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MAGALI MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MADERA

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

Plaintiff,

vs.

READY ROAST NUT COMPANY, L.L.C., a
California limited liability company; and DOES
1 through 100, inclusive,

Defendants.

Case No. MCV084692

*[Assigned for All Purposes to Hon. Katherine Rigby,
Dept. 45]*

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

Date: March 3, 2023
Time: 9:00 a.m.
Dept.: 45

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 March
3 3, 2023 at 9:00 a.m. in Department 45 of the above-entitled Court, located at 200 South “G” Street,
4 Madera, California 93637, Plaintiff Magali Martinez (“Plaintiff”), individually and on behalf of a class
5 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, provisional certification
8 of the following Settlement Class defined as follows:

9 All former non-exempt employees of Defendant Ready Roast Nut Company,
10 L.L.C. who worked for Defendant at any time in California during the period of
11 August 23, 2016 through September 27, 2020.

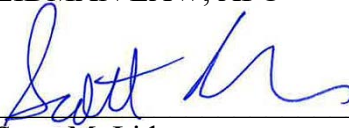
- 12 3. Preliminary appointment of Plaintiff Magali Martinez as the Class Representative;
13 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
14 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
15 5. The scheduling of a hearing to consider 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 (“Phoenix”) as the third-party
20 Settlement Administrator for mailing notices; and
21 7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
22 Class Action and Proposed Settlement and Notice of Individual Settlement Award) and an
23 order 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 Magali
27 Martinez, Thomas J. Finn of Ready Roast Nut Company, L.L.C. and Jodey Lawrence of Phoenix
28 Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this
action, and on any further oral or documentary evidence or argument presented at the time of hearing.

1
2 Dated: February 7, 2023
3

Respectfully submitted,
LIDMAN LAW, APC

4 By:



5 Scott M. Lidman
6 Attorneys for Plaintiff
7 MAGALI MARTINEZ
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Magali Martinez (“Plaintiff”) brought this class and representative action against
4 Defendant Ready Roast Nut Company, L.L.C (hereinafter referred to as “Ready Roast” or “Defendant”)
5 alleging various wage and hour violations. Plaintiff’s primary allegations are that Ready Roast: (1) failed
6 to 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) failure to
8 reimburse necessary business expenses; (6) failed to provide accurate, itemized wage statements; (7) failed
9 to timely pay all wages upon separation of employment; (8) engaged in unlawful business practices; and
10 (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which Ready Roast has agreed to pay Three Hundred Twenty-Five Thousand
13 Dollars and Zero Cents (\$325,000.00) to the following Settlement Class:

14 All former non-exempt employees of Defendant Ready Roast Nut Company,
15 L.L.C. who worked for Defendant at any time in California during the period of
16 August 23, 2016 through September 27, 2020.

17 Settlement Class members do not need to file a claim and will automatically receive a payment
18 unless they affirmatively opt-out. After deducting administration costs, Plaintiff’s service award,
19 attorneys’ fees and costs, and PAGA civil penalties payable to the LWDA, the remaining Net Settlement
20 Amount (“NSA”) of approximately \$179,166.67 will be distributed to all Settlement Class members who
21 do not opt-out. With approximately 470 Settlement Class members, the average payment to each
22 Settlement Class member is currently expected to be approximately \$381.21, which does not include the
23 \$2,500.00 PAGA Amount to PAGA Employees.

24 This proposed Settlement is well-within the range of possible approval in light of the significant
25 legal and factual obstacles that Plaintiff faced, the financial condition of Ready Roast and its ability to pay
26 an eventual judgment, the risks and costs of further litigation, and the tangible monetary benefits to be

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

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, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTIATIONS

1. The Parties

Ready Roast conducted business as a processor/manufacture of nuts, nut butters, powders, and mixes. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Effective September 27, 2020, Ready Roast sold its entire operation and has not conducted any business nor employed any employees since that date. Declaration of Thomas J. Finn (“Finn Decl.”), ¶ 3. Plaintiff was employed by Ready Roast from approximately April 2018 through approximately August 19, 2020. *See* Declaration of Magali Martinez (“Martinez Decl.”), ¶ 2.

2. Procedural History

On February 17, 2021, Plaintiff filed a class action Complaint against Defendant in Madera County Superior Court. Lidman Decl., ¶ 10. After exhausting her administrative requirements under the PAGA, Plaintiff filed a First Amended Class and Representative Action Complaint on June 17, 2021 adding one cause of action for civil penalties under the PAGA. On September 12, 2022, Plaintiff submitted to the LWDA a supplemental letter alleging additional claims against Defendant and expressing her intent to further amend the operative complaint in the Action to seek civil penalties for these additional claims. *Id.* On October 17, 2022, pursuant to a September 27, 2022 Order from the Court, Plaintiff filed a Second Amended Complaint, the operative complaint in the action, alleging the following claims: (i) failure to provide meal periods; (ii) failure to authorize and permit rest periods; (iii) failure to provide accurate, itemized wage statements; (iv) failure to timely pay all wages upon termination; (v) failure to pay all minimum wages; (vi) failure to pay all overtime wages; (vii) failure to reimburse necessary business expenses; (viii) unfair competition; and (ix) violations of the PAGA. *Id.*

3. Discovery

After agreeing to participate in mediation, Defendant informally produced time records and payroll data for the putative class as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged in advance of mediation. Lidman Decl., ¶ 11. Plaintiff conducted an analysis of the payroll data and time records produced by Defendant. After the detailed review of the payroll and time records and other documents and policies produced by Defendant, Class

Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case.

4. Arms-Length Negotiations

On May 6, 2022, after extensive research and analysis, including a detailed analysis of Defendant's potential exposure by Plaintiff, a mediation was held with Mark J. Keppler, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses, as well as the legal basis for the claims and defenses. *Id.* The Parties also discussed Defendant's financial condition considering it had not been in operation (and sold its assets) as of September 27, 2020. Finn Decl., ¶¶ 3-4. The Parties were unable to reach a settlement at mediation. *Id.*

After the Parties' unsuccessful mediation, Ready Roast produced information and records regarding its financial condition. *Id.* As a result of the foregoing, Plaintiff's counsel confirmed that Ready Roast's representations regarding its financial condition and ability to pay issues were supported by the financial documents and other information provided by Ready Roast during mediation and further settlement discussions. *Id.* Ultimately, after months of further settlement negotiations, the Parties agreed in principle on a class-wide resolution. *Id.* Thereafter, in the weeks that followed, the Parties signed the Stipulation of Settlement ("Settlement"). Lidman Decl., ¶ 12, Exh. 1. Additionally, as part of the agreement, Ready Roast provided a declaration filed concurrently herewith verifying under oath and confirming its representations concerning its financial condition. Finn Decl., ¶¶ 3-7.

III. ARGUMENT

A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

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

As explained below, the Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the

claims of absent Settlement Class Members; and (4) Plaintiff and her counsel will fairly and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

1. Numerosity is Satisfied.

There are approximately 470 Settlement Class Members. Therefore, numerosity is satisfied. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as "All former non-exempt employees of Defendant Ready Roast Nut Company, L.L.C. who worked for Defendant at any time in California during the period of August 23, 2016 through September 27, 2020." Lidman Decl., ¶ 14.

In addition, PAGA Employees is defined as: "All former non-exempt employees of Defendant Ready Roast Nut Company, L.L.C. who worked for Defendant at any time in California during the period of February 17, 2020 through September 27, 2020. *Id.*

2. Commonality is Satisfied.

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members' claims arise from Ready Roast's common, uniform policies and practices that applied to Plaintiff and Settlement Class Members during the class period. Lidman Decl., ¶ 15. As a result of the common and uniform policies and practices that applied to all Settlement Class Members, their claims involve common questions of law and fact, including but not limited to:

1. Whether Ready Roast properly paid all minimum wages;
2. Whether Ready Roast properly paid all overtime wages;
3. Whether Ready Roast provided all legally compliant meal periods;
4. Whether Ready Roast authorized and permitted all legally required rest periods;
5. Whether Ready Roast properly reimbursed all necessary business expenses incurred;
6. Whether Ready Roast failed to furnish accurate, itemized wage statements;

1 7. Whether Ready Roast failed to timely pay all wages owed upon separation; and

2 8. Whether Ready Roast's conduct constituted unlawful and/or unfair business practices.

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

5 **3. Typicality is Satisfied.**

6 The typicality requirement is satisfied where class representatives have claims that are typical of
7 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
8 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
9 in a consumer class action).

10 Here, Plaintiff's claims are typical of those held by the Settlement Class. First, Plaintiff was
11 employed by Ready Roast during the Class Period as a non-exempt employee and was subject to
12 Defendant's wage and hour policies at issue in this case. *See Martinez Decl.*, ¶ 2. Second, Plaintiff
13 contends she was injured by the same challenged policies that injured the Settlement Class as a whole.
14 For example, Plaintiff asserts that she, like the Settlement Class, was not paid all legally required
15 minimum wages and overtime wages, was not provided with all required meal periods, was not
16 authorized and permitted to take all required rest periods, did not receive meal and rest period premium
17 wages when she was not provided compliant meal or rest periods, was not provided with accurate,
18 itemized wage statements, was not reimbursed for all business expenses, and was not paid all of her wages
19 owed upon separation of employment. *Id.* Given that Defendant's policies and practices applied to all
20 non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar
21 alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all
22 arise from the same conduct, typicality is satisfied.

23 **4. Adequacy is Satisfied.**

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

27 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class she
28 seeks to represent. *See Martinez Decl.*, ¶ 11. Indeed, Plaintiff's interests are aligned with those of the
Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. *Id.*

1 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee*
2 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication
3 that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the
4 proposed class). Further, Class Counsel also have extensive experience in wage and hour class action
5 litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Elizabeth
6 Nguyen (“Nguyen Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Declaration
7 of Milan Moore (“Moore Decl.”), ¶¶ 2-4.

8 **B. THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE, AND**
9 **REASONABLE**

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

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

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

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

27 Although Plaintiff maintains that her claims are meritorious, she acknowledges there were
28 substantial risks and uncertainty in proceeding with litigation including, without limitation, Defendant’s
ability to pay an eventual potential judgment in light of the fact it stopped and sold all operations in
September 2020 leaving no ongoing revenue. As described below, Ready Roast presented multiple

1 defenses to Plaintiff's claims, both on the merits and class certification. Thus, while Plaintiff was prepared
2 to litigate these claims through certification and trial, success and recoverability of a judgment was far
3 from certain.

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

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., ¶ 34.
7 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of
8 a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if
9 the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably
10 more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.*
11 This Settlement avoids those risks and the accompanying expense. Further, as stated above, Ready Roast's
12 financial condition and ability to pay an eventual judgment was a large factor in the settlement decision.
Thus, this factor supports preliminary approval.

13 **c. Risk of Maintaining Class Action Status**

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

17 **d. Overview of the Settlement Agreement**

18 If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of
19 \$325,000.00.² Lidman Decl., ¶ 13, Exh. 1 (Settlement, ¶ 4). Significantly, this Settlement is **non-**
20 **reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement
21 Award. *Id.* (Settlement, ¶ 5). Each Settlement Class member will automatically receive a Settlement
22 Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement
23 are summarized below:

24 //

25 //

26 //

27 ² Defendant represents that there are an estimated 38,000 workweeks worked by the Class Members during the Class Period.
28 If the number of weeks worked by the Class Members during the Class Period is more than 10% greater than this figure (i.e.,
if there are 41,800 or more workweeks worked by the settlement Class Members during the Class Period), Defendant agrees to
increase the Gross Settlement Amount on a proportional basis (i.e., if there was 12% increase in the number workweeks worked
during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 12%). See Settlement ¶ 4.D.

Gross Settlement Amount (“GSA”):	\$325,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$108,333.33
Minus Court-approved, verified costs (up to):	\$15,000.00
Minus Court-approved Class Representative Service Award (up to):	\$5,000.00
Minus Settlement Administration Costs:	\$10,000.00
Minus PAGA civil penalties to LWDA:	\$7,500.00
Net Settlement Amount (“NSA”):	\$179,166.67

The Gross Settlement Amount has already deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. If the Settlement is not finally approved by the Court, the Gross Settlement Amount shall be returned to Defendant. Lidman Decl., ¶ 13, Exh. 1 Settlement ¶ 4.B.

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties to the LWDA, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) of at least **\$179,166.67** to all Settlement Class Members who do not timely opt out. This amount does not include the \$2,500.00 PAGA Amount to be paid to the PAGA Employees. Lidman Decl., ¶ 13, Exh. 1 (Settlement ¶ 5.A).

According to Defendant, there are approximately 470 total Settlement Class Members. Lidman Decl., ¶ 14. Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is projected to be approximately **\$381.21, exclusive of any PAGA civil penalties**. *Id.* The Individual Settlement Awards shall be determined as follows:

- i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of weeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member’s total weeks worked as a non-exempt employee during the Class Period, and the denominator of which is the total weeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period. *See* Settlement, ¶ 5.B.i.
- ii. **PAGA Amount**: Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of workweeks worked as a non-exempt employee during this

time period, and the denominator of which is the total number of workweeks worked by all PAGA Employees. *See* Settlement, ¶ 5.C.

The average individual portion of PAGA Amount is approximately \$5.32, if all 470 Settlement Class Members are also PAGA Employees. Thus, combining the individual class payments and the PAGA Amount, the average individual payment (assuming no opt outs) is **\$386.52**.

Settlement Class Members will have sixty (60) calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶ 11.C. Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement, for the period of August 23, 2016 through September 27, 2020. *See* Settlement, ¶ 3. Settlement Class Members who opt-out of Settlement will still receive a portion of the PAGA Amount if they are a PAGA Employee during the PAGA Period.

As this is a non-reversionary Settlement, 100% of the NSA shall be consumed in that if a Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-out shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did not opt-out. *See* Settlement, ¶ 4.C.

e. The Parties Engaged in Fair and Honest Negotiations.

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance of a mediator. In connection with mediation, Defendant produced timekeeping and payroll data. Plaintiff conducted an analysis of the payroll data and time records produced by Defendant to calculate Defendant's potential exposure for Plaintiff's claims. Lidman Decl., ¶ 11. After the detailed review of the payroll and time records and other documents and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id.*

Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of: factual investigation and data analysis; the exchange of substantial information and class data, including timekeeping and payroll records; information concerning Ready Roast's closure and sale of operations in September 2020 and related financial condition; arm's length negotiations by counsel; mediation

1 before an experienced wage and hour class action mediator; and months of direct settlement negotiations.
2 *See* Lidman Decl., ¶¶ 11-12; *See Kullar, supra*, 168 Cal.App.4th at 130. In addition, the Parties attended
3 a full-day mediation and continued negotiations with the mediator after a deal was not reached during the
4 actual mediation date. *Id.* Thus, these factors support preliminary approval.

5 Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential
6 treatment to the class representative or segments of the class, and is within the range of possible approval,
7 as discussed in detail below. The Settlement will provide monetary relief to Settlement Class Members.
8 The amounts proposed for Class Counsel’s attorneys’ fees and costs, and service award are all reasonable
9 and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies,
10 this factor supports preliminary approval.

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

12 Off-the-Clock: Plaintiff alleges that Defendant failed to compensate its non-exempt employees
13 for all time worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges she would spend approximately
14 5 minutes before her scheduled start time putting on her protective gear and approximately 5 minutes
15 after her scheduled end time taking off her protective gear. *Id.* Despite being under Ready Roast’s
16 direction and control during these times, Plaintiff alleges Ready Roast required employees to don/doff
17 off-the-clock. *Id.* As a result of Defendant’s failure to properly track the time worked by Plaintiff and
18 other non-exempt employees, Plaintiff contends that Defendant failed to pay Plaintiff and other non-
19 exempt employees for all minimum and overtime wages owed. *Id.* Accordingly, based on 10 minutes of
20 unpaid time each shift, or .83 hours per workweek, and based on a review of the time punch data and
21 payroll records, Plaintiff estimates Defendant’s exposure for unlawful rounding at the overtime rate (as
22 overwhelming majority of shifts were 8+ hours) at approximately \$712,173 [38,000 workweeks x .83 per
23 workweek x \$22.58 (average overtime rate)]. *Id.*

24 Ready Roast contends that it compensated Settlement Class members for all of their time worked
25 and any unpaid time was *de minimis* and therefore non-compensable. Lidman Decl., ¶ 17. Ready Roast
26 further asserts that Plaintiff would be unable to certify an off the clock class given the individualized
27 inquiries that would be required. Further, Ready Roast contends that Plaintiff’s assessment of the claim
28 at the overtime rate is incorrect. In light of these defenses, Plaintiff discounted the maximum exposure

1 by 60% for the risk of non-certification, and an additional 65% to account for Defendant's defenses on
2 the merits to arrive at an estimated exposure of approximately \$99,704.22.

3 Meal Period Violations: Plaintiff alleges that she and Settlement Class Members were not provided
4 with all legally-required meal periods in compliance with California law due to Defendant's unlawful meal
5 period policies/practices. Lidman Decl., ¶ 18. Due to Plaintiff's job duties, Plaintiff was often prevented
6 from taking meal periods that commenced before the end of the 5th hour of work and/or which were at
7 least 30 minutes in length. Specifically, Plaintiff alleges that Ready Roast had a policy of requiring its
8 employees to clock out/in for their meal periods, even when they could not actually take them. *Id.* As such,
9 the reliability and accuracy of the timesheets are questionable. Therefore, based on a review of the time
10 punch data and payroll records, Plaintiff calculated Defendant's maximum exposure for the alleged meal
11 period violations at approximately \$2,802,310 [38,000 workweeks x 5 shifts/week x .98 (% of shifts over
12 6.0) x \$15.05 (average hourly rate)]. *Id.*

13 Ready Roast counters that it has always provided non-exempt employees with an opportunity to
14 take legally compliant meal periods, and any non-compliant meal periods reflected in employee
15 timekeeping records were solely the result of employee choice, rather than any policy or practice of Ready
16 Roast. Lidman Decl., ¶ 19. Ready Roast also points out that under *Brinker Restaurant Corp. v. Superior*
17 *Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not
18 "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038
19 (rejecting "ensure" standard). Finally, Ready Roast contends Plaintiff's meal period claim is not suited
20 for class certification and individual inquiries would be required to assess which employees took non-
21 compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a
22 particular employee took a non-compliant meal period or missed a meal period during a particular shift.
23 *Id.* Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and
24 an additional 55% to account for Ready Roast's defenses on the merits to arrive at an estimated exposure
25 of \$441,363.83. *Id.*

26 Rest Period Violations: Plaintiff alleges that she and other Settlement Class Members were not
27 authorized and permitted to take all required rest periods due to Ready Roast's rest period
28 policies/practices which fail to authorize and permit all rest periods for every four hours worked, *or major*

1 *fraction thereof*. Lidman Decl., ¶ 20. Specifically, Plaintiff alleges she worked shifts in excess of 3.5
2 hours, but was not authorized or permitted to take a ten-minute paid rest period for every four (4) hour
3 period worked, or *major fraction thereof* as a result of the work demands imposed by Defendant. *Id.* In
4 addition, Defendant's policy and practice required employees to remain on the work premises during rest
5 periods, failing to relinquish all control of employees and restricting their movement during required rest
6 periods, and thereby failed to authorize and permit off-duty rest periods. Accordingly, Plaintiff calculated
7 Defendant's maximum exposure at approximately \$2,859,500 (38,000 workweeks x 5 shifts over 3.5
8 hours x \$15.05 average hourly rate). *Id.*

9 Ready Roast contends it has always maintained and enforced lawful rest period policies and
10 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
11 periods in compliance with California law. Lidman Decl., ¶ 21. Ready Roast argues that Plaintiff's rest
12 period claims are inherently unsuited for class treatment as it requires an individualized inquiry into
13 whether each Settlement Class member was in fact authorized and permitted to take a compliant rest
14 period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff
15 discounted the maximum exposure by 50% for the risk of non-certification, and an additional 55% to
16 account for Defendant's defenses on the merits to arrive at an estimated exposure of \$643,387.75. *Id.*

17 Unreimbursed Business Expenses: Plaintiff alleges that Ready Roast failed to reimburse her and
18 Settlement Class members for necessary business expenditures, including the use of their personal cellular
19 phones for work purposes, as required under Labor Code section 2802. Lidman Decl., ¶ 22. Plaintiff
20 contends that Ready Roast also required her and other non-exempt employees to spend about \$60.00 on
21 protective shoes and did not reimburse them. Accordingly, Plaintiff estimates employees should have been
22 reimbursed approximately \$25.00/month or about \$6.25/week for reasonable cellular phone related
23 expenses and \$60 per employee. Accordingly, Plaintiff calculates Ready Roast's maximum exposure for
24 this claim at approximately \$265,700.00 ((38,000 workweeks x \$6.25) + (\$60 x 470 employees)). *Id.*

25 Ready Roast contends that any purportedly necessary expenses incurred by employees were
26 minimal. Lidman Decl., ¶ 23. Ready Roast also argues that this claim is not suitable for class treatment,
27 it maintained a lawful expense reimbursement policy, Plaintiff did not submit a request to be reimbursed,
28 and individualized determinations would be required as to how often each employee used their personal

cellular phone and/or replaced their protective shoes. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 55% to account for Ready Roast's defenses on the merits and financial condition, to arrive at an estimated exposure of \$41,847.75. *Id.*

Wage Statement Violations: Plaintiff further alleges that Ready Roast issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages described above. Lidman Decl., ¶ 24. 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 the rate at which they were being paid. *Id.* Therefore, Plaintiff calculated Ready Roast's maximum exposure for wage statement violations at approximately \$276,500.00 $[(\$50.00 \times 470 \text{ employees}) + (\$100.00 \times 2,530 \text{ subsequent wage statements})]$. *Id.*

Ready Roast argued that meal and rest period claims could not support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, *review granted*³ and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g., Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Lidman Decl., ¶ 25. Ready Roast further argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 25. Further, since Ready Roast sold and closed its operations on September 27, 2020, it contended that the liability period for the wage statement claim was substantially truncated. As such, Plaintiff discounted the calculated exposure by 45% for a risk of non-certification and an additional 60% for a risk of being unsuccessful on the merits to arrive at an estimated total of \$60,830.00. *Id.*

Waiting Time Penalties: Plaintiff alleges that Ready Roast is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages upon separation of employment. Lidman Decl., ¶ 26. Based on the data provided by Ready Roast, there were approximately 470 Settlement Class Members who have separated their employment with Defendant during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Ready Roast's maximum

³ The California Supreme Court issued its decision in *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, on May 23, 2022.

1 exposure for waiting time penalties at approximately \$1,697,640 (470 former employees x \$15.05 [average
2 regular rate] x 30 days x 8 hours/day). *Id.*

3 Ready Roast asserts it has strong defenses to the waiting time claim because there exist good-faith
4 disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 27. *See*
5 *also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of
6 waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith
7 dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested
8 wages owed). Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of non-
9 certification, and an additional 55% to account for Ready Roast's defenses on the merits to arrive at an
10 estimated exposure of approximately \$305,575.20. *Id.*

11 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
12 foregoing alleged Labor Code violations. Lidman Decl., ¶ 28. Plaintiff calculated Ready Roast's exposure
13 at approximately \$300,000 (3,000 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas*
14 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is
15 notified that it is violating a Labor Code provision).

16 Ready Roast argues that Plaintiff's PAGA claim will fail for the same reasons that her underlying
17 claims will fail. Lidman Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
18 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Ready
19 Roast also maintains that, given its good faith defenses, this Court would exercise its discretion to
20 substantially reduce any PAGA penalties if it were to find Ready Roast liable for any of Plaintiff's claims.
21 *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
22 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-
23 01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).
24 *Id.* Further, since Ready Roast sold and closed its operations on September 27, 2020, it contended that the
25 liability period for the wage statement claim was substantially truncated. Therefore, Plaintiff discounted
26 the maximum exposure figure by 50% for a risk of being unsuccessful on the merits, and an additional
27 65% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of
28 approximately \$52,500.00. *Id.*

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

2 Using these estimated figures for each of the claims described above, Plaintiff predicted the
3 realistic total recovery for the Settlement Class would be approximately \$1,645,208.50. Lidman Decl., ¶
4 30. The proposed settlement of \$325,000.00 therefore represents approximately 20% of the reasonably
5 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
6 will provide tangible monetary relief to Settlement Class Members, and will still provide an average
7 recovery to Settlement Class Members of over \$380.00 which is a good result in light of the fact that Ready
8 Roast ceased operations on September 27, 2020 and no longer had ongoing revenue. Finn Decl., ¶¶ 3-4.
9 Thus, Ready Roast’s financial condition and the possibility that Ready Roast would not have been able to
10 pay any final judgment if this case proceeded to through trial was also a major factor in the ultimate
11 settlement amount agreed upon.

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

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

26 “Parties represented by competent counsel are better positioned than courts to produce a
27 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
28 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,

1 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
2 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*;
3 Nguyen Decl., ¶¶ 2-8; Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
4 review of Defendant’s policies and timekeeping and payroll records and drew on their extensive
5 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Lidman Decl.,
6 ¶¶ 10-26. The Settlement was also reached with the assistance of an experienced and respected wage and
7 hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See*
8 *Kullar, supra*, 168 Cal.App.4th at 130.

9 **i. Attorneys’ Fees and Costs**

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

17 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
18 is currently estimated to be \$108,333.33, and up to \$15,000 in verified costs reimbursement. *See*
19 Settlement, ¶ 7; Lidman Decl., ¶ 31. Plaintiff submits the requested fee is fair compensation for
20 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
21 *Id.* Further, Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman
22 Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
23 analyzing Plaintiff’s claims, conducting legal research, reviewing Defendant’s documents and policies,
24 analyzing Settlement Class Members’ timekeeping data and payroll records, preparing for and attending
25 mediation, reviewing Ready Roast’s financials, engaging in months of direct negotiations, negotiating and
26 revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl.,
27 ¶ 31. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion,
28

overseeing the Notice process and fielding questions from Settlement Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

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

j. Administration Costs

Phoenix Settlement Administrator's fees and expenses are estimated not to exceed \$10,000.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This includes sending the Notice in both English and Spanish due to the nature of Defendant's workforce. This request is reasonable in light of the proposed class size of approximately 470 Settlement Class Members and the costs and expenses associated with administering the notices in Spanish and English and distributing the awards.

k. Class Representative Service Award

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for his services to the Settlement Class. Lidman Decl., ¶ 33; Settlement, ¶ 8; Martinez Decl., ¶¶ 3-12. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, participating in the mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, the fact that Plaintiff has

1 agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶
2 33; Magali Decl., ¶¶ 3-11; Settlement ¶ 3.D.

3 **I. PAGA Civil Penalties**

4 The parties have agreed to a PAGA award of \$10,000.00 and in accordance with California Labor
5 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or
6 \$7,500.00. Settlement ¶ 4.C.5. This \$10,000.00 represents roughly 3.07% of the \$325,000.00 Gross
7 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.
8 *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D.
9 Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or
10 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr.
11 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
12 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
13 claims and PAGA claims under which no money was allocated to the PAGA claims).

14 **m. Payroll Taxes**

15 The Settlement provides that the employer’s share of payroll taxes shall be paid separately from,
16 and in addition to, the Gross Settlement Amount. Settlement ¶ 9.

17 **n. Uncashed Funds**

18 The Settlement provides that Settlement Class Members with 180 days from the date the
19 Settlement Administrator mails the checks and any funds remaining after 180 days escheat to the
20 California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name
21 of the Settlement Class member. Settlement ¶ 5.F. As all settlement funds will be distributed to the
22 Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

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

24 Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies.
25 The Settlement will provide monetary relief to participating Settlement Class Members. The amounts
26 proposed for Class Counsel’s attorneys’ fees and costs, and service award are all reasonable and
27 appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
28 factor supports preliminary approval.

1 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE**
2 **TO SETTLEMENT CLASS MEMBERS**

3 Before the final approval hearing, the Court requires adequate notice of the settlement be given
4 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
5 Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and
6 Notice of Individual Settlement Award) by first-class regular U.S. Mail, postage prepaid, using last
7 known mailing address information provided by Defendant. *See* Settlement, ¶ 10, Exh. A. The Notice
8 Packet will be mailed in both English and Spanish due to the nature of Defendant’s workforce.

9 This manner of giving notice is the “best notice practicable” under the circumstances because it
10 provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen*
11 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be
12 administered by Phoenix, an experienced class action settlement administrator. *See generally* Lawrence
13 Decl. and attached exhibits. Class Data will be ascertainable through Defendant’s personnel and payroll
14 records, which Defendant will provide to Phoenix within 15 calendar days of preliminary approval of the
15 Settlement. *See* Settlement ¶ 11.A. Within 10 business days of receipt of the Settlement Class Members’
16 addresses, Phoenix will run the names of all Settlement Class Members through the United States Postal
17 Service Notice of Change of Address database (which provides updated addresses for any individual who
18 has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address),
19 calculate the estimated Settlement Award for each Settlement Class member, and mail the notices to
20 Settlement Class Members. *See* Settlement ¶ 11.B. To the extent that any notices are returned, Phoenix
21 will perform a “skip trace” to track any Class Member’s current mailing address. *See* Settlement ¶ 11.C.

22 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it
23 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the parties,
24 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
25 procedures by which to do so, explains the recovery formula and expected recovery amount for each
26 Settlement Class member, provides them the opportunity to contest their total workweeks included in the
27 notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out.
28 *See* Lidman Decl., Exh. 1 (Settlement, Exh. C). The proposed Notice Packet will also notify Settlement

1 Class Members of the final approval hearing date and provides Settlement Class Members the contact
2 information for Class Counsel, and advises Settlement Class Members that they may enter an appearance
3 through counsel if they wish to. Additionally, as stated in the proposed Notice Packet, any changes to
4 the Final Approval hearing date, time, or location will be posted on the Settlement Administrator's
5 website. *Id.* Furthermore, the Settlement Administrator will post the notice of final judgment on its
6 website. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable
7 and cost-effective method of reaching Settlement Class Members.

8 **E. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

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

12 **IV. CONCLUSION**

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

16
17 Dated: February 7, 2023

Respectfully submitted,
LIDMAN LAW, APC

18
19 By:



20 Scott M. Lidman
21 Attorneys for Plaintiff
22 MAGALI MARTINEZ
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