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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE CARLOS MARTINEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

R C FURNITURE, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 21STCV00874

*[Assigned for all purposes to the Hon. Kenneth R.
Freeman, Dept. 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: August 24, 2023
Time: 10:00 a.m.
Dept.: SSC-14

Action Filed: January 7, 2021
Trial Date: None Set

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
3 August 24, 2023, 10:00 a.m. in Department SSC-14 of the above-entitled Court, located at 312 North
4 Spring Street, Los Angeles, California, 90012, Plaintiff Jose Carlos Martinez ("Plaintiff"), individually
5 and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement
8 purposes only, provisional certification of the following Settlement Class defined as follows:

9 All current and former non-exempt, hourly employees of Defendant R C
10 Furniture, Inc. who worked at any time in California between January 7, 2017
11 and the date of preliminary approval.

- 12 3. Preliminary appointment of Plaintiff Jose Carlos Martinez as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
14 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
15 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
16 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
17 payable to the California Labor Workforce Development Agency, and attorneys' fees and
18 costs to Class Counsel;
19 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
20 Administrator for mailing notices; and
21 7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final
22 Court Approval ("Class Notice") and is attached to the Settlement as Exhibit A and an order
23 that it be disseminated to the proposed Settlement Class Members as provided in the
24 Settlement Agreement.

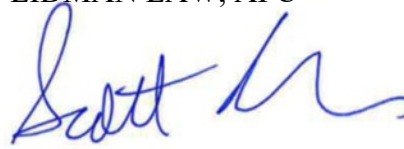
25 This Motion is based on this notice of motion, the memorandum of points and authorities, the
26 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Jose Carlos
27 Martinez, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto,
28

1 the pleadings and other papers filed in this action, and on any further oral or documentary evidence or
2 argument presented at the time of hearing.

3
4 Dated: March 2, 2023

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



8 Scott M. Lidman
9 Attorney for Plaintiff
10 JOSE CARLOS MARTINEZ
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1 **MEMORANDUM OF POINTS AND AUTHORITIES¹**

2 **I. INTRODUCTION**

3 Plaintiff Jose Carlos Martinez (“Plaintiff”) brought this class and representative action against
4 Defendant R C Furniture, Inc. (hereinafter “R C Furniture” or “Defendant”) alleging various wage and
5 hour and related violations. Plaintiff’s primary claims/allegations are that R C Furniture: (1) failed to
6 pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally
7 required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to
8 provide accurate, itemized wage statements; (6) failed to timely pay all wages upon termination; (7)
9 engaged in unlawful business practices; and (8) is liable for civil penalties under the Labor Code Private
10 Attorneys General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,² in which R C Furniture has agreed to pay Eight Hundred Twenty-Five
13 Thousand Dollars and Zero Cents (\$825,000.00) on behalf of the following Settlement Class:

14 All current and former non-exempt, hourly employees of Defendant R C
15 Furniture, Inc. who worked at any time in California between January 7, 2017
and the date of preliminary approval.

16 Significantly, Settlement Class Members do not need to file a claim to benefit from the
17 Settlement because all Settlement Class Members will automatically receive a payment unless they
18 affirmatively opt-out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees
19 and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount (“NSA”) of
20 approximately \$492,250.00 will be distributed to all Settlement Class Members who do not opt-out of
21 the Settlement. There were approximately 197 Settlement Class Members as of the date of mediation,
22 and not including the \$5,000 PAGA payment to be distributed to the approximate 180 Aggrieved
23 Employees, the average payment to participating Settlement Class Members is estimated to be
24

25 ¹ Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court
26 allow Plaintiff to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the
Court consider the attached memorandum of points and authorities which is 26 pages in length.

27 ² The Settlement is attached to the Declaration of Scott M. Lidman as Exhibit 2. The proposed Class
28 Notice is attached to the Settlement as Exhibit A. Also, the redline of the LA Model Class Settlement
is attached to the Lidman Decl. as Exhibit 3.

1 approximately **\$2,498.73.**

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

6 **II. SUMMARY OF THE LITIGATION**

7 **A. THE PARTIES**

8 R C Furniture manufactures and sells furniture, upholstery, and other furniture related
9 accessories. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff, a former employee,
10 was employed by R C Furniture as a non-exempt employee from approximately March 9, 2020 through
11 in or around late November/early December 2020. *See* Declaration of Jose Carlos Martinez (“Martinez
Decl.”), ¶ 2.

12 **B. BRIEF PROCEDURAL HISTORY**

13 On January 7, 2021, Plaintiff filed the instant putative class action complaint. Lidman Decl., ¶
14 10. On January 7, 2021, Plaintiff submitted a letter to the California Labor & Workforce Development
15 Agency (“LWDA”) and R C Furniture of his intention of filing a PAGA claim based on the labor code
16 violations as alleged in his complaint. *Id.*, **Exhibit 1**. Thereafter, on May 19, 2021, after exhausting
17 his administrative remedies, Plaintiff filed a First Amended Class and Representative Action Complaint
18 adding a cause of action for civil penalties under the PAGA. *Id.*

19 Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the
20 LWDA on the same date he files this Motion and will submit a supplemental declaration showing the
21 submission. Lidman Decl., ¶ 34.

22 **III. DUNK/KULLAR ANALYSIS**

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

1 **A. INVESTIGATION AND DISCOVERY**

2 Prior to mediation, Plaintiff propounded one set of written discovery including, Special
3 Interrogatories, Requests for Production of Documents, Form Interrogatories, Employment Law and
4 Form Interrogatories, General. Lidman Decl., ¶ 11. In response to Plaintiff's Requests for Production
5 of Documents, R C Furniture produced over 1,500 pages of information related to Plaintiff's
6 employment and Defendant's wage and hour policies and procedures. *Id.* The Parties also completed
7 the *Belaire-West* opt out privacy notice, and as a result Plaintiff received the contact information for the
8 putative class members that did not opt out of the disclosure. *Id.*

9 In addition, in advance of mediation, R C Furniture produced timekeeping and payroll data for
10 Plaintiff and 46 other putative class members from 2017 – July 2021, which is an approximate 25%
11 sample. R C Furniture also produced its wage and hour policies and other relevant documents and
12 information relevant to the claims alleged. Lidman Decl., ¶ 11. Accordingly, a sample of this group is
13 representative of the entire Settlement Class and is statistically significant and reliable for purposes of
14 evaluating a potential settlement. *See e.g., Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016)
15 (The Supreme Court held that statistical evidence was admissible to prove liability and damages across
16 a class, thereby allowing it to support class action certification) In *Tyson*, a case involving a class of
17 employees claiming that they did not receive statutorily mandated overtime pay for time spent “donning
18 and doffing protective gear,” the court upheld the use of statistical evidence to calculate the additional
19 time class members spent donning and doffing, even though differences in the type of gear worn meant
20 that plaintiffs may have taken different amounts of time to don and doff. *Id.* at pp. 1042, 1048–1409.

21 Here, the statistical analysis of the time punch and payroll data was used for the limited purpose
22 of determining predominance of rounding and meal period violations in support of Plaintiff's claims
23 that R C Furniture had policies and practices of not paying for all time worked and failed to provide all
24 legally compliant meal periods. Indeed, the time punch data included actual time punches and rounded
25 paid hours, which allowed Plaintiff to conduct a rounding analysis and conclude R C Furniture's
26 rounding practice was widespread and during the entire relevant time period. *Id.* Moreover, from the
27 time and payroll data, Plaintiff was able to determine that R C Furniture did not require its employees
28 to record meal periods but rather automatically deducted 30 minutes of work time for purported meal
periods. The Settlement Class members worked at the same facility, did similar work, and were paid

1 under the same wage and hour policies. Given these circumstances, the experiences of the 25%
2 sampling, it can be probative as to the experiences of all of the Settlement Class. *Lubin v. The*
3 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938 (As in *Tyson*, under these circumstances the percentage
4 of the subset of employees who signed meal agreements lacking the required revocation language during
5 a given time period is probative as to the percentage of the class that signed meal agreements lacking
6 the required revocation language.) Further, if all Settlement Class members brought lawsuits for unpaid
7 wages and/or meal period violations, they would rely on timekeeping records similar to the ones in this
8 sampling which also supports a finding that the sampling is statistically reliable. *Id.*

9 Moreover, R C Furniture also provided a class list for Plaintiff to calculate the necessary metrics,
10 including without limitation, class size, number of workweeks and pay periods. After the detailed
11 review of the documents and data produced by R C Furniture, Class Counsel drew on their extensive
12 experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery
13 allowed the parties to assess the merits and value of Plaintiff's claims and R C Furniture's defenses
14 thereto.

15 **B. ARMS-LENGTH NEGOTIATIONS**

16 On August 10, 2022, a mediation was held with Jeffrey Ross, 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, through a mediator's proposal, the Parties agreed on a class-wide
20 resolution. *Id.*

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

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

¶¶ 16-28. The Settlement was also reached with the assistance of a mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS

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

R C Furniture Failed to Pay for All Hours Worked: Plaintiff alleges that he and Settlement Class Members were not fully compensated for all of their time worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges R C Furniture would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. *Id.* Plaintiff also alleges that this time shaving and/or rounding practice utilized by R C Furniture was not-even handed over time and would almost exclusively round and shave in R C Furniture's favor such that the employees were routinely underpaid for their time worked and it appeared on average to be an underpayment of approximately 25 minutes per week. *Id.* Moreover, for the most recent portion of the relevant time period, Plaintiff contends that R C Furniture required Plaintiff and the other non-exempt employees submit to COVID-19 related temperature checks, that took about 4 minutes per day and was uncompensated. *Id.* Accordingly, and based on non-exempt employees working in excess of 8.0 hours, Plaintiff calculated a total wage underpayment of approximately \$301,968 ((22,100 workweeks x .42 per workweek x \$24 average OT rate) + (10,000 workweeks x .33 per workweek x \$24 average OT rate). *Id.*

R C Furniture contends that it compensated Settlement Class Members for all of their time worked. Lidman Decl., ¶ 17. R C Furniture also contends that its rounding practices were lawful, and any unpaid time for rounding and/or temperature checks was *de minimis* and therefore non-compensable. *Id.* R C Furniture further asserts that Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be required, and also that R C Furniture's rounding policy/mechanism was, according to it, neutral on its face and in its application. *Id.* In light of these defenses, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an additional 30% to account for R C Furniture's defenses on the merits, to arrive at an estimated exposure

1 of \$126,826.56. *Id.*

2 R C Furniture Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and
3 Settlement Class Members were not provided with all legally-compliant first meal periods beginning
4 before the end of the fifth hour of work. Lidman Decl., ¶ 18. Specifically, Plaintiff alleges that R C
5 Furniture utilized a bell signaling system for meal periods, with the bell ringing exactly thirty minutes
6 apart. This means that Plaintiff and the other non-exempt employees did not receive a full 30-minute
7 meal period because they were required to be back at their workstations ready to work before the second
8 bell. *Id.* As such, Plaintiff alleges that he and other non-exempt employees were not provided a full
9 uninterrupted 30-minute meal period because they had to return from their meal periods early and be at
10 their workstations ready to commence work. *Id.* Moreover, it appears R C Furniture did not require its
11 non-exempt employees to clock in and out for meal periods. Instead, Plaintiff alleges that R C Furniture
12 automatically deducted 30 minutes of work time for purported meal periods whether or not a compliant
13 meal period was actually taken when employees remained on the work premises. *Id.* As such, Plaintiff
14 contends that Settlement Class Members experienced at least one meal period violation on every shift in
15 excess of 6.0 hours, which is virtually all of the shifts during the relevant time period. Accordingly,
16 Plaintiff calculated R C Furniture’s maximum exposure for the alleged meal period violations at
17 approximately \$1,768,000 (22,100 workweeks x 5 shifts/week x \$16.00). *Id.*

18 R C Furniture counters that it has always maintained a lawful meal period policy and provided
19 non-exempt employees with an opportunity to take legally compliant meal periods, and any non-
20 compliant meal periods reflected in employee timekeeping records were solely the result of employee
21 choice, rather than any policy or practice of R C Furniture. Lidman Decl., ¶ 19. R C Furniture points
22 out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required
23 to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that they
24 have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally, R C
25 Furniture contends Plaintiff’s meal period claim is not suited for class certification, since individual
26 inquiries would be required to assess which employees took non-compliant meal periods, how many
27 meal periods were non-compliant or missed, and the reasons why a particular employee took a non-
28 compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff

discounted the maximum exposure by 50% for the risk of non-certification, and an additional 45% to account for R C Furniture's defenses on the merits to arrive at an estimated exposure of \$486,200.00. *Id.*

R C Furniture Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and Settlement Class Members were also not authorized and permitted to take all required rest periods due to R C Furniture's rest period policies and practices. Lidman Decl., ¶ 20. Specifically, Plaintiff alleges that R C Furniture required its non-exempt employees to remain on the work premises to receive a paid rest period. Thus, Plaintiff alleges that by prohibiting its non-exempt employees from leaving the work premises during rest periods, R C Furniture is failing to relinquish its control in violation of California law. As such, Plaintiff alleges that he and other non-exempt employees experienced at least one rest period violation on every shift worked in excess of 3.5 hours. *Id.* Therefore, Plaintiff calculated R C Furniture's maximum exposure for the alleged rest period violations at approximately \$1,768,000 (22,100 workweeks x 5 shifts/week x \$16.00). *Id.*

R C Furniture contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. R C Furniture also argues that Plaintiff's rest period claim is without merit because requiring employees to remain on the premises is not unlawful, and the claim is otherwise inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional 55% to account for calculated R C Furniture's defenses on the merits to arrive at an estimated exposure of \$397,800.00. *Id.*

R C Furniture Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that R C Furniture issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum wages and overtime wages, and meal and rest period premium wages described above. Lidman Decl., ¶ 22. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and

1 the rate at which they were being paid. *Id.* Plaintiff's data analysis reflected that there were
2 approximately 13,545 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff
3 calculated R C Furniture's maximum exposure for wage statement violations at approximately
4 \$1,350,250 (($\50.00×85 current employees) + ($\$100.00 \times 13,460$ subsequent wage statements)). *Id.*

5 R C Furniture argues that its alleged wage statement violations could not be shown to be
6 "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed]
7 injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
8 imposition of penalties. *Id.* As such, Plaintiff discounted the calculated exposure by 45% for a risk of
9 non-certification and an additional 55% for a risk of being unsuccessful on the merits, to arrive at an
10 estimated total of \$334,186.88. *Id.*

11 R C Furniture is Liable for Waiting Time Penalties: Plaintiff alleges that R C Furniture is also
12 liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all
13 wages upon separation. Lidman Decl., ¶ 24. There are approximately 69 Settlement Class Members
14 who have separated their employment with R C Furniture during the relevant time period who could be
15 entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated R C Furniture's maximum exposure
16 for waiting time penalties at approximately \$880,250 (69 former employees x \$16/hour x 30 days x 8
17 hours/day). *Id.*

18 R C Furniture asserts it has strong defenses to the waiting time claim because there exist good-
19 faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶
20 25. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude
21 imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding
22 that "good faith dispute" over whether employee was exempt precluded imposition of waiting time
23 penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
24 45% for the risk of non-certification, and an additional 40% to account for R C Furniture's defenses on
25 the merits, to arrive at an estimated exposure of \$290,482.50. *Id.*

26 R C Furniture is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the
27 PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 26. Plaintiff
28 calculated R C Furniture's maximum exposure at \$1,354,500 (13,545 pay periods x \$100 initial violation

1 rate). *Id.*; see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial”
2 violation rate applies until employer is notified that it is violating a Labor Code provision).

3 R C Furniture argues that Plaintiff’s PAGA claim will fail for the same reasons that his
4 underlying claims will fail. Lidman Decl., ¶ 27; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
5 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
6 fail.”). R C Furniture also maintains that, given its good faith defenses, this Court would exercise its
7 discretion to substantially reduce any PAGA penalties if it were to find R C Furniture liable for any of
8 Plaintiff’s claims. See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
9 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.
10 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
11 \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 50%
12 for a risk of being unsuccessful on the merits, and an additional 45% to account for the possibility of
13 this Court reducing penalties, to arrive at an estimated exposure of \$372,487.50. *Id.*

14 E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

15 Using these estimated figures for each of the claims described above, Plaintiff predicted the
16 realistic total recovery for the Settlement Class would be approximately \$2,007,983.44. Lidman Decl.,
17 ¶ 28. The proposed settlement of \$825,000.00 therefore represents approximately 41% of the reasonably
18 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
19 will provide tangible monetary relief to Settlement Class Members, and will still provide an average
20 recovery to Settlement Class Members of **nearly \$2,500.00.**

21 The proposed settlement reflects approximately 41% of the estimated recovery the Settlement
22 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
23 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
24 recovered in this case exceeds percentages routinely approved by courts. See, e.g., *Dunleavy v. Nadler*
25 (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
26 recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus,
27 Plaintiff submits that the proposed settlement is within the range of approval, such that notice should
28 be provided to the Settlement Class so that they can consider the Settlement. The Court will have the

1 opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has
2 expired.

3 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER**
4 **LITIGATION, AND RISK OF MARINATING CLASS ACTION STATUS**

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

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

13 California Rule of Court 3.769 conditions settlement of a class action on court approval, which
14 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of
15 Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322.

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

22 **A. NUMEROSITY IS SATISFIED.**

23 Here, the proposed Settlement Class consists of at least 197 members, and is therefore
24 sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v.*
25 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
26 numerous). Thus, numerosity is satisfied.

27 Further, the class is "ascertainable" because it is defined as "all current and former non-exempt,
28 hourly employees of Defendant R C Furniture, Inc. who worked at any time in California between
January 7, 2017 and the date of preliminary approval" and such members can be identified from
Defendant's personnel/business records. Lidman Decl., ¶ 14.

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, Plaintiff alleges Settlement Class Members’ claims arise from R C Furniture’s common,
6 uniform policies and practices that applied to Settlement Class Members during the class period.
7 Lidman Decl., ¶ 15. Specifically, Plaintiff alleged that R C Furniture’s common and uniform policies
8 and practices resulted in the following violations: (1) failure to pay all minimum wages owed; (2)
9 failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4)
10 failure to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized
11 wage statements; (6) failure to pay all final wages upon separation of employment; (7) engagement in
12 unlawful business practices; and (8) liability for civil penalties under the PAGA. As a result of the
13 common and uniform policies and practices that applied to all Settlement Class Members, their claims
14 involve common questions of law and fact as to whether in fact R C Furniture committed these alleged
15 violations.

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

18 **C. TYPICALITY IS SATISFIED.**

19 The typicality requirement is satisfied where class representatives have claims that are typical
20 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
21 1341, 1347. Here, Plaintiff’s claims are typical of those held by the members of the proposed
22 Settlement Class. Plaintiff was employed by R C Furniture during the Class Period as a non-exempt
23 Painter and was subject to R C Furniture’s wage and hour policies at issue in this case. *See Martinez*
24 *Decl.*, ¶ 2. Further, Plaintiff was allegedly injured by the same challenged policies that allegedly injured
25 the Settlement Class as a whole. *Id.* Given that R C Furniture’s policies and practices applied to all
26 non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar
27 alleged injuries as Plaintiff. Accordingly, typicality is satisfied.
28

1 **D. ADEQUACY IS SATISFIED.**

2 The adequacy requirement examines conflicts of interest between named parties and the
3 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
4 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
5 Settlement Class he seeks to represent. Lidman Decl., ¶ 33, Martinez Decl., ¶ 11. Indeed, Plaintiff's
6 interests are aligned with those of the Settlement Class Members, as they all seek monetary relief under
7 the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest
8 with the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51.

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

13 **V. SETTLEMENT AGREEMENT**

14 **A. THE BASICS**

15 1. Class Definition and Release Period

16 The proposed Settlement Class is defined as "all current and former non-exempt, hourly
17 employees of Defendant R C Furniture, Inc. who worked at any time in California between January 7,
18 2017 and the date of preliminary approval." Lidman Decl., ¶ 14. For purposes of this Settlement
19 Agreement, the "Class Period" shall mean the time period of January 7, 2017 through granting of
20 preliminary approval of Class Action Settlement." *Id.*

21 2. Aggrieved Employees and PAGA Period

22 The proposed Aggrieved Employees are defined as "all current and former non-exempt, hourly
23 employees of Defendant R C Furniture, Inc. who worked at any time in California between January 7,
24 2020 and the date of preliminary approval." Lidman Decl., ¶ 14. For purposes of this Settlement
25 Agreement, the "PAGA Period" shall mean the time period of January 7, 2020 and the date of
26 preliminary approval." *Id.*

1 **B. RELEASE OF CLAIMS**

2 1. Scope of Participating Class Members' Release

3 All Participating Class Members, on behalf of themselves and their respective former and
4 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
5 Released Parties, which means Defendant and each of its former and present directors, officers,
6 shareholders, owners, attorneys insurers, predecessors, successors, assigns and subsidiaries (“Released
7 Parties”), from all class claims and/or causes of action pled or could have been pled based on the factual
8 allegations contained in the Operative Complaint or Plaintiff’s Class Action which occurred during the
9 Cass Period, including all claims for: (i) failure to pay minimum wages; (ii) failure to pay overtime
10 wages; (iii) failure to provide meal periods; (iv) failure to authorize and permit rest periods; (v) failure
11 to provide accurate, itemized wage statements; (vi) failure to timely pay all wages upon termination;
12 and (vii) all claims for unfair competition arising from (i) through (vi) above. Settlement, ¶ 1.40.

13 2. Scope of Aggrieved Employees' Release

14 All Aggrieved Employees are deemed to release, on behalf of themselves and their respective
15 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
16 Released Parties from all claims for PAGA claims pled or could have been pled based on the factual
17 allegations contained in the Operative Complaint and/or PAGA letters sent by Plaintiff that occurred
18 during the PAGA Period as to the Aggrieved Employees. Settlement, ¶ 1.41.

19 3. Releases Effective Date

20 The releases described above are effective on the date when Defendant fully funds the entire
21 Gross Settlement Amount (including any increase pursuant to the Escalator Clause) and funds all
22 employer payroll taxes owed on the Wage Portion of the Individual Class Payments. Settlement, ¶ 6.

23 **C. MONETARY TERMS OF SETTLEMENT**

24 1. Gross Settlement Amount and Timing of Payment

25 If the Court approves this Settlement, R C Furniture will pay a Gross Settlement Amount
26 (“GSA”) of \$825,000.00.³ Lidman Decl., ¶¶ 13, Exh. 2 (Settlement, ¶ 3.1). Significantly, this

27 ³ Based on its records, Defendant has represented that the Class consists of 197 Class Members who
28 collectively worked a total 22,100 Workweeks. Further, Defendant has represented that there are a total
of 180 Aggrieved Employees who worked a total of 13,545 PAGA Period Workweeks. Should the
number of workweeks increase by more than 10% during the Class Period, the Defendant will have the

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.*

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 15 calendar days after the Effective Date. *See* Settlement, ¶ 4.3. Effective Date means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. Settlement, ¶ 1.20.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$825,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$275,000.00
Minus Court-approved, verified costs (up to \$25,000.00):	\$25,000.00
Minus Court-approved Class Representative Service Award:	\$10,000.00
Minus Settlement Administration Costs (up to \$20,000):	\$7,750.00
Minus PAGA payment to the LWDA:	\$15,000.00
Net Settlement Amount ("NSA"):	\$492,250.00
Settlement Class Members	197
Average Individual Payment: NSA/Settlement Class	\$2,498.73

option to either: (a) increase the gross settlement proportionally, or (b) shorten the release period to the date on which the number of workweeks reaches 10% so that there is no increase in the gross settlement amount. Settlement, ¶ 9.

1 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service
2 Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the
3 Settlement results in a Net Settlement Amount ("NSA") of at least \$492,250.00 to be paid out to all
4 Settlement Class Members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 2.

5 Therefore, this calculation of $\$492,250.00/197 = \$2,498.73$, assumes the Court approves the
6 requested attorneys' fees, maximum attorneys' costs, enhancement award, settlement administration
7 costs, and payment to the LWDA. *Id.* This calculation also assumes that all 187 putative class members
8 participate in the settlement and do not submit timely requests for exclusions. *Id.*

9 3. Class Representative Service Payment

10 Incentive awards are typical in class action cases and are intended to compensate class
11 representatives for work done on behalf of the class and to make up for reputational risk undertaken in
12 bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

13 Plaintiff will separately apply for a service payment at the time of seeking final approval in the
14 amount of \$10,000.00. Lidman Decl., ¶ 31, Exh. 2 (Settlement, ¶ 3.2.1.); Martinez Decl., ¶¶ 3-8. As
15 will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to
16 recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing
17 substantial factual information and documents to Class Counsel, attending multiple meetings with
18 Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks
19 Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff
20 has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman
21 Decl., ¶ 31; Martinez Decl., ¶¶ 3-8; Settlement ¶ 3.2.1.

22 The Class Representative Service Payment awarded by the Court shall be paid by the
23 Settlement Administrator to Plaintiff from the Gross Settlement Amount within 14 days after
24 Defendant funds the Gross Settlement Amount. Settlement, ¶ 5.1.

25 4. Attorneys' Fees and Costs

26 California courts recognize an appropriate method for awarding attorneys' fees in class actions
27 is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v.*
28 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506. Class Counsel's request for fees of one-third of the

1 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common
2 fund settlements.

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 \$275,000.00, and up to \$25,000.00 in verified costs reimbursement. *See*
5 Settlement, ¶ 3.2.2.; Lidman Decl., ¶ 29. 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., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
9 analyzing Plaintiff's claims, conducting legal research, propounding formal written discovery,
10 analyzing timekeeping data and payroll records, preparing for and attending mediation, negotiating and
11 revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman
12 Decl., ¶ 29. Class Counsel expect to expend additional attorney time in attending the hearing on this
13 Motion, overseeing the Notice process and fielding questions from Settlement Class Members,
14 preparing the final approval papers and attending the Final Approval hearing. *Id.*

15 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
16 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
17 include a lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the
18 Settlement Administrator to Class Counsel from the Gross Settlement Amount 14 days after Defendant
19 funds the Gross Settlement Amount. Settlement, ¶ 5.1.

19 5. Payroll Taxes

20 The Settlement provides that R C Furniture's payroll taxes shall be paid separately from, and in
21 addition to, and the Class Settlement Amount. Settlement ¶ 4.3. The employer-side taxes shall be
22 deposited at the same time of the funding of the Gross Settlement Amount. *Id.*

23 6. Payment Formula

24 There were approximately 197 total Settlement Class Members as of the date of mediation.
25 Lidman Decl., ¶ 14.

26 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
27 number of Workweeks worked by all Participating Class Members during the Class Period and (b)

1 multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.e. Thus,
2 the average Individual Class Payment is **\$2,492.73**.

3 Additionally, there were approximately 180 Aggrieved Employees. Lidman Decl., ¶ 14.

4 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
5 the Aggrieved Employees' 25% share of PAGA Penalties \$5,000.00 by the total number of PAGA
6 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying
7 the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full
8 responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.d.

9 Thus, the average Individual PAGA Payment is projected to be approximately **\$27.78**. *Id.*

10 7. Tax Allocation

11 For purposes of calculating applicable taxes and withholdings, 50% of each Participating Class
12 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage
13 Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form.
14 The 50% of each Participating Class Member's Individual Class Payment will be allocated to settlement
15 of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject
16 to wage withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 3.2.e.i.

17 8. PAGA Penalty

18 The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California
19 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
20 – or \$15,000.00. Settlement ¶ 3.2.d. This \$15,000.00 represents roughly 1.82% of the \$825,000.00
21 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved
22 by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
23 at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom*
24 *Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
claims and PAGA claims under which no money was allocated to the PAGA claims).

25 VI. NOTICE ADMINISTRATION

26 A. SETTLEMENT ADMINISTRATOR

27 Phoenix Settlement Administrators' ("PSA") costs are estimated not to exceed \$7,750.00. *See*
28 Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed

1 concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the proposed class size
2 of approximately 197 Settlement Class Members and the costs and expenses associated with
3 administering the notices and distributing the awards. Additionally, PSA will translate the Notice
4 Packets and mail the Notice Packets in both English and Spanish to Settlement Class Members.

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

10 **B. CLASS LIST FROM DEFENDANT**

11 No later than 15 calendar days after entry of an order preliminarily approving the Settlement,
12 Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft
13 Excel spreadsheet. Settlement, ¶ 4.2.

14 To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in
15 confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict
16 access to the Class Data to Administrator employees who need access to the Class Data to effect and
17 perform under this Agreement. *Id.*

18 **C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING AND MAILING**

19 Before mailing Class Notices, the Administrator shall update Class Member addresses using the
20 National Change of Address database. Settlement, ¶ 8.4.b.

21 Using best efforts to perform as soon as possible, and in no event later than 14 days after
22 receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data,
23 via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation.
Id.

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

25 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
26 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the
27 parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement
28 and the procedures by which to do so, explains the recovery formula and expected recovery amount

1 for each Settlement Class Member, provides them the opportunity to contest their total workweeks
2 included in the notice, and advises them that they will be bound by the terms of the Settlement if they
3 do not opt-out. *See* Settlement, Exh. A. The proposed Class Notice will also notify Settlement Class
4 Members of the final approval hearing date and provides Settlement Class Members the contact
5 information for Class Counsel, and advises Settlement Class Members that they may enter an
6 appearance through counsel if they wish to. This manner of giving notice satisfies California Rule of
7 Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

8 Moreover, the Class Notice includes the sentence “To receive your check, you should
9 immediately notify the Administrator if you move or otherwise change your mailing address.”

10 **E. PROCESSING OF PAYMENTS**

11 Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail
12 checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment,
13 the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
14 Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
15 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
16 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
17 Settlement, ¶ 4.4.

18 Before mailing any checks, the Settlement Administrator must update the recipients’ mailing
19 addresses using the National Change of Address Database. Settlement, ¶ 4.4.1.

20 **F. UNDELIVERABLE SETTLEMENT NOTICES**

21 Not later than 7 calendar days after the Administrator’s receipt of any Class Notice returned by
22 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address
23 provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall
24 conduct a Class Member Address Search, and re-mail the Class Notice to the most current address
25 obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice
26 to Class Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 8.4.c.

27 The Administrator will send checks for Individual Settlement Payments to all Participating Class
28 Members (including those for whom Class Notice was returned undelivered). The Administrator will
send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating

Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). Settlement, ¶ 5.2.

VII. RESPONSES TO SETTLEMENT NOTICE

A. REQUESTS FOR EXCLUSION

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. Settlement, ¶ 8.5. No specific language is needed from the Class Member for the Request for Exclusion to be valid.

B. RE-MAILED NOTICES

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice. Settlement, ¶ 8.4.d.

C. OBJECTION PROCEDURES

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Settlement, ¶ 8.7.

Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days

1 after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members
2 whose Class Notice was re-mailed). Settlement, ¶ 8.7.b.

3 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

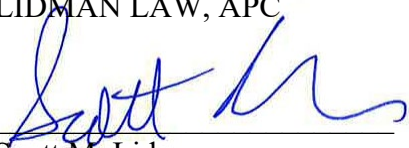
4 The face of each check shall prominently state the date (not less than 180 days after the date of
5 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the
6 void date. Settlement ¶ 5.2.

7 For any Class Member whose Individual Class Payment check or Individual PAGA Payment
8 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds
9 represented by such checks to the California Controller's Unclaimed Property Fund in the name of the
10 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
11 Civil Procedure Section 384, subd. (b). Settlement ¶ 5.4.

12 **IX. CONCLUSION**

13 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve
14 the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order
15 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

16
17 Dated: March 2, 2023

18
19 By: 
20 Scott M. Lidman
21 Attorney for Plaintiff
22 JOSE CARLOS MARTINEZ
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