours
6 worked and the rate at which they were being paid. *Id.* Plaintiff’s data analysis reflected that there were
7 approximately 15,144 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff
8 calculated TK Services’ maximum exposure for wage statement violations at approximately \$1,506,600
9 (((\$50.00 x 156 current employees) + (\$100.00 x 14,988 subsequent wage statements)). *Id.*

10 TK Services argues that meal and rest period claims cannot support a claim for wage statement
11 penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, *review granted*
12 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g., Jones v. Spherion Staffing,*
13 *No. LA-CV-11-06462-JAK(JCx)* (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Lidman Decl., ¶ 25.
14 TK Services further argues that its alleged wage statement violations could not be shown to be “knowing
15 and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a
16 result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of
17 penalties. Lidman Decl., ¶ 25. As such, Plaintiff discounted the calculated exposure by 55% for a risk
18 of non-certification and an additional 50% for a risk of being unsuccessful on the merits, to arrive at an
19 estimated total of \$338,985.00. *Id.*

20 TK Services is Liable for Waiting Time Penalties: Plaintiff alleges that TK Services is also liable
21 for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages. Lidman
22 Decl., ¶ 26. Based on the data provided by TK Services, there were approximately 139 Settlement Class
23 members who have separated their employment with TK Services during the relevant time period who
24 could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated TK Services’ maximum
25 exposure for waiting time penalties at approximately \$850,346 (139 former employees x \$25.49/hour x
26 30 days x 8 hours/day). *Id.*

27 TK Services asserts it has strong defenses to the waiting time claim because there exist good-
28 faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Lidman Decl., ¶

27. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). *Id.* Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 40% to account for TK Services’ defenses on the merits, to arrive at an estimated exposure of \$280,614.18. *Id.*

TK Services is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 28. Plaintiff calculated TK Services’ maximum exposure at \$1,514,400 (15,144 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision).

TK Services argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). TK Services also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find TK Services liable for any of Plaintiff’s claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 55% for a risk of being unsuccessful on the merits, and an additional 35% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$442,962.00. *Id.*

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$3,754,212. Lidman Decl., ¶ 30. The proposed settlement of \$1,750,000.00 therefore represents approximately 46.6% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class members, and will still provide an

1 average recovery to Settlement Class members of over \$2,600.00.

2 The proposed settlement reflects approximately 46.6% of the estimated recovery the Settlement
3 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
4 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
5 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*
6 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
7 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459
8 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm.*
9 *Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed
10 settlement may be acceptable even though it amounts to only a fraction of the potential recovery that
11 might be available to the Settlement Class members at trial"). Thus, Plaintiff submits that the proposed
12 settlement is within the range of possible approval, such that notice should be provided to the
13 Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again
14 assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-
15 out or object.

16 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER** 17 **LITIGATION**

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

25 **G. RISK OF MAINTAINING CLASS ACTION STATUS**

26 Plaintiff had not yet filed his motion for class certification and as such, the extent to which
27 Plaintiff's proposed classes were certifiable is somewhat speculative. This is especially true in light of
28 TK Services' contention that a number of the Settlement Class members signed a Waiver and General

1 Release that covered the claims covered in the instant litigation. Absent settlement, there was a risk
2 that there would not be a certified class at the time of trial.

3 **IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

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

10 As further explained below, the Settlement Class satisfies the criteria for certification of a
11 settlement class under California law because: (1) the Settlement Class is so numerous that joinder
12 would be impractical; (2) common questions of law and fact predominate over individual questions
13 such that class certification is the most efficient and desirable way to maintain this litigation; (3)
14 Plaintiff’s claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and
15 his counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ. Proc.
16 § 382.

17 **A. NUMEROSITY IS SATISFIED.**

18 Here, the proposed Settlement Class consists of approximately 400 members, and is therefore
19 sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v.*
20 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
21 numerous). Thus, numerosity is satisfied.

22 Further, a class is “ascertainable” where the members “may be readily identified without
23 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
24 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class
25 is defined as “all current and former non-exempt, hourly employees of Defendant TK Services, Inc.
26 who worked for Defendant in California at any time from November 6, 2013 through date of
27 preliminary approval.” Lidman Decl., ¶ 14.
28

1 **B. 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*
4 *Court (Rocher)* (2004) 34 Cal.4th 319, 327.

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

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

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

25 **C. TYPICALITY IS SATISFIED.**

26 The typicality requirement is satisfied where class representatives have claims that are typical
27 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
28 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative
class in a consumer class action).

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

13 **D. ADEQUACY IS SATISFIED.**

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

17 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he
18 seeks to represent. Indeed, Plaintiff's interests are aligned with those of the Settlement Class members,
19 as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel
20 does not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of America* (1976)
21 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were
22 not qualified and the named plaintiff had no interests antagonistic to those of the proposed class).

23 Further, Class Counsel also have extensive experience in wage and hour class action litigation
24 and have vigorously litigated this case. *See* Lidman Decl., ¶¶ 2-8; Declaration of Elizabeth Nguyen
25 ("Nguyen Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Milan
26 Moore ("Moore Decl."), ¶¶ 2-4.

27 //

28 //

1 **V. SETTLEMENT AGREEMENT**

2 **A. THE BASICS**

3 1. Class Definition

4 The proposed Settlement Class is defined as “all current and former non-exempt, hourly
5 employees of Defendant TK Services, Inc. who worked for Defendant in California at any time from
6 November 6, 2013 through date of preliminary approval.” Lidman Decl., ¶ 14.

7 2. Class and Release Period

8 For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of
9 November 6, 2013 through the date of preliminary approval of this Settlement Agreement. Lidman
10 Decl., ¶ 14.

11 **B. RELEASE OF CLAIMS**

12 1. Scope

13 Settlement Class members and Plaintiff will release all claims, demands, rights, liabilities and
14 causes of action that were pled in any of the Complaints in the Action (including the proposed First
15 Amended Complaint attached hereto as Exhibit A), or which could have been pled in any of the
16 Complaints in the Action (including the proposed First Amended Complaint attached hereto as Exhibit
17 A) based on the factual allegations therein, that arose during the Class Period including but not limited
18 to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum
19 wages owed; (c) failure to pay all wages at the agreed-upon rate; (c) failure to provide meal periods, or
20 premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or
21 premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements;
22 (f) failure to timely pay wages upon separation of employment; (g) all claims for unfair business
23 practices that could have been premised on the facts, claims, causes of action or legal theories described
24 above; and (i) a claim under California Labor Code Private Attorneys General Act of 2004 that were or
25 could have been premised on the facts, claims, causes of action or legal theories described above and in
the operative Complaint. Settlement, ¶ 3.A.

26 2. Release Effective Date

27 The releases described above will only be effective on the date that Defendant fully funds the
28 Gross Settlement Amount. Settlement, ¶ 3.E.

1 **C. MONETARY TERMS OF SETTLEMENT**

2 1. Gross Settlement Amount and Timing of Payment

3 If the Court approves this Settlement, TK Services will pay a Gross Settlement Amount (“GSA”) of \$1,750,000.00.⁵ Lidman Decl., ¶¶ 13, Exh. 1 (Settlement, ¶ 4). 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.*

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

15 2. Deductions from Gross Settlement Amount

16 The monetary terms of the Settlement are summarized below:

17 Gross Settlement Amount (“GSA”):	\$1,750,000.00
18 Minus Court-approved attorneys’ fees (update to 1/3 of GSA):	\$583,333.33
19 Minus Court-approved, verified costs (up to \$40,000.00):	\$40,000.00
20 Minus Court-approved Class Representative Service Award:	\$7,500.00
21 Minus Settlement Administration Costs:	\$10,000.00
22 Minus PAGA payment to the LWDA:	\$37,500.00

23
24 ⁵ Defendant represents that there are an estimated 46,613 workweeks worked by Class Members during the Class Period. If the number of pay periods during the Class Period is more than 10% greater than this figure (*i.e.*, if there are 51,275 or more workweeks worked by the settlement class members during the Class Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis to the extent the number of workweeks exceed the total (*i.e.*, if there was 15% increase in the number of workweeks worked during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 15%). For the purposes of this Section the Class Period shall be no later than ninety (90) days after the October 6, 2020 mediation. *See* Settlement ¶ 5.E.

Net Settlement Amount (“NSA”):

\$1,071,666.67

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement requires TK Services to pay a Net Settlement Amount (“NSA”) of at least \$1,071,666.67 to all Settlement Class members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 1.

3. Class Representative Service Award

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

Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for his services to the Settlement Class. Lidman Decl., ¶ 29, Exh. 1 (Settlement, ¶ 7); Nunez Decl., ¶¶ 3-8. As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, responding to written discovery requests from TK Services, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶ 35; Nunez Decl., ¶¶ 3-8; Settlement ¶ 7.

4. Attorneys’ Fees and Costs

California courts recognize an appropriate method for awarding attorneys’ fees in class actions is to award a percentage of the “common fund” created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding “the percentage of fund method survives in California class action cases”). Class Counsel’s request for fees of one-third of the CSA is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements.

1 Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the
2 circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

3 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
4 is currently estimated to be \$583,333.33, and up to \$40,000.00 in verified costs reimbursement. *See*
5 Settlement, ¶ 5; Lidman Decl., ¶ 31. Plaintiff submits the requested fee is fair compensation for
6 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
7 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman
8 Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
9 analyzing Plaintiff's claims, conducting legal research, propounding two sets of written discovery,
10 participating in the *Belaire-West* notice process, taking the deposition of TK Services' designated PMK,
11 reviewing approximately 20,000 pages of TK Services' documents and policies, analyzing Settlement
12 Class members' timekeeping data and payroll records, preparing for and attending mediation,
13 negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the
14 case. Lidman Decl., ¶ 31. Class Counsel expect to expend additional attorney time in attending the
15 hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class
16 members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

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

23 5. Payroll Taxes

24 The Settlement provides that TK Services' payroll taxes shall be paid separately from, and in
25 addition to, and the Class Settlement Amount. Settlement ¶ 4.D.

26 6. Payment Formula

27 According to TK Services, there are approximately 400 total Settlement Class members.
28 Lidman Decl., ¶ 14. The Net Settlement Amount shall be allocated to Settlement Class members who
worked during the Class Period, as follows: each participating Settlement Class member shall receive a

1 proportionate settlement share based upon the number of workweeks worked as a non-exempt employee
2 during the Class Period, the numerator of which is the Settlement Class member's total workweeks
3 worked as a non-exempt employee during the Class Period, and the denominator of which is the total
4 workweeks worked as non-exempt employees by all Settlement Class members (who do not opt out)
5 who worked during the Class Period. Settlement, ¶ 5.B.i.

6 Additionally, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross
7 Settlement Amount has been designated as the "PAGA Amount" as described above. Each Settlement
8 Class member who was employed by Defendant at any time from November 6, 2016 to the date of
9 preliminary approval (the "PAGA Period") of this Settlement shall receive a portion of the PAGA
10 Amount proportionate to the number of workweeks that he or she worked as a non-exempt employee
11 during this time period. Each Settlement Class member who worked during this time period shall
12 receive a portion of the PAGA Amount, and which will be calculated by multiplying the PAGA Amount
13 by a fraction, the numerator of which is the Settlement Class members' number of workweeks worked
14 as a non-exempt employee during this time period, and the denominator of which is the total number of
15 workweeks worked by all Settlement Class members as non-exempt employees during this time period.
Settlement, ¶ 5.C.

16 Thus, the average Individual Settlement Payment (assuming all Settlement Class members
17 worked the same length of time) is projected to be approximately **\$2,679.17**. *Id.*

18 7. Tax Allocation

19 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
20 allocated as follows: Seventy-five percent (75%) as penalties and interest; and Twenty-Five percent
21 (25%) as wages. Settlement, ¶ 5.E.

22 8. PAGA Penalty

23 The parties have agreed to a PAGA award of \$50,000.00 and in accordance with California
24 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
25 – or \$37,500.00. Settlement ¶ 3.C.5. This \$37,500.00 represents roughly 2.14% of the \$1,750,000.00
26 Class Settlement Amount and is in line with the zero to two percent range for PAGA claims approved
27 by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
28 at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Hopson v.*

1 *Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009)
2 (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm'n Cases*, 186 Cal. App.
3 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under
4 which no money was allocated to the PAGA claims).

5 **VI. NOTICE ADMINISTRATION**

6 **A. SETTLEMENT ADMINISTRATOR**

7 Phoenix Settlement Administrator's ("PSA") fees and expenses are estimated not to exceed
8 \$10,000.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary
9 Approval filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the
10 proposed class size of approximately 400 Settlement Class members and the costs and expenses
11 associated with administering the notices and distributing the awards. Additionally, PSA will translate
12 the Notice Packet and mail the Notice in both English and Spanish to Settlement Class members.

13 **B. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR**

14 PSA has extensive experience administering class action matters. PSA has administered
15 complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA,
16 ERISA and PAGA class action matters, though final approval and distribution. PSA has developed a
17 system of quality assurance measures, to ensure the highest quality service is provided in our cases and
18 to class members. Lawrence Decl., ¶ 5.

19 **C. CLASS LIST FROM DEFENDANT**

20 Within fifteen (15) calendar days after entry of an order preliminarily approving this Agreement,
21 Defendant will provide the Settlement Administrator with the names, last known addresses, phone
22 numbers, social security numbers, positions held, the number of workweeks worked (or information
23 allowing the Settlement Administrator to calculate same) as a non-exempt employee by each Settlement
24 Class member while employed during the Class Period and PAGA Period (the "Class Data"). The Class
25 Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the
26 Settlement Administrator. Settlement, ¶ 10.A.

27 **D. CLASS LIST UPDATED PRIOR TO INITIAL MAILING**

28 Prior to mailing, the Settlement Administrator shall (i) run the names of all Settlement Class
members through the National Change of Address ("NCOA") database to determine any updated

addresses for Settlement Class members and (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search. Settlement, ¶ 10.B.

E. DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS

Within ten (10) business days from receipt of the class list, the Settlement Administrator shall mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing. Settlement, ¶ 10.B.

F. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)

The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, provides them the opportunity to contest their total workweeks included in the notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Lidman Decl., Exh. 1 (Settlement, Exh. B). The proposed Notice Packet will also notify Settlement Class members of the final approval hearing date and provides Settlement Class members the contact information for Class Counsel, and advises Settlement Class members that they may enter an appearance through counsel if they wish to. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

G. COURT'S CURRENT SOCIAL DISTANCING PROCEDURES

The Class Notice expressly states the following:

Any Settlement Class member who elects to appear personally at the Court for any reason related to this Lawsuit must comply with the Court's social distancing and mandatory face covering requirements, as well as any other orders related to COVID-19. All such rules and orders can be located at the Court's website: www.lacourt.org.

For more information on how to appear remotely, please visit the Court's website at <http://www.lacourt.org/division/civil/CI0040.aspx> and <https://www.lacourt.org/lacc/>

1 **H. PROCESSING OF PAYMENTS**

2 Within ten (10) calendar days following Defendant’s deposit of the Gross Settlement Amount
3 with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award
4 amounts and provide the same to counsel for the Parties for review and approval. Within seven (7)
5 calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail
6 Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members.
7 Settlement, ¶ 5.E.

8 **I. UNDELIVERABLE NOTICE PACKETS**

9 Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the
10 Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding
11 address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a
12 “skip trace,” to obtain an updated mailing address within three (3) business days of receiving the
13 returned Notice Packet. Settlement, ¶ 10.F.

14 **VII. RESPONSES TO NOTICE**

15 **A. REQUESTS FOR EXCLUSION**

16 The Request for Exclusion must: (1) contain the name, address, telephone number and the last
17 four digits of the Social Security number of the Settlement Class member; (2) contain a statement that
18 the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement
19 Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement
20 Administrator at the address specified in the Class Notice. Settlement, ¶ 10.C.i.

21 The Parties agree there is no statutory or other right for any Settlement Class member to opt out
22 or otherwise exclude himself or herself from the PAGA portion of the Settlement. A Settlement Class
23 member who submits a valid and timely Request for Exclusion shall still receive his or her proportionate
24 share of the PAGA Amount. Settlement, ¶ 10.C.ii.

25 **B. RE-MAILED NOTICES**

26 Settlement Class members to whom Notice Packets are re-mailed after having been returned as
27 undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of
28 re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for

1 Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this
2 adjusted deadline. Settlement, ¶ 10.F.

3 **C. OBJECTION PROCEDURES**

4 Any written objection must: (1) contain the objecting Settlement Class member's full name and
5 current address, as well as contact information for any attorney representing the objecting Settlement
6 Class member for purposes of the objection; (2) include all objections and the factual and legal bases
7 for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other
8 evidence, if any; and (4) be postmarked no later than the Response Deadline. Members of the Settlement
9 Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval
10 Hearing in person or virtually irrespective of whether they submitted any written objections. Settlement,
11 ¶ 10.D.

12 **VIII. CY PRES DISTRIBUTION**

13 The Settlement provides that Settlement Class members with 180 days from the date the
14 Settlement Administrator mails the checks and any funds remaining after 180 days shall be transmitted
15 by the Settlement Administrator to the California State Controller's Office under the unclaimed
16 property laws in the names and corresponding amounts associated with each Participating Class
17 Member. Settlement ¶ 5.F. As all settlement funds will be distributed to the Settlement Class members,
18 there will be no residue and it is unnecessary to designate *cy pres* recipients.

19 **IX. CONCLUSION**

20 This Court should set a hearing for final approval of the Settlement on a date appropriately
21 scheduled to follow the deadline by which Settlement Class members must file objections to the
22 Settlement or opt-out. *See* California Rule of Court 3.769.

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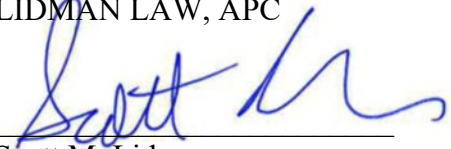
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1 Therefore, for the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
2 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed
3 Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

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5 Dated: March 10, 2021

Respectfully submitted,
LIDMAN LAW, APC

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7 By: 

8 Scott M. Lidman
9 Attorney for Plaintiff
10 RAUL NUNEZ
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