

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Tiara Gose-Hardy (SBN 323823)
tgose@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
JOSE MARTINEZ

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
JOSE MARTINEZ

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

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

Plaintiff,

vs.

SOUTHLAND ENERGY SYSTEMS, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 21STCV06911

*[Assigned for all purposes to the Hon. Stuart M. Rice,
Dept. SSC-1]*

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

Date: January 31, 2025
Time: 10:30 a.m.
Dept.: SSC-1

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 January 31, 2025 at 10:30 a.m. in Department SSC-1 of the above-entitled Court, located at 312 North
4 Spring Street, Los Angeles, California, 90012, Plaintiff Jose Martinez (“Plaintiff”), individually and on
5 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 individuals whom Defendant Southland Energy Systems classified as
10 nonexempt employees and who worked for Defendant in California at any time
11 during the Class Period.

12 Class Period means the period of time starting February 19, 2017 and ending on
13 June 3, 2024.

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

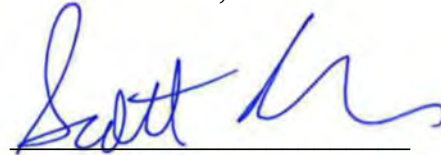
27 This Motion is based on this notice of motion, the memorandum of points and authorities, the
28 declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Jose Martinez, and Jodey

1 Lawrence of Phoenix Class Action Administration Solutions, and the exhibits attached thereto, the
2 pleadings and other papers filed in this action, and on any further oral or documentary evidence or
3 argument presented at the time of hearing.

4
5 Dated: October 8, 2024

Respectfully submitted,
LIDMAN LAW, APC

6
7
8 By:



Scott M. Lidman
Attorney for Plaintiff
JOSE MARTINEZ

TABLE OF CONTENTS

I.	INTRODUCTION	8
II.	SUMMARY OF THE LITIGATION	9
	A. THE PARTIES.....	9
	B. BRIEF PROCEDURAL HISTORY	9
III.	DUNK/KULLAR ANALYSIS	9
	A. INVESTIGATION AND DISCOVERY	10
	B. ARMS-LENGTH NEGOTIATIONS.....	11
	C. THE EXPERIENCE AND VIEWS OF COUNSEL	11
	D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS	12
	E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL	16
	F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER LITIGATION, AND RISK OF MAINTAINING CLASS ACTION STATUS	17
IV.	CLASS CERTIFICATION FOR SETTLEMENT PURPOSES.....	17
	A. NUMEROSITY IS SATISFIED.....	17
	B. COMMONALITY IS SATISFIED.....	18
	C. TYPICALITY IS SATISFIED.....	18
	D. ADEQUACY IS SATISFIED.....	18
V.	SETTLEMENT AGREEMENT	19
	A. THE BASICS.....	19
	1. Class Definition and Release Period	19
	2. Aggrieved Employees and PAGA Period	19
	B. RELEASE OF CLAIMS	19
	1. Scope of Participating Class Members' Release	19
	2. Scope of Aggrieved Employees' Release	20
	3. Releases Effective Date	20
	C. MONETARY TERMS OF SETTLEMENT	20
	1. Gross Settlement Amount and Timing of Payment.....	20
	2. Deductions from Gross Settlement Amount	21
	3. Class Representative Service Payment.....	22
	4. Attorneys' Fees and Costs	22
	5. Payroll Taxes	23
	6. Payment Formula.....	23
	7. Tax Allocation	24
	8. PAGA Penalty	24

1	VI.	NOTICE ADMINISTRATION	25
2		A. SETTLEMENT ADMINISTRATOR.....	25
3		B. CLASS LIST FROM DEFENDANT.....	25
4		C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING AND MAILING	25
5		D. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)	26
6		E. PROCESSING OF PAYMENTS	26
7		F. UNDELIVERABLE SETTLEMENT NOTICES	27
8	VII.	RESPONSES TO SETTLEMENT NOTICE.....	27
9		A. REQUESTS FOR EXCLUSION	27
10		B. RE-MAILED NOTICES	27
11		C. OBJECTION PROCEDURES	28
12	VIII.	DISTRIBUTION OF UNCASHED FUNDS.....	28
13	IX.	CONCLUSION.....	28

TABLE OF AUTHORITIES

Federal Cases

<i>Dunleavy v. Nadler</i> , 213 F.3d 454 (9th Cir. 2000)	16
<i>Fleming v. Covidien Inc.</i> , Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	16
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	9
<i>In re M.L. Stern Overtime Litig.</i> , No. CV 07-0118 BTM (JMAx), 2009 WL 995864 (S.D. Cal. Apr. 13, 2009).....	24
<i>In re Pacific Enterprises Securities Litigation</i> , 47 F.3d 373 (9th Cir. 1995)	11
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	9
<i>Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004)	16
<i>Tyson Foods, Inc. v. Bouaphakeo</i> , 136 S. Ct. 1036 (2016).....	10
State Cases	
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	15
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	18
<i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013)	18
<i>Bowles v. Sup. Ct.</i> , 44 Cal.2d 574 (1955)	17
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	14
<i>Capital People First v. State Dept. of Developmental Services</i> , 155 Cal.App.4th 676 (2007)	18
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010)	22

1	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
2	168 Cal.App.4th 116 (2008)	9, 12
3	<i>Laffitte v. Robert Half Int’l, Inc.</i> ,	
4	1 Cal.5 th 480 (2016)	22
5	<i>Lubin v. The Wackenhut Corp.</i> ,	
6	5 Cal.App.5th 926 (2016)	10
7	<i>McGhee v. Bank of America</i>	
8	60 Cal.App.3d 442 (1976)	19
9	<i>Nordstrom Comm’n Cases</i> ,	
10	186 Cal. App. 4th 576 (2010)	24
11	<i>Price v. Starbucks Corp.</i> ,	
12	192 Cal.App.4th 1136 (2011)	16
13	<i>Reed v. United Teachers Los Angeles</i> ,	
14	208 Cal.App.4th 322 (2012)	17
15	<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i> ,	
16	34 Cal.4th 319 (2004)	18
17	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> ,	
18	203 Cal.App.4th 1112 (2012)	16
19	<i>Vaquero v. Stoneledge Furniture LLC</i> ,	
20	9 Cal. App 5th 98 (2017)	12
21	Federal Rules	
22	F.R.C.P. Rule 23	17
23	State Statutes and Rules	
24	B.P.C. § 17200 <i>et seq.</i>	20
25	Cal. Civ. Code § 1542.....	22
26	Cal. Civ. Proc. § 382.....	17
27	Cal. Civ. Proc. § 384(b)	28
28	C.R.C. Rule 3.766(d)	26
	C.R.C. Rule 3.766(e).....	26
	Cal. Lab. Code § 203	16
	Cal. Lab. Code § 204	20

1	Cal. Lab. Code § 226 <i>et seq.</i>	20
2	Cal. Lab. Code § 226(e).....	15
3	Cal. Lab. Code § 226.7	20
4	Cal. Lab. Code § 510	20
5	Cal. Lab. Code § 512	20
6	Cal. Lab. Code § 516	20
7	Cal. Lab. Code § 558	20
8	Cal. Lab. Code § 1194	20
9	Cal. Lab. Code § 1194.2	20
10	Cal. Lab. Code § 1197	20
11	Cal. Lab. Code § 1198	20
12	Cal. Lab. Code § 2698 <i>et seq.</i>	20
13	Cal. Lab. Code § 2699(e)(2).	16
14	Cal. Lab. Code § 2699(i).....	24

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

10 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
11 class action settlement,¹ in which SES has agreed to pay [REDACTED]
12 [REDACTED] on behalf of the following Settlement Class:

13 All individuals whom Defendant Southland Energy Systems classified as
14 nonexempt employees and who worked for Defendant in California at any time
during the Class Period.

15 Class Period means the period of time starting February 19, 2017 and ending on
16 June 3, 2024.

17 Significantly, Settlement Class Members do not need to file a claim to benefit from the
18 Settlement because all Settlement Class Members will automatically receive a payment unless they
19 affirmatively opt-out. After deducting administration costs, Plaintiff’s service payment, attorneys’ fees
20 and costs, and the PAGA Payment to the LWDA, and the employer side taxes, the remaining Net
21 Settlement Amount (“NSA”) of approximately [REDACTED] will be distributed to all Class Members
22 who do not opt-out of the Settlement. There were approximately 101 Class Members as of the date of
23 mediation, and **not** including the \$20,000 for 88 Aggrieved Employees, the average payment to
24 participating Class Members is estimated to be approximately [REDACTED]

25 This proposed Settlement is well-within the range of possible approval in light of the significant
26 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible

27
28 ¹ The Settlement is attached to the Declaration of Scott M. Lidman as Exhibit 2. The proposed Class Notice is attached to the Settlement as Exhibit A.

monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

SES is a self-described for-profit corporation that provides energy efficiency services throughout southern California. Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff, a current employee, has been employed by SES as an installer since 1984 and was paid on a piece-rate basis. Declaration of Jose Martinez (“Martinez Decl.”), ¶ 2.

B. BRIEF PROCEDURAL HISTORY

On February 19, 2021, Plaintiff filed the instant putative class action complaint. Lidman Decl., ¶ 10. On February 19, 2021, Plaintiff submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) regarding SES’s alleged Labor Code violations and his intent to bring a claim for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). *Id.*, **Exhibit 1**. On May 21, 2021, after exhausting his administrative remedies, Plaintiff filed a First Amended Class and Representative Action Complaint for: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) engagement in unlawful business practices; and (7) liability for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). *Id.*

Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date he files this Motion and will submit a supplemental declaration showing the submission. Lidman Decl., ¶ 35.

III. DUNK/KULLAR ANALYSIS

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of a 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, the Parties propounded formal written discovery. Specifically, Plaintiff
3 propounded Special Interrogatories, Requests for Production of Documents, Form Interrogatories –
4 Employment Law and General. Lidman Decl., ¶ 11. Throughout formal discovery, SES produced over
5 20,000 pages of documents, including without limitation policies and procedures. *Id.* Plaintiff also
6 took the deposition of Defendant’s Person Most Qualified. *Id.* Additionally, SES produced a 20%
7 sampling of timekeeping and payroll data for the putative class (specifically 20% of the piece-rate
8 employees and 20% of the hourly employees), as well as its wage and hour policies and other relevant
9 documents and information relevant to the claims alleged. *Id.*

10 Accordingly, a sample of this group is representative of the entire Settlement Class and is
11 statistically significant and reliable for purposes of evaluating a potential settlement. *See e.g., Tyson*
12 *Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016) (The Supreme Court held that statistical evidence
13 was admissible to prove liability and damages across a class, thereby allowing it to support class action
14 certification) In *Tyson*, a case involving a class of employees claiming that they did not receive
15 statutorily mandated overtime pay for time spent “donning and doffing protective gear,” the court
16 upheld the use of statistical evidence to calculate the additional time class members spent donning and
17 doffing, even though differences in the type of gear worn meant that plaintiffs may have taken different
18 amounts of time to don and doff. *Id.* at pp. 1042, 1048–1409.

19 Here, the statistical analysis of the time punch and payroll data was used for the limited purpose
20 of determining the arguable predominance of rounding and meal period violations in support of
21 Plaintiff’s claims that SES maintained policies and practices during the relevant time period of not
22 paying its non-exempt employees for all time worked and not providing all legally compliant meal and
23 rest periods. Lidman Decl., ¶ 11. Indeed, based on the time punch data produced which included actual
24 time punches and arguable rounded paid hours, Plaintiff was able to conduct a rounding analysis and
25 conclude that SES’s piece-rate practice was widespread during the entire relevant time period. *Id.* The
26 Settlement Class members were paid under the same wage and hour policies and procedures. *Id.* Given
27 these circumstances, the experiences of a subset of employees – the 20% sampling for each subclass-
28 can be probative as to the experiences of all of the Settlement Class. *Lubin v. The Wackenhut Corp.*
(2016) 5 Cal.App.5th 926, 938 (As in *Tyson*, under these circumstances the percentage of the subset of

1 employees who signed meal agreements lacking the required revocation language during a given time
2 period is probative as to the percentage of the class that signed meal agreements lacking the required
3 revocation language.) Further, if all Settlement Class members brought lawsuits for unpaid wages
4 and/or meal period violations, they would rely on timekeeping records similar to the ones in this
5 sampling which also supports a finding that the sampling is statistically reliable. *Id.*

6 In addition to the representative sampling, SEs produced key data points and all relevant written
7 wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff was provided
8 with the following:

- 9 • Plaintiff's personnel files and timekeeping and payroll documents;
- 10 • Key data points, including total number of employees, workweeks, and pay periods during
11 the relevant time period; and
- 12 • Exemplars of the wage statements provided during the relevant time period.

13 Lidman Decl., ¶ 11. This information coupled with the representative data sampling, enabled Plaintiff
14 to extrapolate to the entire class and aided in Plaintiff's creation of a class-wide exposure model for all
15 the claims at issue, including unpaid wages and penalties potentially owed for alleged minimum and
16 overtime wages, meal and rest period violations, and unpaid wages. *Id.* Ultimately, this discovery
17 allowed the parties to assess the merits and value of Plaintiff's claims and SES's defenses thereto. *Id.*

18 **B. ARMS-LENGTH NEGOTIATIONS**

19 On January 18, 2024, a mediation was held with Hon. Russell Bostrom, Ret., a well-respected
20 wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously
21 debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal
22 basis for the claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution. *Id.*

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

24 "Parties represented by competent counsel are better positioned than courts to produce a
25 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises*
26 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
27 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
28 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
Lidman Decl., ¶¶ 2-8; Moore Decl., ¶¶ 2-5; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth

review of SES'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., ¶¶ 2-28. 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:

SES Paid Employees on a Piece-Rate Basis: Plaintiff alleges that up until August 1, 2022, SES paid its piece-rate employees by way of piece-rate basis only, in which they were paid per service provided and not by the hour. Lidman Decl., ¶ 16. As such, SES's piece-rate pay plan was the functional equivalent of the commission pay plan in *Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App. 5th 98 (2017). Accordingly, the piece-rate employees are owed rest period premium wages per Labor Code section 226.7 for each workday in which they worked more than 3.5 hours, given SES's failure to offer paid rest breaks and the failure to compensate these employees separately for these rest periods when taken. *Id.* Moreover, Plaintiff alleges that SES failed to compensate for tasks unrelated to units installed, including without limitation, hours spent cleaning and maintaining tools, performing administrative tasks, waiting for customers, and traveling between job sites. *Id.* Based on 1 hour of non-productive time per shift and 5 unpaid rest periods, Plaintiff estimates SES exposure at [REDACTED] workweeks with unpaid rest periods x 5 shifts over 3.5 hours/week x [REDACTED] average hourly rate [REDACTED] + [REDACTED] workweeks of piece-rate compensation x 5 hours NPT/week x \$13.38 average minimum wage = [REDACTED]). *Id.*

SES contends that it compensated Settlement Class Members for all of their time worked, including alleged "non-productive" time. Lidman Decl., ¶ 17. SES also contends that any unpaid time was *de minimis* and therefore non-compensable. *Id.* SES further asserts that Plaintiff would be unable to certify this class given the individualized inquiries that would be required to assess time spent on "non-productive" activities. *Id.* In light of these defenses, Plaintiff discounted the maximum exposure

by 30% for the risk of non-certification, and an additional 40% to account for SES's defenses on the merits, to arrive at an estimated exposure of approximately [REDACTED] *Id.*

SES Rounded Hours Worked: Plaintiff alleges that SES failed to pay all its employees for all hours worked as a result of its timekeeping practices. Lidman Decl., ¶ 18. Specifically, Plaintiff alleges that SES failed to compensate its piece-rate employees from August 1, 2022 through the end of the relevant time period for traveling to work sites. *Id.* Plaintiff estimates an underpayment of approximately 1 hour per shift. *Id.* Additionally, based on the data provided in connection with mediation, SES recorded its employees' hours, but arguably the employees did not have the actual start and stop times recorded and/or paid for. *Id.* Plaintiff estimates approximately 5 minutes of unpaid time due to SES's alleged rounding practices. *Id.* Plaintiff also contends that SES failed to properly calculate the regular rate of overtime because it failed to include any earned bonuses. *Id.* Accordingly, Plaintiff estimates SES's exposure at approximately [REDACTED] ([REDACTED] workweeks x 5 hours per workweek x \$13.38 average minimum wages = [REDACTED]) + ([REDACTED] workweeks for hourly employees x .42 hours per workweek x [REDACTED] average hourly rate = [REDACTED]).

SES contends that it compensated Class Members for all of their time worked. Lidman Decl., ¶ 19. SES also contends that any purported unpaid time was *de minimis* and therefore non-compensable. *Id.* SES also contends that any bonuses paid were discretionary and therefore, did not need to be included in any regular rate of pay for overtime purposes. *Id.* SES further asserts that Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be required, and also that SES'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 20% for the risk of non-certification, and an additional 25% to account for SES's defenses on the merits, to arrive at an estimated exposure of [REDACTED] *Id.*

SES Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that as a result of the work demands imposed by SES and the timekeeping policies, the Settlement Class Members were not provided a full uninterrupted 30-minute meal period before the end of the fifth hour of work. Lidman Decl., ¶ 20. Based on a review of the timekeeping data, and the opinion formed that SES did not maintain accurate records of the start and stop time of meal periods up until August 2022, Plaintiff calculated

SES's maximum exposure for the alleged meal period violations at approximately [REDACTED] ([REDACTED] workweeks for piece-rate employees x 5 shifts/week x [REDACTED] average hourly rate [REDACTED] + [REDACTED] workweeks for hourly employees x 5 shifts/week x \$20.03 = [REDACTED]). *Id.*

SES counters that it has always maintained a lawful meal period policy and provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of SES. Lidman Decl., ¶ 21. Further, SES points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). *Id.* Finally, SES contends Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification, and an additional 25% to account for SES's defenses on the merits to arrive at an estimated exposure of [REDACTED]. *Id.*

SES Failed to Authorize and Permit All Paid Rest Periods: Plaintiff alleges that as a result of the work demands imposed by SES, non-exempt employees were not authorized and permitted to take duty-free net 10-minute rest periods. Lidman Decl., ¶ 22. Specifically, Plaintiff alleges that piece-rate employees experienced at least one rest period violation on every shift in excess of 3.5 hours after August 2022 given the work demands. *Id.* Moreover, it is alleged that the hourly employees were also not authorized and permitted to take rest periods given the heavy work duties imposed by SES. *Id.* Thus, Plaintiff alleges the Class Members experienced at least one rest period violation on every shift worked in excess of 3.5 hours. *Id.* Therefore, Plaintiff calculated SES's maximum exposure for the alleged rest period violations at approximately [REDACTED] ([REDACTED] workweeks post August 2022 x 5 shifts over 3.5 hours/week x [REDACTED] average hourly rate for piece-rate employees = [REDACTED]) + [REDACTED] for hourly employees x 5 shifts over 3.5 hours/week x [REDACTED] average hourly rate = [REDACTED]. *Id.*

1 SES contends that its policies and procedures authorized and permitted Settlement Class
2 Members to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 23. SES
3 also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an
4 individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted
5 to take a compliant rest period, which would evolve into an unmanageable series of mini-trials. *Id.*
6 Accordingly, Plaintiff discounted the maximum exposure by 20% for the risk of non-certification, and
7 an additional 25% to account for SES's defenses on the merits to arrive at an estimated exposure of
8 [REDACTED] *Id.*

9 SES Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that SES issued
10 inaccurate wage statements in violation of Labor Code section 226 as a result of the alleged unpaid
11 minimum wages and overtime wages, and meal and rest period premium wages described above.
12 Lidman Decl., ¶ 24. Plaintiff also contends that this conduct violated Labor Code section 226(a) because
13 the wage statements issued to Settlement Class Members did not include all hours worked and the rate
14 at which they were being paid. *Id.* Plaintiff calculated SES's maximum exposure for wage statement
15 violations at approximately [REDACTED] (\$50.00 x 57 current employees + \$100 x [REDACTED] subsequent wage
16 statements). *Id.*

17 SES argues that its alleged wage statement violations could not be shown to be "knowing and
18 intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result
19 of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties.
20 Lidman Decl., ¶ 25. As such, Plaintiff discounted the calculated exposure by 15% for a risk of non-
21 certification and an additional 15% for a risk of being unsuccessful on the merits, to arrive at an estimated
22 total of [REDACTED] *Id.*

23 SES is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as
24 a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 26. Plaintiff calculated SES's
25 maximum exposure at \$629,400 (6,294 pay periods x \$100 initial violation rate). *Id.*; see *Amaral v.*
26 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until
27 employer is notified that it is violating a Labor Code provision). *Id.*

28 SES argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims

will fail. Lidman Decl., ¶ 27; 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.”). SES 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 SES liable for any of Plaintiff’s claims. *Id.*, 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 25% for a risk of being unsuccessful on the merits, and an additional 20% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$377,640.00. *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 [REDACTED] Lidman Decl., ¶28. The proposed settlement of [REDACTED] therefore represents approximately 40% 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 average recovery to Settlement Class Members of [REDACTED]

The proposed settlement reflects approximately 40% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. See, e.g., *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus, Plaintiff submits that the proposed settlement is within the range of approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has expired.

1 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER**
2 **LITIGATION, AND RISK OF MAINTAINING CLASS ACTION STATUS**

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

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

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

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

21 **A. NUMEROSITY IS SATISFIED.**

22 Here, the proposed Settlement Class consists of 101 members, and is therefore sufficiently
23 numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.*
24 (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).
25 Thus, numerosity is satisfied.

26 Further, the class is "ascertainable" because it is defined as "all individuals whom Defendant
27 Southland Energy Systems classified as nonexempt employees and who worked for Defendant in
28 California at any time during the Class Period. Class Period means the period of time starting February
29 19, 2017 and June 3, 2024," and such members can be identified from Defendant's personnel/business
30 records. Lidman Decl., ¶ 14; Exh. 2.

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

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

16 **C. TYPICALITY IS SATISFIED.**

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

26 **D. ADEQUACY IS SATISFIED.**

27 The adequacy requirement examines conflicts of interest between named parties and the
28 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
(2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the

1 Settlement Class he seeks to represent. Lidman Decl., ¶ 34, Martinez Decl., ¶ 11. Indeed, Plaintiff's
2 interests are aligned with those of the Class Members, as they all seek monetary relief under the same
3 facts and legal theories. Additionally, Class Counsel do not have any conflict of interest with the
4 Settlement Class. See *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. Further,
5 Class Counsel also have extensive experience in wage and hour class action litigation and have
6 vigorously litigated this case. See Lidman Decl., ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."),
7 ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-5.

8 **V. SETTLEMENT AGREEMENT**

9 **A. THE BASICS**

10 **1. Class Definition and Release Period**

11 The proposed Settlement Class is defined as: all individuals whom Defendant Southland Energy
12 Systems classified as non-exempt employees and who worked for Defendant in California at any time
13 during the Class Period. Class Period means the period of time starting February 19, 2017 and ending
14 on June 3, 2024. Settlement, ¶¶ 1.5, 1.12.

15 **2. Aggrieved Employees and PAGA Period**

16 The proposed Aggrieved Employees are defined as: all individuals whom Defendant Southland
17 Energy Systems classified as nonexempt employees and who worked for Defendant in California at any
18 time during the PAGA Period. PAGA Period means the period of time starting February 19, 2020 and
19 ending on June 3, 2024. Settlement, ¶¶ 1.4, 1.31.

20 **B. RELEASE OF CLAIMS**

21 **1. Scope of Participating Class Members' Release**

22 All Participating Class Members, on behalf of themselves and their respective former and
23 present representatives, agents, attorneys, heirs, administrators, successors and assigns, release
24 Defendant and its respective former, current, and future directors, officers, shareholders, owners,
25 subsidiaries, affiliates, managers, member, agents, principals, heirs, representatives (including, without
26 limitation, any investment bankers, accountants, auditors, consultants, attorneys, insurers, predecessors,
27 successors and assigns) ("Released Parties") from (i) all claims that were alleged, or reasonably could
28 have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in
the course of the Action, including any and all claims involving any alleged (1) Failure to Pay All

1 Overtime Wages Owed (Labor Code §§ 204, 510, 558, 1194, 1198); (2) Failure to Pay All Minimum
2 Wages Owed (Labor Code §§ 1194, 1194.2, 1197); (3) Failure to Provide Meal Periods (Labor Code
3 §§ 226.7, 512); (4) Failure to Authorize and Permit All Rest Periods (Labor Code §§ 226.7, 516); (5)
4 Failure to Provide Accurate, Itemized Wage Statements (Labor Code § 226 *et seq.*);(6) Unfair
5 Competition (Bus & Prof Code § 17200 *et seq.*) and (7) Civil Penalties Under the Labor Code Private
6 Attorneys General Action of 2004 (Labor Code Private Attorneys General Act of 2004 (Labor Code §
7 2698 *et seq.*) Except as set forth in Section 5.3 of the Settlement, Participating Class Members do not
8 release any other claims, including claims for vested benefits, wrongful termination, violation of the
9 Fair Employment and Housing Act, unemployment insurance, disability, social security, workers'
10 compensation or claims based on facts occurring outside the Class Period. Settlement, ¶ 5.2.

11 2. Scope of Aggrieved Employees' Release

12 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
13 behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,
14 administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that
15 were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
16 Operative Complaint and the PAGA Notice, and ascertained in the course of the Action, and which
17 occurred during the PAGA Period. The claims under the PAGA being released include, without
18 limitation: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide
19 meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide
20 premium wages in lieu thereof; and (5) failure to provide accurate, itemized wage statements, and any
21 and all related claims for attorneys' fees and costs. Settlement, ¶ 5.3.

22 3. Releases Effective Date

23 The releases described above are effective on the date when Defendant funds the Gross
24 Settlement Amount [REDACTED] which Gross Settlement Amount
25 includes all employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments.
Settlement, ¶ 5.

26 **C. MONETARY TERMS OF SETTLEMENT**

27 1. Gross Settlement Amount and Timing of Payment

28 If the Court approves this Settlement, SES will pay a Gross Settlement Amount ("GSA") of

1 [REDACTED] Lidman Decl., ¶ 13, Exh. 2 (Settlement, ¶ 3.1). Significantly, this Settlement is **non-**
2 **reversionary**, and no Class Member will have to submit a claim form to receive a Settlement Award.
3 *Id.* Each Class Member will automatically receive a Settlement Award unless he or she affirmatively
4 opts out of the Settlement. *Id.*

5 SES shall fund the Gross Settlement Amount [REDACTED] after the Settlement
6 is submitted to the Court as part of the Motion for Preliminary Approval or [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 The Parties agree that the total Gross Settlement Amount includes the amount necessary to fully
12 pay Defendant's employer side payroll taxes owed on the Wages Portions of the Individual Class
13 Payments. Settlement, ¶ 4.3. Defendant shall make the payments set forth above by transmitting the
14 funds to the Administrator pursuant to the time periods set forth above. *Id.*

15 2. Deductions from Gross Settlement Amount

16 The monetary terms of the Settlement are summarized below:

17	Gross Settlement Amount ("GSA"):	[REDACTED]
18	Minus Court-approved attorneys' fees (update to 1/3 of GSA):	[REDACTED]
19	Minus Court-approved, verified costs (up to [REDACTED])	[REDACTED]
20	Minus Court-approved Class Representative Service Award:	[REDACTED]
21	Minus Settlement Administration Costs:	[REDACTED]
22	Minus PAGA payment to the LWDA:	\$60,000.00
23	Total:	[REDACTED]
24	Estimated Employer Side Taxes	[REDACTED]
25	NSA:	[REDACTED]
26	Settlement Class Members	101
27	Average Individual Payment: NSA/Settlement Class	[REDACTED]

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, and employer
3 side taxes, the Settlement results in a Net Settlement Amount ("NSA") of at least [REDACTED] to be
4 paid out to all Settlement Class Members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 2.

5 Therefore, this calculation of [REDACTED] assumes the Court approves the
6 requested attorneys' fees, maximum attorneys' costs, service payment, settlement administration costs,
7 and payment to the LWDA. *Id.* This calculation also assumes that all 101 putative class members
8 participate in the settlement and do not submit timely requests for exclusions and Defendant's employer
9 side payroll taxes owed on the Wage portions of the individual class payments. *Id.*

10 3. Class Representative Service Payment

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

14 Plaintiff will separately apply for a service payment at the time of seeking final approval in the
15 amount of [REDACTED] Lidman Decl., ¶ 31, Exh. 2 (Settlement, ¶ 3.2.1.); Martinez Decl., ¶¶ 3-11. As
16 will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to
17 recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing
18 substantial factual information and documents to Class Counsel, attending multiple meetings with
19 Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks
20 Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff
21 has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman
22 Decl., ¶31; Martinez Decl., ¶¶ 3-11; Settlement ¶ 3.2.1.

23 The Class Representative Service Payment awarded by the Court shall be paid by the
24 Settlement Administrator to Plaintiff from the Gross Settlement Amount within 14 calendar days after
25 Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

26 4. Attorneys' Fees and Costs

27 California courts recognize an appropriate method for awarding attorneys' fees in class actions
28 is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v.*

1 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506. Class Counsel's request for fees of one-third of the
2 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common
3 fund settlements.

4 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
5 is currently estimated to be [REDACTED] in verified costs reimbursement. See
6 Settlement, ¶ 3.2.2.; Lidman Decl., ¶29. Plaintiff submits the requested fee is fair compensation for
7 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
8 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman
9 Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
10 analyzing Plaintiff's claims, conducting legal research, propounding formal written discovery, taking
11 the deposition of SES's Person Most Qualified, analyzing timekeeping data and payroll records,
12 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
13 Motion, and otherwise litigating the case. Lidman Decl., ¶ 29. Class Counsel expect to expend
14 additional attorney time in attending the hearing on this Motion, overseeing the Notice process and
15 fielding questions from Settlement Class Members, preparing the final approval papers, and attending
16 the Final Approval hearing. *Id.*

17 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
18 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
19 include a lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the
20 Settlement Administrator to Class Counsel from the Gross Settlement Amount 14 calendar days after
21 Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

22 5. Payroll Taxes

23 The Settlement provides that SES's payroll taxes shall be paid from the Gross Settlement
24 Amount. Settlement ¶¶ 3.1 and 4.3. PSA has estimated SES's portion of payroll taxes at the max rate
25 of [REDACTED]

26 6. Payment Formula

27 There were approximately 101 total Class Members as of the date of mediation. Lidman Decl.,
28 ¶ 14.

1 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
2 number of Workweeks worked by all Participating Class Members during the Class Period, and (b)
3 multiplying the result by the total Workweeks worked by each Participating Class Member during the
4 Class Period. Settlement, ¶ 3.2.4. Thus, the average Individual Class Payment is [REDACTED]

5 Additionally, there were approximately 88 Aggrieved Employees. Lidman Decl., ¶ 14.

6 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
7 the Aggrieved Employees' 25% share of PAGA Penalties (\$20,000.00) by the total number of PAGA
8 Pay Periods worked by all Aggrieved Employees, and (b) multiplying the result by the total PAGA Pay
9 Periods worked by each Aggrieved Employee. Each Aggrieved Employee assumes full responsibility
10 and liability for any taxes owed on his or her Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

11 Thus, the average Individual PAGA Payment is projected to be approximately **\$227.27**. *Id.*

12 7. Tax Allocation

13 [REDACTED] of each Participating Class Member's Individual Class Payment will
14 be allocated to settlement of wage claims (the "Wage Portions"). The Wage Portions are subject to tax
15 withholding and will be reported on an IRS W-2 Form. The [REDACTED] of each
16 Participating Class Member's Individual Class Payment will be allocated to settlement of claims for
17 [e.g., interest and penalties] (the "Non-Wage Portions"). The Non-Wage Portions are not subject to
18 wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full
19 responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement,
20 ¶ 3.2.4.1.

21 8. PAGA Penalty

22 The parties have agreed to a PAGA award of \$80,000.00 and in accordance with California
23 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
24 – or \$60,000.00. Settlement ¶ 3.2.5. This \$80,000 represents roughly 21% of the \$377,640.00 estimated
25 realistic exposure on PAGA. It is also approximately 5.3% of the [REDACTED] Gross Settlement Amount
26 and is in line with the zero to two percent range for PAGA claims approved by Courts. *See, e.g., In re*
27 *M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13,
28 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom Comm'n Cases*, 186 Cal. App.

1 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under
2 which no money was allocated to the PAGA claims).

3 **VI. NOTICE ADMINISTRATION**

4 **A. SETTLEMENT ADMINISTRATOR**

5 Phoenix Class Action Administration Solutions (“Phoenix”) costs are estimated [REDACTED]
6 [REDACTED] See Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary
7 Approval filed concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the
8 proposed class size of approximately 101 Class Members and the costs and expenses associated with
9 administering the notices and distributing the awards. Additionally, Phoenix will translate the Class
10 Notices and mail them in both English and Spanish to Class Members. Lawrence Decl., ¶ 18.

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

16 **B. CLASS LIST FROM DEFENDANT**

17 No later than 15 calendar days after entry of an order preliminarily approving the Settlement,
18 Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft
19 Excel spreadsheet. Settlement, ¶ 4.2. To protect Class Members’ privacy rights, the Administrator must
20 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for
21 no other purpose, and restrict access to the Class Data to Administrator employees who need access to
22 the Class Data to effect and perform under this Agreement. *Id.*

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

24 Before mailing Class Notices, the Administrator shall update Class Member addresses using the
25 National Change of Address database. Settlement, ¶ 7.4.2. Using best efforts to perform as soon as
26 possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send
27 to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”)
28 mail, the Class Notice with Spanish translation. *Id.*

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

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

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

15 **E. PROCESSING OF PAYMENTS**

16 Within 14 calendar days after SES fully funds the Gross Settlement Amount, the Administrator
17 will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA
18 Payment, the Administration Expenses Payment, the Class Counsel Fee Award, the Class Counsel
19 Litigation Expenses Payment, the Class Representative Service Payment, and Defendant’s employer
20 side payroll taxes owed on the Wage portions of the individual class payments. Disbursement of the
21 Class Counsel Fee Award, the Class Counsel Litigation Expenses Payment and the Class Representative
22 Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
23 Payments. Settlement, ¶ 4.4. Before mailing any checks, the Settlement Administrator must update the
24 recipients’ mailing addresses using the National Change of Address Database. Settlement, ¶ 4.4.1. The
25 Settlement Administrator shall also be responsible for timely tax reporting and payment of Defendant’s
26 share of payroll taxes to the appropriate government agencies on behalf of Defendant.
27
28

1 **F. UNDELIVERABLE SETTLEMENT NOTICES**

2 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by
3 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address
4 provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall
5 conduct a Class Member Address Search, and re-mail the Class Notice to the most current address
6 obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice
7 to Class Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 7.4.3.

8 The Administrator will send checks for Individual Settlement Payments to all Participating Class
9 Members (including those for whom Class Notice was returned undelivered). The Administrator will
10 send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating
11 Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was
12 returned undelivered). Settlement, ¶ 4.4.1.

13 **VII. RESPONSES TO SETTLEMENT NOTICE**

14 **A. REQUESTS FOR EXCLUSION**

15 Class Members who wish to exclude themselves from (or opt-out of) the Class Settlement must
16 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60
17 days after the Administrator mails the Class Notice (plus an additional 14 days for any Class Member
18 whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her
19 representative that reasonably communicates the Class Member’s choice to be excluded from the
20 Settlement and includes the Class Member’s name, address, and email address or telephone number. To
21 be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response
22 Deadline. Settlement, ¶ 7.5.1.

23 **B. RE-MAILED NOTICES**

24 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay
25 Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days
26 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The
27 Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
28 Settlement, ¶ 7.4.4.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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 the Response Deadline – *i.e.* 60 days after the Administrator’s mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). Settlement, ¶ 7.7.2.

The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Settlement ¶ 4.4.1.

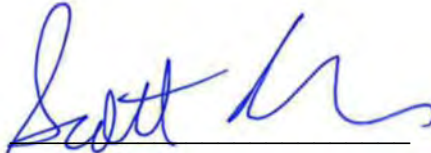
IX. CONCLUSION

//

1
2 Dated: October 8, 2024

Respectfully submitted,
LIDMAN LAW, APC

3
4
5 By:



6 Scott M. Lidman
7 Attorney for Plaintiff
8 JOSE MARTINEZ
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28