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J. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By: 

7 Attorneys for Plaintiff Samantha Owens and the Class

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF CONTRA COSTA

10 SAMANTHA OWENS,

Case No.: MSC21-00731

11 Plaintiff,

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

12 vs.

13 FIDELITY NATIONAL HOME WARRANTY
14 COMPANY; and DOES 1-100, inclusive,

15 Defendants.
16

17 Plaintiff Samantha Owens moves for preliminary approval of her class action and PAGA
18 settlement with Defendant Fidelity Equity Home Warranty Company. The motion is **granted**.

19 **A. Background and Settlement Terms**

20 Defendant is in the home warranty business. Plaintiff worked there as a non-exempt employee
21 from September 2016 to December 2020, although her job description is not provided.

22 The original complaint was filed on April 12, 2021 as a class-action and PAGA case.

23 The settlement would create a gross settlement fund of \$285,000. The class representative
24 payment to the plaintiff is proposed to be \$10,000. Attorney's fees would be \$9,500 (one-third of the
25 settlement). Litigation costs are estimated at \$15,000. The settlement administrator's costs are
26 estimated at \$7,500. PAGA penalties would be \$10,000, resulting in a payment of \$7,500 to the
27 LWDA. The net amount paid directly to the class members would be about \$147,000. The fund is
28 nonreversionary.

1 The settlement is complicated because there are several settlement subclasses with different
2 settlement fund allocations and time periods. It is further complicated by the point that there was a prior
3 class-action settlement that covers some of the employees or claims within the relevant periods. The
4 subclasses are:

- 5 1. The Meal-Period Subclass. This arises from allegations that because defendant strictly
6 required employees to clock back in at the end of their meal breaks without being even a
7 minute late, employees were effectively required to cut their breaks short to make sure
8 they clocked back in timely. This covers employees from March 1, 2020, to September
9 21, 2023. There are estimated to be 104 subclass members. Half of the net settlement
10 amount is allocated to this subclass, resulting in an estimated average \$709 per class
11 member.
12
- 13 2. The Overtime Subclass. This arises from allegations that defendant miscalculated the
14 proper pay rate for overtime pay. This includes employees between April 12, 2017, and
15 September 21, 2023, excluding those who were part of the prior class-action settlement.
16 There are estimated to be 106 subclass members. 15% of the net settlement amount is
17 allocated to this subclass, resulting in an estimated average \$209 per class member.
18
- 19 3. The Wage Statement Subclass. This arises from allegations that defendant's wage
20 statements inaccurately stated the hours worked and made it difficult to ascertain the
21 total hours worked in a pay period. This includes employees from April 12, 2020 to
22 September 21, 2023. There are estimated to be 104 subclass members. 20% of the net
23 settlement amount is allocated to this subclass, resulting in an estimated average \$284
24 per class member.

25 In addition, the remaining 20% of the net settlement fund will be distributed to members of the
26 meal period and overtime subclasses whose employment ended between April 12, 2018 and September
27 21, 2023, referred to as the waiting time penalty share. This results in an estimated additional \$738 per
28 qualifying class member. It is also estimated that aggrieved employees under PAGA will receive

1 distributions of PAGA penalties of about \$24 per person. The PAGA period is April 12, 2020 to
2 September 21, 2023.

3 The individual payments will vary considerably because of the allocation formula prorating
4 payments according to the number of weeks worked during the relevant time.

5 The entire settlement amount will be deposited with the settlement administrator within 14 days
6 after the effective date of the settlement.

7 The Court notes the several provisions of ¶ 28(D) of the Settlement Agreement, addressing the
8 possibility that the number of subclass members may have been underestimated. This is typically
9 handled by an optional escalator clause, allowing the defendant to agree to a proportional increase in
10 the settlement fund to accord to the larger correct class size. Here, instead, the Settlement Agreement
11 calls for shortening the class period so as to reverse-engineer the class size to fit the agreed settlement
12 amount. The Court skips over this issue for now, because it expects that the issue will never come to
13 fruition because the parties have correctly estimated the subclass sizes. It warns, however, that it is
14 likely to be skeptical of any effort to artificially foreshorten the class periods after the fact. At a
15 minimum, such a decision would require further Court approval prior to the sending of any class
16 notices. The Court is not likely to countenance either the sending of notices not conforming to this
17 approval order, or the subsequent denial of payment to people who have been sent notices promising
18 payments.

19 The class members will not be required to file a claim. Class members may object or opt out of
20 the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds
21 would be apportioned to class members based on the number of workweeks worked during the class
22 period.

23 A class list will be provided within 14 days after preliminary approval, and notices will be
24 mailed within 28 days after preliminary approval. Various prescribed follow-up steps will be taken with
25 respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be
26 cancelled, and the funds will be directed to CASA of Contra Costa County as a cy pres beneficiary.

27 The Court notes that although the beneficiary organization is identified as CASA of Contra
28 Costa County, the website referred to for that organization appears to be one for Alameda County. The

1 parties are requested to recheck whether they have correctly identified the website. Moreover, there is
2 no declaration stating that counsel has no disqualifying affiliation with the beneficiary organization.
3 That assurance should be provided by supplemental declaration.

4 The settlement contains release language covering all claims and causes of action, alleged or
5 which could have reasonably been alleged based on the allegations in the operative pleading, including
6 a number of specified claims. Under recent appellate authority, the limitation to those claims with the
7 “same factual predicate” as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt.,*
8 *LLC* (2021) 69 Cal.App.5th 521, 537 (“A court cannot release claims that are outside the scope of the
9 allegations of the complaint.”) “Put another way, a release of claims that goes beyond the scope of the
10 allegations in the operative complaint’ is impermissible.” (*Id.*, quoting *Marshall v. Northrop Grumman*
11 *Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

12 Formal discovery was undertaken, resulting in the production of substantial documents. The
13 matter settled after arms-length negotiations, which included a session with an experienced mediator.

14 Counsel also has provided an analysis of the case, and how the settlement compares to the
15 potential value of the case, after allowing for various risks and contingencies. The substance of the
16 allegations is described above, and counsel’s analysis of the merits of the claims is satisfactory.

17 The potential liability needs to be adjusted for various evidence and risk-based contingencies,
18 including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they
19 derive from other violations, they include “stacking” of violations, the law may only allow application
20 of the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the
21 court. (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where “based on the facts and
22 circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary
23 and oppressive, or confiscatory.”)) Moreover, recent decisions may make it difficult for PAGA
24 plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v.*
25 *Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San*
26 *Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

27 Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently
28 with the filing of the motion.

1 **B. Legal Standards**

2 The primary determination to be made is whether the proposed settlement is “fair, reasonable,
3 and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the
4 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the
5 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
6 discovery completed and the state of the proceedings, the experience and views of counsel, the presence
7 of a governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro*, 69
8 Cal.App.5th 521.)

9 Because this matter also proposes to settle PAGA claims, the Court also must consider the
10 criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA,*
11 *Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair,
12 reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.)
13 The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil
14 penalties between the affected aggrieved employees”. (*Id.*, at 64-65.)

15 California law provides some general guidance concerning judicial approval of any settlement.
16 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3
17 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.
18 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106
19 Cal.App.4th 1121, 1127.) Moreover, “The court cannot surrender its duty to see that the judgment to be
20 entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto.*
21 *Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have
22 specifically noted that *Neary* does not always apply, because “Where the rights of the public are
23 implicated, the additional safeguard of judicial review, though more cumbersome to the settlement
24 process, serves a salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*
25 *America* (2006) 141 Cal.App.4th 48, 63.)

26 **C. Attorney Fees**

27 Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund”
28 theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar

1 cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court
2 endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is
3 reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily
4 high or low, the trial court should consider whether the percentage used should be adjusted so as to
5 bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make
6 such an adjustment." (*Id.*, at 505.) Following typical practice, however, the fee award will not be
7 considered at this time, but only as part of final approval.

8 Similarly, litigation and administration costs and the requested representative payment of
9 \$10,000 for the plaintiff will be reviewed at time of final approval. Criteria for evaluation of
10 representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009)
11 175 Cal.App.4th 785, 804-07. The representative payment appears to be distinctly on the high side
12 relative to the overall settlement, but the Court will address it at a later time.

13 **D. Discussion and Conclusion**

14 The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify
15 preliminary approval. Counsel is directed to obtain a hearing date for the motion for final approval
16 from the Department clerk. Other dates in the scheduled notice process should track as appropriate to
17 the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has
18 been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week
19 before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims
20 administrator pending satisfactory compliance as found by the Court.

21 **IT IS HEREBY ORDERED¹:**

- 22 1. Plaintiff Samanth Owens is preliminarily appointed as Class Representative.
- 23 2. Mayall Hurley P.C., by and through Jenny D. Baysinger and Robert J. Wassermann, is
24 hereby preliminarily approved and appointed as Class Counsel.
- 25 3. Phoenix Class Action Administration Solutions is appointed as the Settlement
26 Administrator and shall administer the Settlement in accordance with the terms set forth in the

27 ¹ All terms used in this Order of Preliminary Approval of Class Action Settlement (the "Order") shall have the same
28 meanings given those terms in the Parties' Joint Stipulation of Class Action Settlement and Release ("Settlement
Agreement" or "Settlement"), a copy which is attached hereto as **Exhibit 1** and made a part of this Order.

1 Settlement Agreement and perform the functions set forth therein. The Court also preliminarily
2 approves declared fees and costs of administering the Settlement of up to \$7,500.

3 4. The Class of employees covered by the Parties' Settlement consists of:

4 a. All non-exempt individuals who worked for Defendant in California at any time
5 during the Class Period and who are members of one or more of the following
6 subclasses: (1) the "Meal Period Subclass," which includes those who worked at
7 least one shift of more than five (5) hours from March 1, 2020, through and
8 including September 21, 2023; (2) the "Overtime Subclass," which includes
9 those who earned a non-discretionary bonus or other remuneration pertaining to
10 a workweek when he or she also worked overtime on at least one occasion from
11 April 12, 2017, through and including September 21, 2023, and who were not
12 part of the "Overtime Class" in the matter of *Dillard/Menchaca v. Fidelity*
13 *National Financial, Inc., et al.*, Contra Costa County Superior Court Case No.
14 C18-00394; and (3) the "Wage Statement Subclass," which includes those who
15 received one or more wage statements at any time from April 12, 2020, through
16 and including September 21, 2023. SA ¶ 15.

17 5. Pursuant to California Civil Procedure section 382, and for purposes of settlement only,
18 the Class is preliminarily and conditionally certified. The Meal Period Subclass is estimated to consist
19 of 104 individuals, the Overtime Subclass is estimated to consist of 106 individuals, and the Wage
20 Statement Subclass is expected to consist of 104 individuals.

21 6. The Court grants preliminary approval of the Settlement between Plaintiff and
22 Defendant, based upon the terms set forth in the Settlement Agreement.

23 a. As to the Class and subclasses, the Settlement Agreement appears to be fair,
24 adequate and reasonable, and the Court preliminarily approves the terms of the
25 Settlement Agreement.

26 b. The Court approves, as to form and content, the Class Notice, in substantially the
27 form attached as **Exhibit A** to the Settlement Agreement. The Court further
28

1 approves the procedure by which Class Members may opt out of, and object to, the
2 Settlement as set forth in the Settlement Agreement and the Class Notice.

3 7. The Court directs mailing of the Class Notice in accordance with the terms of the
4 Settlement Agreement and on the schedule set forth below. The Court finds the dates selected for the
5 mailing and distribution of the Class Notice, as set forth below, meet the requirements of due process
6 and provide the best notice practicable under the circumstances and shall constitute due and sufficient
7 notice to all persons entitled thereto.

8 8. Subject to further consideration by the Court at the time of the Final Approval Hearing,
9 the proposed PAGA allocation of \$10,000 and payment to the LWDA of \$7,500 is preliminarily
10 approved. Distribution of \$2,500 to the Settlement Class Members employed during the PAGA Period
11 based on the formula outlined in the Settlement Agreement is also approved.

12 9. Subject to further consideration by the Court at the time of the Final Approval Hearing,
13 the proposed Class Representative Enhancement Award of \$10,000 each, 3.5% of the Gross
14 Settlement Amount, to Plaintiff for her service as Class Representative is preliminarily approved.

15 10. Subject to further consideration by the Court at the time of the Final Approval Hearing,
16 Class Counsel's request of attorneys' fees in the amount of 33.33% of the Gross Settlement Amount,
17 presently expected to be \$95,000, and declared costs of up to \$15,000, are preliminarily approved.

18 11. The Court adopts the following dates and deadlines:

19 Administrator to mail Class Notice	Within 20 calendar days of the POA
20 Deadline for Class Members to object or opt out	Within 45 calendar days after Notice mailed.
21 Plaintiff to file Motion for Attorneys' Fees, Costs and Service Payment.	Not less than 16 court days before the Final Approval hearing.
22 Deadline for Plaintiff to file Motion for Final Approval.	Not less than 16 court days before the Final Approval hearing.
23 Final Approval Hearing.	Not less than 100 days after the POA

24
25 12. A Final Approval hearing on the questions of whether the proposed Settlement,
26 attorneys' fees to Class Counsel, and the Class Representatives' Service Payments should be finally
27 approved as fair, reasonable and adequate is scheduled in for April 25 2024 at 9:00 a.m. Plaintiff is to
28 file two (2) separate motions; one addressing approval of the Settlement and one addressing the

1 propriety of sought fees, costs, and enhancement award. The parties to the Agreement are directed to
2 carry out their obligations under the Settlement Agreement.

3 Dated: JAN 10 2024



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5 HON. CHARLES S. TREAT
6 SUPERIOR COURT JUDGE
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EXHIBIT 1

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SAMANTHA OWENS,

Plaintiff,

v.

FIDELITY NATIONAL HOME WARRANTY
COMPANY; and DOES 1-100 inclusive,

Defendants.

Case No. MSC21-00731

JOINT STIPULATION FOR CLASS
ACTION SETTLEMENT AND RELEASE

1 This Joint Stipulation of Class Action Settlement and Release (hereinafter, "Settlement") is
2 made and entered into by and between Plaintiff Samantha Owens, individually and on behalf of the
3 Settlement Class, and Defendant Fidelity National Home Warranty Company, and is subject to the
4 terms and conditions hereof and the approval of the Court.

5 **DEFINITIONS**

6 1. "Action" means this lawsuit between the Parties pending in the Superior Court for
7 the County of Contra Costa as Case No. MSC21-00731, including the alleged class claims,
8 representative claims, and individual claims asserted therein.

9 2. "Class Counsel" refers to the law firm of Mayall Hurley P.C.

10 3. "Class Notice" means the Notice of Proposed Class Action Settlement that shall be
11 mailed to Settlement Class Members, subject to court approval, in substantially the form attached
12 hereto as "Exhibit A."

13 4. "Class Period" is the period from April 12, 2017, through and including September
14 21, 2023.

15 5. "Defendant" means Fidelity National Home Warranty Company.

16 6. "Defendant's Counsel" refers to the law firm of Littler Mendelson, P.C.

17 7. "LWDA" means the California Labor & Workplace Development Agency.

18 8. "PAGA" means the California Labor Code's Private Attorneys General Act of 2004,
19 as amended, section 2698, *et seq.*

20 9. "PAGA Period" is the period from April 12, 2020, through and including September
21 21, 2023.

22 10. "Parties" means Plaintiff and Defendant, collectively.

23 11. "Plaintiff" means named Plaintiff Samantha Owens.

24 12. "Qualified Class Member" means a Settlement Class Member who does not timely
25 seek exclusion from the Settlement Agreement. All Qualified Class Members shall be included in
26 the Settlement and shall receive a Settlement Share in exchange for the full release of the Settlement
27 Class Released Claims (as defined herein) for the entire Class Period.

13. "Settlement" or "Settlement Agreement" shall be the collective terms and conditions set forth by way of this Joint Stipulation of Class Action Settlement and Release to completely settle and resolve any and all claims in and pertaining to this Action.

14. "Settlement Administrator" means the third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

15. “Settlement Class” includes all non-exempt individuals who worked for Defendant in California at any time during the Class Period and who are members of one or more of the following subclasses: (1) the “Meal Period Subclass,” which includes those who worked at least one shift of more than five (5) hours from March 1, 2020, through and including September 21, 2023; (2) the “Overtime Subclass,” which includes those who earned a non-discretionary bonus or other remuneration pertaining to a workweek when he or she also worked overtime on at least one occasion from April 12, 2017, through and including September 21, 2023, and who were not part of the “Overtime Class” in the matter of *Dillard/Menchaca v. Fidelity National Financial, Inc., et al.*, Contra Costa County Superior Court Case No. C18-00394; and (3) the “Wage Statement Subclass,” which includes those who received one or more wage statements at any time from April 12, 2020, through and including September 21, 2023. All Settlement Class Members shall receive a portion of the PAGA Allocation in exchange for the full release of the PAGA Release (as defined herein) for the entire PAGA Period. A “Settlement Class Member” is an individual member of the Settlement Class.

16. “Total Workweeks” means the number of calendar workweeks that the respective Settlement Class Member worked during the Class Period as a member of the Meal Period Subclass, Overtime Subclass, and/or Wage Statement Subclass.

BACKGROUND

17. On February 2, 2021, Plaintiff provided notice to LWDA of the alleged Labor Code violations in this Action.

18. On April 12, 2021, Plaintiff filed the Class and Representative Action Complaint in this Action, alleging seven causes of action: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Breaks; (4) Failure to Furnish Accurate Itemized Wage Statements; (5) Failure to Timely Pay All Wages Due and Owing; (6) Unfair Business Practices; and (7) Violation of the Private Attorneys General Act (collectively, the “Class Allegations”).

RECITALS

19. The Parties have conducted formal and informal discovery and investigation of the facts and law in this Action. Such discovery and investigation have included, inter alia, the exchange of informal data and discoverable information in preparation for the mediation session. The Parties have analyzed payroll and other data pertaining to Plaintiff and the Settlement Class during the relevant Class Period, including but not limited to, employee workweeks, time records, meal period records, wage statements, wages, hours worked, compensation paid, and rates of hourly pay.

20. Plaintiff believes the action is meritorious. Plaintiff and Class Counsel have considered the expense and length of continued proceedings necessary to continue the action against Defendant through litigation, pre-trial motions, trial, and any possible appeals. Plaintiff and Class Counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's defenses thereto, and the difficulties in establishing Plaintiff's entitlement to monetary recovery and relief. Plaintiff and Class Counsel have also considered the settlement negotiations conducted by the Parties with the mediator, David Phillips. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement is fair and reasonable, and in the best interests of Plaintiff and the Settlement Class.

21. Defendant disputes the merits of the action and deny all liability and wrongdoing of any kind associated with the claims alleged in the Action or otherwise. Defendant contends, inter alia, that at all times it fully complied with all state and federal wage and hour laws, including all Labor Code and Wage Order requirements, and all regulations applicable to Plaintiff and the

1 Settlement Class in connection with the services performed for Defendant. Nothing contained in
2 this Settlement Agreement, nor any documents referred to herein, nor any action taken to carry out
3 and/or consummate the Settlement is, or may be construed as, or may be used as, an admission of
4 liability, culpability, negligence or wrongdoing by or against Defendant as to the merits or lack
5 thereof of the claims being settled by this Settlement Agreement.

6 22. On May 5, 2023, the Parties mediated the Action before David Phillips, who is a
7 highly experienced and well-regarded mediator in employment litigation, specifically including
8 wage and hour class action matters. After a full day of mediation, the Parties were not able to
9 resolve this Action. The Parties continued their settlement negotiations for more than two months,
10 and with the assistance of mediator David Phillips, agreed to the material terms of this settlement
11 by accepting the mediator's settlement proposal on July 20, 2023.

12 23. The Parties now enter into this Settlement Agreement to submit to the Court for
13 approval in accordance with their agreement to obtain final approval of the Settlement. As more
14 particularly set forth below, it is the desire of the Parties to fully, finally and forever settle,
15 compromise and discharge the Settlement Class Released Claims. In addition, Plaintiff agrees to
16 enter into a general release of all claims as more particularly set forth below.

17 24. For settlement purposes only, the Parties conditionally stipulate and agree that all of
18 the requisites for establishing class certification are met with respect to the "Settlement Class," as
19 defined above, and stipulate to certification under Code of Civil Procedure section 382 of this class.
20 Defendant does not waive, and instead expressly reserves, its right to challenge the propriety of
21 class certification for any purpose should the Court not approve the Settlement. Defendant's
22 willingness to stipulate to class certification as part of the Settlement shall have no bearing on, and
23 shall not be admissible in or considered in connection with, the issue of whether a class should be
24 certified in a non-settlement context in this Action and shall have no bearing on, and shall not be
25 admissible or considered in connection with, the issue of whether a class should be certified in any
26 other lawsuit.

27 25. Should the Settlement not achieve final approval for any reason, the Parties agree
28 that this Action shall revert to the procedural posture that existed as of the date the Parties accepted

1 the mediator's proposal on July 20, 2023, including but not limited to any pending discovery
2 requests and motions, and no Party shall have waived any rights between the Parties and/or the
3 Settlement Class, and/or any individual member of the Settlement Class.

4 26. The Parties intend that this Settlement Agreement shall include a full and complete
5 settlement and release, as more particularly set forth below, of Defendant, and each of its past,
6 present and future affiliates, parent companies, subsidiaries, shareholders, lenders, officers,
7 partners, directors, employees, agents, attorneys, insurers, predecessors, representatives,
8 accountants, plan administrators, heirs, trustees and successors and assigns, and each and all of
9 their respective past, present and future officers, partners, directors, servants, agents, shareholders,
10 members, employees, representatives, accountants, insurers, and attorneys and all persons acting
11 under, by, through, or in concert with any of them (the "Released Parties").

12 27. In connection with the proposed certification of the Settlement Class, the Parties
13 shall cooperate and present to the Court for its consideration any additional competent evidence, as
14 may be requested by the Court, under the applicable due process requirements and standards for
15 class certification, and shall take all steps necessary and appropriate to obtain preliminary and final
16 approval of the Settlement and to effectuate all aspects of the Settlement.

17 SETTLEMENT STRUCTURE

18 28. NOW, THEREFORE, in consideration of the mutual covenants, promises, and
19 warranties set forth herein, the Parties agree, subject to the Court's approval, as follows:

20 A. Settlement: This Action shall be settled and compromised as between
21 Plaintiff, the Settlement Class, and Defendant, subject to the terms and conditions set forth in this
22 Settlement Agreement and the approval of the Superior Court of California, County of Contra
23 Costa. In the event that Judgment is not entered, or in the event that this Settlement Agreement is
24 modified in any material respect, or in the event that the Effective Date, as defined herein, does not
25 occur, this Settlement Agreement shall be deemed null and void and shall be of no force or effect
26 whatsoever, and shall not be referred to or utilized for any purpose whatsoever.

27 B. Gross Settlement Amount: The settlement is in the gross amount of Two
28 Hundred Eighty-Five Thousand Dollars and Zero Cents (\$285,000.00) (hereinafter, the "Gross

Settlement Amount"). This Gross Settlement Amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which shall be separately paid by Defendant to the Settlement Administrator. The Gross Settlement Amount shall be inclusive of, as described and defined herein, all settlement payments to Qualified Class Members, the costs of settlement administration, Class Counsel's reasonable attorneys' fees, Class Counsel's reasonable litigation expenses and costs, service fee award to Plaintiff, and the PAGA Allocation. No other funds shall be owed or paid by Defendant in excess of the Gross Settlement Amount, other than the employer-side tax obligations identified above.

C. Net Settlement Amount: The Net Settlement Amount shall be the Gross Settlement Amount, less all of the following: the costs of settlement administration (subject to the approval of the Court), Class Counsel's reasonable attorneys' fees, expenses, and costs (subject to the approval of the Court), Plaintiff's service fee award (subject to the approval of the Court), and the PAGA Allocation (subject to the approval of the Court). It is estimated that the Net Settlement Amount will be One Hundred Forty-Seven Thousand Five Hundred Dollars (\$147,500).

D. Settlement Share of Qualified Class Members: Each Qualified Class Member's respective share of the Net Settlement Amount shall be calculated as follows:

i. As described below, Defendant will provide the Settlement Administrator with Settlement Class Information (as defined herein), including the Settlement Class Members' respective dates of employment.

ii. From the Settlement Class Information, the Settlement Administrator shall determine the Total Workweeks for each Qualified Class Member as a member of the (1) Meal Period Subclass, (2) Overtime Subclass, and/or (3) Wage Statement Subclass.

iii. After final approval of this Settlement and according to the timetables set forth in this Settlement Agreement, all Qualified Class Members who are members of the Meal Period Subclass are eligible to receive a pro-rata share of fifty percent (50%) of the Net Settlement Amount (the "Meal Period Share"). Each Qualified Class Member who is a member of the Meal Period Subclass shall receive a Meal Period Share in exchange for the full release of the

1 Settlement Class Released Claims for the entire Class Period. Qualified Class Members of the
2 Meal Period Subclass shall ultimately be entitled to a distribution in the amount of that fraction of
3 the Meal Period Share, in which the numerator is the number of the respective Qualified Class
4 Member's Total Workweeks between March 1, 2020 and September 21, 2023, and the denominator
5 is the sum, aggregate total of the Total Workweeks of all Qualified Class Members of the Meal
6 Period Subclass between March 1, 2020 and September 21, 2023. Defendant represented at the
7 mediation on May 5, 2023 that there were approximately 104 members of the Meal Period Subclass.
8 If Defendant has underrepresented the number of members of the Meal Period Subclass as of May
9 5, 2023 for any reason by more than ten (10) percent, Defendant agrees to reduce the Class Period
10 for the Meal Period Subclass to a date earlier than September 21, 2023 to reduce the increase to ten
11 (10) percent or less.

12 iv. After final approval of this Settlement and according to the
13 timetables set forth in this Settlement Agreement, all Qualified Class Members who are members
14 of the Overtime Subclass are eligible to receive a pro-rata share of fifteen percent (15%) of the Net
15 Settlement Amount (the "Overtime Share"). Each Qualified Class Member who is a member of the
16 Overtime Subclass shall receive an Overtime Share in exchange for the full release of the Settlement
17 Class Released Claims for the entire Class Period. Qualified Class Members of the Overtime
18 Subclass shall ultimately be entitled to a distribution in the amount of that fraction of the Overtime
19 Share, in which the numerator is the number of the respective Qualified Class Member's Total
20 Workweeks between April 12, 2017 and September 21, 2023, and the denominator is the sum,
21 aggregate total of the Total Workweeks of all Qualified Class Members of the Overtime Subclass
22 between April 12, 2017 and September 21, 2023. Defendant represented at the mediation on May
23 5, 2023 that there were approximately 106 members of the Overtime Subclass. If Defendant has
24 underrepresented the number of members of the Overtime Subclass as of May 5, 2023 for any
25 reason by more than ten (10) percent, Defendant agrees to reduce the Class Period for the Overtime
26 Subclass to a date earlier than September 21, 2023 to reduce the increase to ten (10) percent or less.

27 v. After final approval of this Settlement and according to the
28 timetables set forth in this Settlement Agreement, all Qualified Class Members who are members

1 of the Wage Statement Subclass are eligible to receive a pro-rata share of twenty percent (20%) of
2 the Net Settlement Amount (the "Wage Statement Share"). Each Qualified Class Member who is a
3 member of the Wage Statement Subclass shall receive a Wage Statement Share in exchange for the
4 full release of the Settlement Class Released Claims for the entire Class Period. Qualified Class
5 Members of the Wage Statement Subclass shall ultimately be entitled to a distribution in the amount
6 of that fraction of the Wage Statement Share, in which the numerator is the number of the respective
7 Qualified Class Member's Total Workweeks between April 12, 2020 and September 21, 2023, and
8 the denominator is the sum, aggregate total of the Total Workweeks of all Qualified Class Members
9 of the Wage Statement Class between April 12, 2020 and September 21, 2023. Defendant
10 represented at the mediation on May 5, 2023 that there were approximately 104 members of the
11 Wage Statement Subclass. If Defendant has underrepresented the number of members of the Wage
12 Statement Subclass as of May 5, 2023 for any reason by more than ten (10) percent, Defendant
13 agrees to reduce the Class Period for the Wage Statement Subclass to a date earlier than September
14 21, 2023 to reduce the increase to ten (10) percent or less.

15 vi. After final approval of this Settlement and according to the
16 timetables set forth in this Settlement Agreement, all Qualified Class Members who are members
17 of the Meal Period Subclass or the Overtime Subclass whose employment with Defendant ended
18 between April 12, 2018 and September 21, 2023 will additionally receive an equal pro-rata portion
19 of fifteen percent (15%) of the Net Settlement Amount (the "Waiting-Time Penalty Share").

20 vii. The Meal Period Share, Overtime Share, Wage Statement Share, and
21 Waiting-Time Penalty Share shall together constitute the entire potential Settlement Share of each
22 Qualified Class Member ("Settlement Share"). For tax purposes, the Settlement Share shall be
23 allocated as follows: (1) the Meal Period Share shall be allocated as penalties; (2) the Overtime
24 Share shall be allocated as wages subject to reduction for payroll tax and withholding requirements;
25 (3) the Wage Statement Share shall be allocated as penalties; and (4) the Waiting-Time Penalty
26 Share shall be allocated as penalties. Each Qualified Class Member shall assume full responsibility
27 and liability for correctly characterizing the Settlement Share he or she receives for tax purposes
28 and for the payment of any other taxes owing on that amount.

1 viii. The Settlement Share will not count as earnings or compensation for
2 purposes of any benefits (e.g., 401(k) plans or retirement plans) sponsored by Defendant.

3 ix. A Qualified Class Member's act of negotiating his or her Settlement
4 Share for payment shall operate as, and be deemed to express, the Qualified Class Member's intent
5 to opt in, join, settle, and fully release and discharge all of the Settlement Class Released Claims,
6 including any claims the Qualified Class Member may have under the Fair Labor Standards Act,
7 29 U.S.C. § 201, *et seq.*

8 E. Class Counsel Attorneys' Fees: Defendant agrees that it will not oppose
9 Plaintiff's request for an award of attorneys' fees to Class Counsel in an amount up to one-third
10 (1/3) of the Gross Settlement Amount in order to compensate and reimburse Class Counsel for all
11 of the work already performed in this case, all of the work remaining to be performed by Class
12 Counsel in documenting the Settlement, securing Court approval of the Settlement, making sure
13 that the Settlement is fairly administered and implemented, and obtaining final approval of this
14 Settlement. Plaintiff believe such a percentage fee is warranted considering, without limitation: (1)
15 the time and labor required of Class Counsel in this Action; (2) the complexity involved and the
16 results obtained; (3) the potential contingent nature of the compensation; (4) the opportunity costs
17 to Class Counsel in the time the engagement has taken away from other potential matters; and (5)
18 the informed consent of Plaintiff to a percentage fee to Class Counsel of up to one-third of the
19 Gross Settlement Amount. The Parties acknowledge and understand that Class Counsel's
20 attorneys' fees will be paid entirely from the Gross Settlement Amount, regardless of the amount
21 approved by the Court, and that should the Court approve a lesser amount than set forth in this
22 subparagraph, the unapproved amount shall be allocated to the Net Settlement Amount.

23 F. Class Counsel's Costs: Class Counsel will separately seek recovery of their
24 actual, reasonable litigation costs and expenses. Defendant agrees that it will not oppose or
25 otherwise object to Plaintiff's request for an award of costs in the amount up to Fifteen Thousand
26 Dollars (\$15,000). The Parties acknowledge and understand that Class Counsel's costs will be paid
27 entirely from the Gross Settlement Amount, regardless of the amount approved by the Court, and
28

1 that should the Court approve a lesser amount than set forth in this subparagraph, the unapproved
2 amount shall be allocated to the Net Settlement Amount.

3 G. Enhancement Payment for Plaintiff: Subject to Court approval, Defendant
4 will not object to application for a service fee award of Ten Thousand Dollars (\$10,000) for
5 Plaintiff. It is understood that this service fee award is in addition to Plaintiff's Settlement Share
6 as a Qualified Class Member. The Settlement Administrator will issue IRS Form 1099 for the
7 service fee award to Plaintiff. Plaintiff shall assume full responsibility and liability for correctly
8 characterizing this compensation on her personal income tax return for tax purposes and for paying
9 any taxes on the amounts received. The Parties acknowledge and understand that the service fee
10 award will be paid entirely from the Gross Settlement Amount, regardless of the amount approved
11 by the Court, and that should the Court approve a lesser amount(s) than set forth in this
12 subparagraph, the unapproved amount(s) shall be allocated to the Net Settlement Amount.

13 H. The PAGA Allocation: The Parties have agreed that Ten Thousand Dollars
14 (\$10,000) of the Gross Settlement Amount shall be allocated to the resolution of all Settlement
15 Class Members' claims arising under PAGA (the "PAGA Allocation"). Pursuant to PAGA,
16 seventy-five percent (75%) of the PAGA Allocation shall be paid to the LWDA, and the remaining
17 25% shall be distributed evenly amongst all Settlement Class Members, regardless of whether the
18 Settlement Class Member is a Qualified Class Member, in exchange for the PAGA Release. The
19 Parties acknowledge and understand that the PAGA Allocation will be paid entirely from the Gross
20 Settlement Amount, regardless of the amount approved by the Court, and that any unapproved
21 amount of the PAGA Allocation shall be allocated to the Net Settlement Amount.

22 I. Settlement Administration Costs: The Settlement Administrator has agreed
23 to perform all necessary class administration duties for a fee estimated to be no more than Seven
24 Thousand Five Hundred Dollars (\$7,500). These administration duties shall include, without
25 limitation, searching for updated addresses before mailing Class Notices, performing necessary
26 skip traces on notices returned as undeliverable, calculating, processing, and mailing settlement
27 checks, handling tax withholding, contributions, reporting and filings. The Parties acknowledge
28 and understand that the Settlement Administrator's fees will be paid entirely from the Gross

1 Settlement Amount, regardless of the amount approved by the Court, and that any unapproved or
2 unused portion below the amount set forth in this paragraph shall be allocated to the Net Settlement
3 Amount.

4 29. Effective Date: The "Effective Date" is a condition of performance of the
5 obligations under this Settlement. The Effective Date is the latter of: (1) the date upon which an
6 order granting final approval or final judgment is entered, if no Objection (defined herein) to the
7 Settlement is timely received from a Settlement Class Member; or (2) if any Objection to the
8 Settlement is received, the last date after the final judgment by which a notice of appeal of the order
9 granting final approval or the final judgment may be timely filed, and none is filed; or (3) if any
10 Objection is received and a notice of appeal from the order granting final approval or the final
11 judgment is filed, the date on which the Superior Court's order granting final approval or final
12 judgment is finally affirmed or upheld without any further right of appeal by any party or third
13 party and following the expiration of any such period for such further appeal that may be available.

14 30. Settlement Funding and Payment Timetable: Within fourteen (14) calendar days of
15 the Effective Date, Defendant will provide to the Settlement Administrator the Gross Settlement
16 Amount pursuant to this Settlement and the order and Judgment of final approval. The Settlement
17 Administrator shall be responsible for depositing the funds in the Settlement Account and solely
18 responsible for taking all necessary and reasonable steps to ensure the entirety of the funds are
19 securely deposited into and remain in the Settlement Account for the distributions specified in this
20 Agreement. Within ten (10) days of the Effective Date, the Settlement Administrator shall calculate
21 any Employer-side taxes due on the Gross Settlement amount and advise Defendant of same.
22 Defendant shall deposit any additional amount due, which the Parties believe will only be amounts
23 relating to the Overtime Share funds, within ten (10) days of being advised of the amount. Within
24 fourteen (14) calendar days of the Settlement Administrator's receipt of the Gross Settlement
25 Amount from Defendant, the Settlement Administrator will make all required distributions
26 pursuant to this Settlement and the order and Judgment of final approval including, to the extent
27 ordered, all Settlement Shares to Qualified Class Members and Court-approved attorneys' fees,
28 costs, enhancement payment, costs of settlement administration, and PAGA Allocation.

1 31. Resolution of Dispute: If any Settlement Class Member timely disputes the number
2 of his or her Total Workweeks, by way of a written dispute that is postmarked within the Notice
3 Period (as defined below) as provided for in the Class Notice, the dispute shall be determined by
4 the Settlement Administrator, who shall examine all available written records in an attempt to
5 resolve the dispute. Defendant's records shall be presumed accurate and control unless the
6 Settlement Class Member provides satisfactory proof that Defendant's records are incorrect. In
7 any event, the Settlement Administrator will make every reasonable effort to resolve any such
8 disputes before final approval of this Settlement. The Settlement Administrator's determination of
9 the eligibility for and amount of any Settlement Share shall be final, not subject to appeal, and
10 binding upon the Settlement Class Member and the Parties.

11 **NOTICE TO THE SETTLEMENT CLASS**

12 32. Subject to Court approval, the Parties agree that, within fourteen (14) calendar days
13 after the Court enters any Order granting preliminary approval of the Settlement, Defendant will
14 provide to the Settlement Administrator the following information for each Settlement Class
15 Member in a reasonable format requested by the Settlement Administrator: (1) name; (2) last known
16 home address and telephone numbers; (3) social security number; and (4) dates of employment
17 (collectively, the "Settlement Class Information"). The Settlement Administrator will perform
18 address updates and verifications, as necessary, prior to the first mailing. Within fourteen (14)
19 calendar days after the Settlement Administrator receives the Settlement Class Information from
20 Defendant, and subject to Court approval, the Settlement Administrator will mail the Class Notice
21 by first class mail.

22 **SETTLEMENT ADMINISTRATION**

23 33. Settlement Class Information. Any Settlement Class Information or other personnel
24 data provided by Defendant to the Settlement Administrator, shall be treated as confidential and
25 shall not be used by the Settlement Administrator for any purpose other than as permitted by this
26 Agreement. Settlement Class Information shall not be disclosed to Class Counsel, Plaintiff, or any
27 Settlement Class Member without the written consent of Defendant or order of the Court. Further,
28 the Settlement Administrator shall use commercially reasonable efforts to secure the data provided

1 by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data
2 other than as permitted by this Agreement. At no time during the settlement process will any
3 Settlement Class Member's Social Security Number be filed with the Court, except under seal as
4 may be ordered by the Court. The Settlement Administrator shall ensure that the Notice and any
5 other communications to Settlement Class Members shall not include the Settlement Class
6 Members' Social Security Number, except for the last four digits.

7 34. Notice Period. Settlement Class Members will be afforded the opportunity to submit
8 an objection to the Settlement ("Objection") or to exclude themselves from the Settlement
9 ("Exclusion Request") by mail. Settlement Class Members will be permitted no more than forty-
10 five days (45) calendar days from the date the Class Notices are mailed by the Settlement
11 Administrator to postmark their Objection or Exclusion Request to the Settlement Administrator
12 (the "Notice Period"). To be valid, an Objection or Exclusion Request must be timely submitted
13 during the Notice Period and must follow the procedures outlined below. These procedures must
14 also be described in the Class Notice. A Settlement Class Member may not submit both an
15 Objection and an Exclusion Request; if a Settlement Class Member submits to Exclusion Request
16 to exclude himself or herself from the Settlement, he or she has no right to submit an Objection to
17 the Settlement.

18 35. Exclusion Requests. Any Settlement Class Member, other than Plaintiff, may elect
19 to submit an Exclusion Request during the Notice Period. To be effective, any such election: (i)
20 must be made in writing; (ii) must contain the name and sufficient information to verify the
21 individual's identity in the opinion of the Settlement Administrator, which may include address,
22 telephone number, and/or last four digits of the social security number of the Settlement Class
23 Member requesting exclusion; (iii) must be signed by the Settlement Class Member who is electing
24 to be excluded; and (iv) must be mailed to the Settlement Administrator on or before the end of the
25 Notice Period. As applicable, the date of the postmark on the mailing envelope shall be the
26 exclusive means to determine whether an Exclusion Request is timely. Any Settlement Class
27 Member who timely submits an Exclusion Request in compliance with these requirements shall not
28 be a Qualified Class Member, shall not be entitled to receive any Settlement Share, shall not be

entitled to submit an Objection to the Settlement Agreement, and shall not be bound by the terms of this Settlement Agreement, except that the PAGA Release shall apply to all Settlement Class Members and all Settlement Class Members shall still be entitled to his or her individual share of the PAGA Allocation. Under no circumstances may any Settlement Class Member request exclusion from that portion of the Settlement relating to the PAGA Allocation, and any request for exclusion shall not have any effect on the PAGA Release, which shall remain in full force and effect.

36. Objections: Any Qualified Class Member (one who does not timely seek exclusion from the Settlement Agreement), other than Plaintiff, may submit an Objection to final approval of this Settlement, provided that the Objection is made in writing and mailed to the Settlement Administrator by no later than the last day of the Notice Period. As applicable, the date of the postmark on the mailing envelope shall be the exclusive means to determine whether the Objection is timely. An Objection must clearly state the name of the case and case number and must also include the objector's full name, address, and the basis for any Objection and, if the objector is represented by counsel, the name and address of the objector's counsel. The Objection must also state whether the Qualified Class Member intends to appear at the final approval hearing and present oral argument. At the Court's discretion, any Qualified Class Member who has not complied with these requirements may not be heard at the final approval hearing. Any Qualified Class Member who fails to comply with these requirements will be deemed to have waived any right to submit an Objection to the Settlement Agreement. The Settlement Administrator shall promptly forward any and all Objections that it receives to Class Counsel and Defendant's Counsel.

37. Re-mailing. The Settlement Administrator will perform one skip-trace on any returned Class Notices and re-mail Class Notices to any updated address (if any) within seven (7) calendar days of receipt of the returned mail for all returned mail received by the Settlement Administrator by the conclusion of the Notice Period. The deadline for a Settlement Class Member, who has been re-mailed the Class Notice, to submit the Exclusion Request, or to object to the Settlement, shall be the later of the conclusion of the Notice Period or fifteen (15) calendar days

1 from the date the Class Notice is re-mailed. It is the intent of the Parties that the Settlement
2 Administrator use reasonable and customary means to locate Settlement Class Members.

3 38. Deficiency Notice. Within seven (7) calendar days of receipt by the Settlement
4 Administrator of any timely submitted, but deficient Exclusion Request, the Settlement
5 Administrator will send a deficiency notice to the Settlement Class Member regarding any
6 irregularities ("Deficiency Notice"). The Deficiency Notice will provide any applicable Settlement
7 Class Member no more than fifteen (15) calendar days from the mailing of any Deficiency Notice
8 to postmark the response to any deficiencies in writing. The failure of a Settlement Class Member
9 to cure a deficiency shall invalidate an Exclusion Request, unless counsel for both of the Parties
10 stipulate otherwise.

11 39. Weekly Report. On a weekly basis, the Settlement Administrator will advise Class
12 Counsel and Defendant's Counsel regarding the number of Exclusion Requests and/or Objections
13 that have been submitted. The Settlement Administrator shall be responsible for calculating the
14 Settlement Share for each Qualified Class Member, issuing payments to Qualified Class Members,
15 and performing all other settlement administration duties required by this Settlement Agreement.
16 Upon completion of the Notice Period, the Settlement Administrator shall provide Class Counsel
17 and Defendant's Counsel with a report listing the amount of all payments to be made to each
18 Qualified Class Member. Proof of Payment will be filed with the Court and provided to the Parties'
19 respective counsel.

20 40. Tax Payment. The Settlement Administrator shall withhold all payroll and income
21 taxes required by law to be withheld and/or paid on behalf of the employees from its distributions
22 to the Settlement Class, and report and remit the same to the appropriate government agencies. The
23 Settlement Administrator shall report individual settlement amounts to all required taxing and other
24 authorities, and issue IRS Forms W-2 and 1099. Upon completion of administration of the
25 Settlement, the Settlement Administrator shall provide written certification of such completion to
26 the Court and counsel for all Parties.

27 41. Settlement Checks. Checks issued by the Settlement Administrator to Qualified
28 Class Members for their respective Settlement Shares shall be negotiable for one hundred and

1 twenty (120) calendar days. At the conclusion of the 120-day period the checks shall be void. A
2 Qualified Class Member's act of negotiating his or her Settlement Share for payment shall operate
3 as, and be deemed to express, the Qualified Class Member's intent to opt in, join, settle, and fully
4 release and discharge all of the Settlement Class Released Claims, including any claims the
5 Qualified Class Member may have under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

6 42. Uncashed Funds. With the sole exception of the residual, if any, resulting from any
7 Qualified Class Members' failure to deposit the check issued to them for their respective Settlement
8 Shares within the 120-day period provided above (hereafter, the "Residual"), the Parties agree that
9 Code of Civil Procedure section 384 ("Section 384") is not applicable to any portion of the Gross
10 Settlement Amount (including but not limited to any portion of the Net Settlement Amount).
11 Neither Plaintiff nor Class Counsel shall take, or cause any other person to take, a position before
12 the Court that Section 384 applies to any portion of the Gross Settlement Amount, with the sole
13 exception of the Residual. The Parties agree that any Residual will be distributed to the nonprofit
14 organization CASA of Contra Costa County, a child advocacy program that places Court Appointed
15 Special Advocates For Children (website is www.casaofalamedacounty.org), and accordingly there
16 will be no "unpaid cash residue and unclaimed or abandoned funds" within the meaning of Section
17 384. However, in the event the Residual is determined by the Court to constitute "unpaid cash
18 residue and unclaimed or abandoned funds" within the meaning of Section 384, the Residual shall
19 be distributed in compliance with Section 384, as directed by the Court after a hearing regarding
20 the actual amount paid to the class members, to the nonprofit organization CASA of Contra Costa
21 County.

22 **SETTLEMENT CLASS RELEASED CLAIMS AND PAGA RELEASE**

23 43. Other than the rights created by this Settlement Agreement, upon the Effective Date,
24 Plaintiff and each Qualified Class Member shall fully release and discharge the Released Parties
25 for the entire Class Period from any and all claims as follows:

26 A. Meal Period Subclass Members shall release the Released Parties from
27 causes of action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses,
28 interest, attorneys' fees, penalties, and damages, whether suspected or unsuspected, contingent or

1 accrued, known or unknown, arising from the factual allegations and claims set forth in the Action,
2 and occurring during the Class Period relevant to that subclass (March 1, 2020 through September
3 21, 2023) that were alleged or could have been alleged based on the factual allegations related to
4 that subclass, including, without limitation: Class Allegations predicated on allegations of Meal
5 Period violations; any claims for alleged violations of California Labor Code sections 201, 202,
6 203, 204, 210, 226, 226.3, 226.7, 512, 558, 1174, and their subparts and applicable IWC Wage
7 Orders to the extent such claims are predicated on allegations of Meal Period violations; any
8 derivative claims for unpaid wages or penalties, and for unfair, unlawful, and fraudulent business
9 practices under the California Business and Professions Code sections 17200, *et seq.* to the extent
10 they are predicated on allegations of Meal Period violations; any other state or federal statute, rule,
11 or regulating arising from or relating to allegations of Meal Period violations; and all related
12 remedies of any nature whatsoever, including without limitation all claims for restitution and other
13 equitable relief, injunctive relief, statutory damages, liquidated damages, exemplary damages,
14 punitive damages, waiting-time penalties, statutory penalties, civil penalties, interest, attorneys'
15 fees, costs, and expenses to the extent they are predicated on allegations of Meal Period violations
16 (collectively, the "Meal Period Subclass Released Claims").

17 B. Overtime Subclass Members shall release the Released Parties from causes
18 of action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses, interest,
19 attorneys' fees, penalties, and damages, whether suspected or unsuspected, contingent or accrued,
20 known or unknown, arising from the factual allegations and claims set forth in the Action, and
21 occurring during the Class Period relevant to that subclass (April 12, 2017 through September 21,
22 2023) that were alleged or could have been alleged based on the factual allegations related to that
23 subclass, including, without limitation: Class Allegations predicated on allegations of Regular Rate
24 or overtime violations; any claims for alleged violations of California Labor Code sections 201,
25 202, 203, 204, 210, 233, 246, 510, 558, 1174, 1194, and 1198 and their subparts and applicable
26 IWC Wage Orders to the extent such claims are predicated on allegations of Regular Rate or
27 overtime violations; any derivative claims for unpaid wages or penalties, and for unfair, unlawful,
28 and fraudulent business practices under the California Business and Professions Code sections

1 17200, *et seq.* to the extent they are predicated on allegations of Regular Rate or overtime
2 violations; any other state or federal statute, rule, or regulating arising from or relating to allegations
3 of Regular Rate or overtime violations; and all related remedies of any nature whatsoever, including
4 without limitation all claims for restitution and other equitable relief, injunctive relief, statutory
5 damages, liquidated damages, exemplary damages, punitive damages, waiting-time penalties,
6 statutory penalties, civil penalties, interest, attorneys' fees, costs, and expenses to the extent they
7 are predicated on allegations of Regular Rate or overtime violations (collectively, the "Overtime
8 Subclass Released Claims").

9 C. Wage Statement Subclass Members shall release the Released Parties from
10 causes of action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses,
11 interest, attorneys' fees, penalties, and damages, whether suspected or unsuspected, contingent or
12 accrued, known or unknown, arising from the factual allegations and claims set forth in the Action,
13 and occurring during the Class Period relevant to that subclass (April 12, 2020 through September
14 21, 2023) that were alleged or could have been alleged based on the factual allegations related to
15 wage statements, including, without limitation: Class Allegations predicated on wage statement
16 violations; any claims for alleged violations of California Labor Code sections 226, 226.3, and 1174
17 and their subparts and applicable IWC Wage Orders to the extent such claims are predicated on
18 allegations of wage statement violations; any derivative claims for penalties, and for unfair,
19 unlawful, and fraudulent business practices under the California Business and Professions Code
20 sections 17200, *et seq.* to the extent they are predicated on allegations of wage statement violations;
21 any other state or federal statute, rule, or regulating arising from or relating to allegations of wage
22 statement violations; and all related remedies of any nature whatsoever, including without
23 limitation all claims for restitution and other equitable relief, injunctive relief, statutory damages,
24 liquidated damages, exemplary damages, punitive damages, waiting-time penalties, statutory
25 penalties, civil penalties, interest, attorneys' fees, costs, and expenses to the extent they are
26 predicated on allegations of wage statement violations (collectively, the "Wage Statement Subclass
27 Released Claims").
28

44. In addition, other than the rights created by this Settlement Agreement, upon the Effective Date, Plaintiff, each Settlement Class Member, and the LWDA, in exchange for the PAGA Allocation, shall fully release and discharge the Released Parties for the entire PAGA Period from any and all claims seeking penalties, or any other relief under PAGA based on or arising from the allegations in the Action, including and any claims that could have been asserted under PAGA based on the facts and statutes pled in the Action, which include any applicable Industrial Welfare Commission Wage Order and claims under the California Labor Code, including but not limited to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1182.12 et seq., 1174, 1194, 1197, 1198, and their subparts, and any and all claims for Plaintiff's costs, expenses, interest, and attorneys' fees pertaining to them (collectively, the "PAGA Release").

PLAINTIFF'S GENERAL RELEASE OF ALL CLAIMS

45. Other than the rights created by this Settlement Agreement, in addition to the Meal Period Subclass Released Claims, the Overtime Subclass Released Claims, the Wage Statement Subclass Released Claims, and PAGA Release, Plaintiff individually and on behalf of each of her executors, administrators, representatives, attorneys, successors and assigns knowingly and voluntarily releases and forever discharges Defendant and the Released Parties, to the full extent permitted by law, of and from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Released Parties as of the Effective Date of this Settlement Agreement, including, but not limited to, any alleged violation of Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Family and Medical Leave Act; the Equal Pay Act; the California Family Rights Act – Cal. Gov't Code § 12945.2; the California Fair Employment and Housing Act – Cal. Gov't Code § 12900 et seq.; the California Equal Pay Law – Cal. Lab. Code § 1197.5; any other federal, state or local civil or human rights law or any other federal, state or local law, regulation or ordinance; any public policy, contract, tort or common law; or; any basis for fees or other expenses including attorneys' fees incurred in these matters.

46. To affect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of

California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California provides, "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party." Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in their favor at the time of the Effective Date of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims.

DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL

47. The Parties shall promptly submit this Settlement Agreement to the Court in support of a request for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement Agreement, the Parties shall apply to the Court for the entry of an order of preliminary approval, substantially in the form attached hereto as "**Exhibit B**," which shall:

A. Schedule a final fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class.

B. Certify the Settlement Class for settlement purposes only;

C. Certify this action under Code of Civil Procedure section 382 and Rule 3.760, *et seq.*, of the California Rules of Court as a class action for settlement purposes only;

D. Approve as to form and content the proposed Class Notice;

E. Approve the Settlement Administrator and preliminarily approve the estimated costs of settlement administration;

F. Direct the Settlement Administrator to mail the Class Notice by first class mail to the Settlement Class Members;

G. Preliminarily approve the Settlement subject only to the Objections of Settlement Class Members and final review by the Court;

1 H. Preliminarily approve Class Counsel's attorneys' fees and costs subject to
2 final review of the Court; and

3 I. Preliminarily approve the Plaintiff's service fee awards subject to final
4 review of the Court.

5 **DUTIES OF THE PARTIES PRIOR TO FINAL APPROVAL**

6 48. In advance of the final approval hearing, Class Counsel will submit to the Court a
7 proposed order of final approval and Judgment, substantially in the form attached hereto as
8 "Exhibit C," which shall:

9 A. Approve the Settlement, adjudging the terms thereof to be fair, reasonable
10 and adequate, and directing consummation of its terms and provisions;

11 B. Approve the award of attorneys' fees and costs to Class Counsel;

12 C. Approve the enhancement award to Plaintiff as set forth in the Settlement;
13 and

14 D. Approve the administration costs of the Settlement Administrator as set forth
15 in the Settlement.

16 **FINAL JUDGMENT AND CONTINUING JURISDICTION**

17 49. If the Court approves this Settlement at the Final Approval Hearing, the Parties shall
18 request that the Court enter the Final Judgment after the Settlement has been fully funded,
19 incorporating the terms of the Settlement in accordance with California Rules of Court, Rule
20 3.769(h). Pursuant to California Rule of Court 3.769(h), after granting final approval of the
21 Settlement, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment.

22 **PARTIES' AUTHORITY**

23 50. The signatories hereto hereby represent that they are fully authorized to enter into
24 this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

25 **MUTUAL FULL COOPERATION**

26 51. The Parties agree to fully cooperate with each other to accomplish the terms of this
27 Settlement Agreement, including but not limited to, execution of such documents and to take such
28 other action as may reasonably be necessary to implement the terms of this Settlement Agreement.

1 The Parties to this Settlement Agreement shall use their best efforts, including all efforts
2 contemplated by this Settlement Agreement and any other efforts that may become necessary by
3 order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth
4 herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall,
5 with the assistance and cooperation of Defendant and their counsel, take all necessary steps to
6 secure the Court's preliminary and then final approval of this Settlement.

7 **NO PRIOR ASSIGNMENTS**

8 52. The Parties hereto represent, covenant, and warrant that they have not directly or
9 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
10 person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
11 released and discharged except as set forth herein.

12 **NO ADMISSION OF LIABILITY**

13 53. Nothing contained herein, nor the consummation of this Settlement Agreement, is
14 to be construed or deemed an admission of liability, culpability, negligence or wrongdoing on the
15 part of Defendant. Defendant expressly denies that it has violated the law in any manner and
16 affirmatively asserts that its wage and hour practices, and any other acts related to its employees,
17 are and have been in full compliance with all applicable statutes and regulations. This Settlement
18 Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152,
19 be inadmissible as evidence in any proceeding except a proceeding to enforce its terms. Each of
20 the Parties hereto has entered into this Settlement Agreement with the intention to avoid further
21 disputes and litigation with the attendant inconvenience and expenses.

22 **CONSTRUCTION**

23 54. The Parties hereto agree that the terms and conditions of this Settlement Agreement
24 are the result of lengthy, arms-length negotiations between the Parties, and that this Settlement
25 Agreement shall not be construed in favor of or against any party by reason of the extent to which
26 any party or her or its counsel participated in this drafting of this Settlement Agreement.

27 **CAPTIONS AND INTERPRETATIONS**

55. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

56. This Settlement Agreement shall be subject to and governed by the laws of the State of California. The Parties acknowledge that they are subject to the continuing jurisdiction of the Court to enforce the terms of the Settlement contained herein.

MODIFICATION

57. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel of the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

DEFENDANT'S RIGHT TO RESCISSION

58. Notwithstanding any other provision of this Settlement Agreement, Defendant retains the right, in the exercise of its sole discretion, to nullify the Settlement within fourteen (14) calendar days of the expiration of the Notice Period, if four (4) percent or more of the Settlement Class Members timely exclude themselves from this Settlement. If Defendant wishes to exercise this right, Defendant must do so by written notice sent by mail or electronic mail to Class Counsel within the fourteen (14) calendar day period. None of the Parties or respective counsel shall, directly or indirectly, solicit or otherwise encourage Settlement Class Members to exclude themselves from the Settlement. In the event of such a rescission, no party may use the fact that the Parties agreed to settle this case in any future proceeding in this Action or any other action, including but not limited to, in support of a motion for class certification or as evidence of Defendant's liability in this lawsuit or the lack thereof.

INTEGRATION CLAUSE

59. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether

1 by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived
2 except in writing.

3 **BINDING ON ASSIGNS**

4 60. This Settlement Agreement shall be binding upon and inure to the benefit of the
5 Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

6 **SIGNATORIES**

7 61. It is agreed that because of the large number of Settlement Class Members, it is
8 impossible or impractical to have each Settlement Class Member execute this Settlement
9 Agreement. The Class Notice will advise all Settlement Class Members of the binding nature of
10 the release and such shall have the same force and effect as if this Settlement Agreement were
11 executed by each Settlement Class Member.

12 **PUBLIC COMMENT**

13 62. The Parties and their counsel agree that they will not issue any press releases, initiate
14 any contact with the press, respond to any press inquiry or have any communication with the press
15 about the fact, amount or terms of this Settlement. In addition, the Parties and their counsel agree
16 that they will not engage in any advertising or distribute any marketing materials relating to the
17 settlement of this case in any manner that identifies Defendant, including but not limited to any
18 postings on any websites maintained by Class Counsel except as explicitly provided below. Neither
19 Plaintiff nor Class Counsel will discuss the terms or the fact of the settlement with third parties
20 other than (1) their immediate family members, (2) their respective accountants or lawyers as
21 necessary for tax purposes; or (3) other Settlement Class Members. Plaintiff and Class Counsel
22 agree not to publish any of the terms or conditions of this Settlement in any manner that identifies
23 Defendant. The only limited exception is that Class Counsel may identify the fact of the Settlement
24 of this action in a court filing in another case to demonstrate their adequacy as counsel in such other
25 matters, but in no event shall Class Counsel identify the amount of this Settlement as associated
26 with Defendant. In the event that Class Counsel seeks to reference this settlement, Class Counsel
27 must receive express written consent to do so from Defendant's counsel prior to its publication.
28 Defendant shall act in good faith and shall not unreasonably withhold such approval if requested.

COUNTERPARTS

63. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. Copies of the executed Settlement Agreement shall be effective for all purposes as though the signatures contained therein were original signatures.

Dated: 9/15/2023

DocuSigned by:

Samantha Owens

Samantha Owens
Plaintiff/Class Representative

Dated: 09/21/2023

Madeline G. M. Lovejoy
By: Madeline G. M. Lovejoy
Assistant Vice President and Assistant Secretary
Fidelity National Home Warranty Company

APPROVED AS TO FORM

MAYALL HURLEY P.C.

Dated: September 15, 2023

By: *Jed B.*

Robert J. Wassermann
Jenny D. Baysinger
Attorneys for Plaintiff and Settlement Class

LITTLER MENDELSON, P.C.

Dated: September 21, 2023

By: *Angela J. Rafoth*

Angela J. Rafoth
Attorneys for Defendant

EXHIBIT A

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

(*Owens v. Fidelity National Home Warranty Co.*, Superior Court of the State of California,
County of Contra Costa, Case No. MSC21-00731)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. If the Settlement is approved by the Court, your estimated Settlement Share is: \$<< >>. See the explanation in Section 5 below. If you do nothing, you will be considered a Qualified Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the Settlement Share payment, you will release the Released Class Claims as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself The Response Deadline is 	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will not receive any Settlement Share and you will not be bound by the Settlement; however, if you were employed during the PAGA Period, you will still be paid your individual share of the PAGA Allocation and will remain bound by the PAGA Release regardless of whether you submit a request for exclusion. If you choose to exclude yourself, you must notify the Settlement Administrator as explained in Section 7 below.
Object The Response Deadline is 	Write to the Court about why you object to or do not agree with the Settlement, or appear at the Final Approval Hearing to make an oral objection. Instructions are provided in Section 8 below.

1. Why did I get this Notice?

A proposed class action settlement of the above-captioned action (the "Settlement") pending in the Superior Court of the State of California, in and for the County of Contra Costa (the "Court") has been reached between Plaintiff Samantha Owens ("Plaintiff") and Defendant Fidelity National Home Warranty ("Defendant") and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of one or more of the following groups within the Settlement Class defined as follows:

All non-exempt individuals who worked for Defendant in California at any time during the Class Period and who are members of one or more of the following subclasses:

(1) the "Meal Period Subclass," which includes those who worked at least one shift of more than five (5) hours from March 1, 2020, through and including September 21, 2023;

(2) the "Overtime Subclass," which includes those who earned a non-discretionary bonus or other remuneration pertaining to a workweek when he or she also worked overtime on at least one occasion from April 12, 2017, through and including September 21, 2023, and who were not part of the "Overtime Class" in the matter of *Dillard/Menchaca v. Fidelity National Home Warranty Co., et al.*, Contra Costa County Superior Court Case No. C18-00394; and

(3) the "Wage Statement Subclass," which includes those who received one or more wage statements at any time from April 12, 2020, through and including September 21, 2023.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement. To exclude yourself from, or object to, the Settlement you must take action by certain deadlines. If you want to be part of the Settlement, you don't need to do anything to obtain your Settlement Share. Defendant will not retaliate against you for any actions you take with respect to the Settlement.

2. What is this class and representative action lawsuit about?

On April 12, 2021, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Contra Costa, Case No. MSC21-00731 (the "Action"), alleging the following claims against Defendant: failure to pay minimum wage, failure to properly calculate and pay overtime wages, failure to provide required meal periods and pay meal period premiums, failure to provide accurate itemized wage statements, failure to timely pay wages at termination, unfair competition, and violation of California's Private Attorneys General Act of 2004 ("PAGA") (collectively, the "Class Allegations").

Defendant denies and disputes all claims and the Class Allegations. Specifically, Defendant contends that Plaintiff and the Settlement Class were properly compensated for wages under California law; that Plaintiff and the Settlement Class were provided with meal periods and/or premiums in compliance with California law; that Defendant complied with California wage statement and payroll requirements; that Defendant is not liable for any of the damages or penalties claimed or that could be claimed in the Action; and that this Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved Plaintiff to serve as Class Representative and the law firm of Mayall Hurley P.C. to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Two Hundred Eighty-Five Thousand Dollars (\$285,000) (the “Gross Settlement Amount”) to fund the settlement of this Action. The Gross Settlement Amount includes all payments of Settlement Shares to Qualified Class Members, the costs of the Settlement Administrator, Class Counsel’s reasonable attorneys’ fees, expenses, and costs, Plaintiff’s Service Award, and the PAGA Allocation. Any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages shall be separately paid by Defendant.

Within fourteen (14) calendar days of the Effective Date, Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. The “Effective Date” is the latter of: (1) the date upon which an order granting final approval or final judgment is entered, if no Objection to the Settlement is timely received from a Settlement Class Member; or (2) if any Objection to the Settlement is received, the last date after the final judgment by which a notice of appeal of the order granting final approval or the final judgment may be timely filed, and none is filed; or (3) if any Objection is received and a notice of appeal from the order granting final approval or the final judgment is filed, the date on which the Superior Court’s order granting final approval or final judgment is finally affirmed or upheld without any further right of appeal by any party or third party and following the expiration of any such period for such further appeal that may be available. Fourteen (14) calendar days after the settlement is funded, the Settlement Administrator will mail checks for the Settlement Shares to Qualified Class Members.

Amounts to be Paid From the Gross Settlement Amount. The following proposed payments subject to Court approval will be deducted from the Gross Settlement Amount before Settlement Shares are made to Class Members who do not request exclusion (“Qualified Class Members”):

- Costs of Settlement Administration. Payment to the Settlement Administrator, estimated not to exceed \$7,500, for expenses, including without limitation expenses of notifying the Class Members of the Settlement, processing exclusion requests and objections, distributing Settlement Shares, the PAGA Allocation, and tax forms, and handling inquiries and uncashed checks.
- Class Counsel’s Reasonable Attorneys’ Fees, Expenses, and Costs. Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third of the Gross Settlement Amount, which is \$95,000, and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$15,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will request and the final amounts to be paid will be decided by the Court at the Final Approval Hearing.
- Class Representative Service Award. The Class Representative Service Award in an amount not to exceed \$10,000 to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook. The amount stated is what Plaintiff will request and the final amount to be paid will be decided by the Court at the Final Approval Hearing.
- PAGA Allocation. A payment of \$10,000 relating to the claim for penalties under the Private Attorney Generals Act (“PAGA”), \$7,500 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA Payment”). The remaining \$2,500 will be distributed to the Settlement Class Members employed during

the PAGA Period (April 12, 2020 through September 21, 2023) based on the number of pay periods worked during the PAGA Period. Settlement Class Members employed during the PAGA Period will receive a pro rata distribution of the PAGA Allocation, regardless of whether they submit a Request for Exclusion and will be subject to the PAGA Release set forth below.

Calculation of Payments to Class Members. After all of the payments of the Court-approved Class Counsel's Reasonable Attorneys' Fees, Expenses and Costs, the Class Representative Service Award, the PAGA Allocation, and the Costs of Settlement Administration are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount", shall be distributed as Settlement Shares to the Qualified Class Members. The Net Settlement Amount is estimated to be at least \$147,500, based upon the above proposed deductions. The Net Settlement Amount will be allocated amongst the various subclasses, the Meal Period Subclass, Overtime Subclass, and Wage Statement Subclass as follows:

Meal Period Share:	50% of the Net Settlement Amount
Overtime Share:	15% of the Net Settlement Amount
Wage Statement Share:	20% of the Net Settlement Amount

In addition, 15% of the Net Settlement Amount will be allocated for distribution to members of the Meal Period Subclass and/or the Overtime Subclass whose employment ended between April 12, 2018 and September 21, 2023 (the "Waiting Time Penalty Share").

Individual Settlement Shares from the Net Settlement Fund will be calculated as follows:

Qualified Class Members of the Meal Period Subclass shall ultimately be entitled to a distribution in the amount of that fraction of the Meal Period Share, in which the numerator is the number of the respective Qualified Class Member's Total Workweeks between March 1, 2020 and September 21, 2023, and the denominator is the sum, aggregate total of the Total Workweeks of all Qualified Class Members of the Meal Period Subclass between March 1, 2020 and September 21, 2023

Qualified Class Members of the Overtime Subclass shall ultimately be entitled to a distribution in the amount of that fraction of the Overtime Share, in which the numerator is the number of the respective Qualified Class Member's Total Workweeks between April 12, 2017 and September 21, 2023, and the denominator is the sum, aggregate total of the Total Workweeks of all Qualified Class Members of the Overtime Subclass between April 12, 2017 and September 21, 2023.

Qualified Class Members of the Wage Statement Subclass shall ultimately be entitled to a distribution in the amount of that fraction of the Wage Statement Share, in which the numerator is the number of the respective Qualified Class Member's Total Workweeks between April 12, 2020 and September 21, 2023, and the denominator is the sum, aggregate total of the Total Workweeks of all Qualified Class Members of the Wage Statement Class between April 12, 2020 and September 21, 2023.

All Qualified Class Members who are members of the Meal Period Subclass or the Overtime Subclass whose employment with Defendant ended between April 12, 2018 and

September 21, 2023 will additionally receive an equal pro-rata portion of the Waiting Time Penalty Share.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. In addition, if the Settlement is approved by the Court and you were employed during the PAGA Period, you will automatically be mailed a check for your individual share of the PAGA Allocation. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. For tax purposes, the Settlement Shares shall be allocated as follows: (1) the Meal Period Share shall be allocated as penalties; (2) the Overtime Share shall be allocated as wages subject to reduction for payroll tax and withholding requirements; (3) the Wage Statement Share shall be allocated as penalties; and (4) the Waiting-Time Penalty Share shall be allocated as penalties. The employee portion of all applicable income and payroll taxes will be the responsibility of the Qualified Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Qualified Class Member are unique to him/her, and each Qualified Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

Upon the Effective Date, Qualified Class Members will release claims against Defendant, and each of its past, present and future affiliates, parent companies, subsidiaries, shareholders, lenders, officers, partners, directors, employees, agents, attorneys, insurers, predecessors, representatives, accountants, plan administrators, heirs, trustees and successors and assigns, and each and all of their respective past, present and future officers, partners, directors, servants, agents, shareholders, members, employees, representatives, accountants, insurers, and attorneys and all persons acting under, by, through, or in concert with any of them (the "Released Parties") as follows:

Meal Period Subclass Members shall release the Released Parties from causes of action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses, interest, attorneys' fees, penalties, and damages, whether suspected or unsuspected, contingent or accrued, known or unknown, arising from the factual allegations and claims set forth in the Action, and occurring during the Class Period relevant to that subclass (March 1, 2020 through September 21, 2023) that were alleged or could have been alleged based on the factual allegations related to that subclass, including, without limitation: Class Allegations predicated on allegations of Meal Period violations; any claims for alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 558, 1174, and their subparts and applicable IWC Wage Orders to the extent such claims are predicated on allegations of Meal Period violations; any derivative claims for unpaid wages or penalties, and for unfair, unlawful, and fraudulent business practices under the California Business and Professions Code sections 17200, *et seq.* to the extent they are predicated on allegations of Meal Period violations; any other state or federal statute, rule, or regulation

arising from or relating to allegations of Meal Period violations; and all related remedies of any nature whatsoever, including without limitation all claims for restitution and other equitable relief, injunctive relief, statutory damages, liquidated damages, exemplary damages, punitive damages, waiting-time penalties, statutory penalties, civil penalties, interest, attorneys' fees, costs, and expenses to the extent they are predicated on allegations of Meal Period violations (the "Meal Period Subclass Released Claims").

Overtime Subclass Members shall release the Released Parties from causes of action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses, interest, attorneys' fees, penalties, and damages, whether suspected or unsuspected, contingent or accrued, known or unknown, arising from the factual allegations and claims set forth in the Action, and occurring during the Class Period relevant to that subclass (April 12, 2017 through September 21, 2023) that were alleged or could have been alleged based on the factual allegations related to that subclass, including, without limitation: Class Allegations predicated on allegations of Regular Rate or overtime violations; any claims for alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 233, 246, 510, 558, 1174, 1194, and 1198 and their subparts and applicable IWC Wage Orders to the extent such claims are predicated on allegations of Regular Rate or overtime violations; any derivative claims for unpaid wages or penalties, and for unfair, unlawful, and fraudulent business practices under the California Business and Professions Code sections 17200, *et seq.* to the extent they are predicated on allegations of Regular Rate or overtime violations; any other state or federal statute, rule, or regulation arising from or relating to allegations of Regular Rate or overtime violations; and all related remedies of any nature whatsoever, including without limitation all claims for restitution and other equitable relief, injunctive relief, statutory damages, liquidated damages, exemplary damages, punitive damages, waiting-time penalties, statutory penalties, civil penalties, interest, attorneys' fees, costs, and expenses to the extent they are predicated on allegations of Regular Rate or overtime violations (the "Overtime Subclass Released Claims").

Wage Statement Subclass Members shall release the Released Parties from causes of action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses, interest, attorneys' fees, penalties, and damages, whether suspected or unsuspected, contingent or accrued, known or unknown, arising from the factual allegations and claims set forth in the Action, and occurring during the Class Period relevant to that subclass (April 12, 2020 through September 21, 2023) that were alleged or could have been alleged based on the factual allegations related to that subclass, including, without limitation: Class Allegations predicated on wage statement violations; any claims for alleged violations of California Labor Code sections 226, 226.3, and 1174 and their subparts and applicable IWC Wage Orders to the extent such claims are predicated on allegations of wage statement violations; any derivative claims for penalties, and for unfair, unlawful, and fraudulent business practices under the California Business and Professions Code sections 17200, *et seq.* to the extent they are predicated on allegations of wage statement violations; any other state or federal statute, rule, or regulation arising from or relating to allegations of wage statement violations; and all related remedies of any nature whatsoever, including without limitation all claims for restitution and other equitable relief, injunctive relief, statutory damages, liquidated damages, exemplary damages, punitive damages, waiting-time penalties, statutory penalties, civil penalties, interest, attorneys' fees, costs, and expenses to the extent they are predicated on allegations of wage statement violations (the "Wage Statement Subclass Released Claims").

In addition, a Qualified Class Member's act of negotiating his or her Settlement Share for payment shall operate as, and be deemed to express, the Qualified Class Member's intent to opt in, join, settle, and fully release and discharge all of the Settlement Class Released Claims, including any claims the Qualified Class Member may have under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

Each individual will only release claims based on the subclass(es) of which he/she is a Qualified Class Member.

If you do not timely exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and/or any other Released Party about any of the Released Claims resolved by the Settlement. It also means that all of the Court's orders in the Action will apply to you and legally bind you.

Released PAGA Claims by All Settlement Class Members. In addition, upon the Effective Date, Plaintiff, each Settlement Class Member, and the LWDA, in exchange for the PAGA Allocation, shall fully release and discharge the Released Parties for the entire PAGA Period from any and all claims seeking penalties, or any other relief under PAGA based on or arising from the allegations in the Action, including any claims that could have been asserted under PAGA based on the facts and statutes pled in the Action, which include any applicable Industrial Welfare Commission Wage Order and claims under the California Labor Code, including but not limited to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1182.12 *et seq.*, 1174, 1194, 1197, 1198, and their subparts, and any and all claims for Plaintiff's costs, expenses, interest, and attorneys' fees pertaining to them (collectively, the "PAGA Release").

5. How much will my payment be?

Defendant's records reflect that you have worked << >> workweeks for Defendant as a Meal Period Subclass Member; << >> workweeks for Defendant as an Overtime Subclass Member; << >> workweeks for Defendant as a Wage Statement Subclass Member; and that you are/are not entitled to a Waiting-Time Penalty Share.

Based on this information, your estimated Settlement Share [and portion of the PAGA Allocation] from the Net Settlement Amount is << >>.

If you wish to challenge the information set forth above, then you must submit a written and signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [forty-five (45) days after the mailing of the Class Notice or 10 additional days after re-mailing, whichever is later] ("Response Deadline").

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. Following final approval of the Settlement by the Court, a check for your Settlement Share will be mailed automatically to the same address as this Class Notice. Similarly, if you were employed during the PAGA Period, payment for your individual share of the PAGA Allocation will be mailed automatically following final approval of the Settlement by the Court. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator can be contacted at:

or (800)

The Court will hold a Final Approval Hearing on [], at [] to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel, the service award to Plaintiff, the costs for settlement administrator, and the PAGA Allocation. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately one month after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may request exclusion from the Settlement or "opt out." **If you opt out, you will not receive a Settlement Share from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendant for the Released Class Claims.** However, you will still be paid your individual portion of the PAGA Allocation and will remain bound by the release of the Released PAGA Claims regardless whether you submit a request for exclusion from the Settlement.

To opt out, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than the Response Deadline, which is [forty-five (45) days after the mailing of the Class Notice or 10 days after re-mailing, whichever is later]. The request to opt-out must be postmarked or received by the Settlement Administrator by this deadline and should: (1) contain a clear statement that you are requesting to opt out of, or be excluded from the Settlement and Released Class Claims in the *Owens v. Fidelity National Home Warranty* lawsuit; (2) contain the name, address, and the last four digits of the Social Security Number of the person requesting exclusion; and (3) be signed by the Class Member or his or her lawful representative. Please include the name and number of the case, which is *Owens v. Fidelity National Home Warranty*, Case No. MSC21-00731. The request to opt-out must be signed by you. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is []. Written requests for exclusion that are postmarked after [], or are incomplete or unsigned may be rejected; and if so, those Class Members will remain bound by the Settlement and the Released Class Claims described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, including the attorneys' fees, costs, and administration expenses, the service award, and/or the PAGA Allocation either in writing or in person. Objections that are in writing should state the Class Member's name, current address, telephone number, and the dates of employment in California by Defendant, and describe why you believe the Settlement is unfair. All written objections or other correspondence should also state the name and number of the case, which is *Owens v. Fidelity National Home Warranty*, in the Superior Court of the State of California, County of Contra Costa, Case No. MSC21-00731.

All written objections must be mailed to the Settlement Administrator at [], no later than [forty-five (45) days after the mailing of the Class Notice or 10 days after re-mailing, whichever is later].

Alternatively, Class Members may appear at the Final Approval Hearing on _____ at _____ to make an oral objection. The Final Approval Hearing can be attended remotely through CourtCall. Please check the Court's website for current information concerning appearances and how to view court proceedings: <https://www.cc-courts.org/civil/civil.aspx>. For assistance in making an appearance at the Final Approval Hearing, please contact Class Counsel below.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Settlement Share.

The addresses for Parties' counsel are as follows:

Class Counsel:

Robert J. Wassermann
Jenny D. Baysinger
Mayall Hurley P.C.
2453 Grand Canal Boulevard
Stockton, CA 95207
Tel.: (209) 477-3833
Fax: (209) 473-4818
Email: rwassermann@mayallaw.com
jbaysinger@mayallaw.com

Counsel for Defendant:

Angela J. Rafoth
Littler Mendelson P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104
Tel: (415) 433-1940
Fax: (415) 399-8490
Email: arafoth@littler.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, at the Contra Costa County Superior Court, located at 725 Court Street, Martinez, California 94553, in Department 39 before Judge Edward G. Weil. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel, the service payment to Plaintiff, the settlement administration costs, and the PAGA Allocation. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating in the Final Approval Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If the hearing is continued, the new hearing date can be found on the Court Public Portal webpage for the Contra Costa County Superior Court (<https://odyportal.cc-courts.org/portal>) by entering the Case No. MSC21-00731.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Owens v. Fidelity* Settlement Administrator, c/o _____; or contact Class Counsel.

This Class Notice summarizes the proposed settlement. You may also get more details by examining the Court's file on the Internet via the Court Public Portal webpage for the Contra Costa County Superior Court (<https://odyportal.cc-courts.org/portal>) and entering the Case No. MSC21-

00731. If you wish to view the Court files in person, you can go to the Clerk's Office at 1111 Ward Street, Martinez, CA 94553.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Settlement Share and portion of the PAGA Allocation.
- Settlement checks will be null and void if not cashed within one hundred twenty (120) days after its mailing. In such event, the Settlement Administrator shall pay all unclaimed funds to the nonprofit organization CASA of Contra Costa County, a child advocacy program that places Court Appointed Special Advocates For Children (website is www.cccocasa.org).
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

1 MAYALL HURLEY P.C.
2 ROBERT J. WASSERMAN (SBN: 258538)
3 rwasserman@mayallaw.com
4 JENNY D. BAYSINGER (SBN:)
5 jbaysinger@mayallaw.com
6 2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

7 Attorneys for Plaintiff Samantha Owens and the Class

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF CONTRA COSTA

10 SAMANTHA OWENS,

11 Plaintiff,

12 vs.

13 FIDELITY NATIONAL HOME WARRANTY
14 COMPANY; and DOES 1-100, inclusive,

15 Defendants.
16

Case No.: MSC21-00731

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

17 Plaintiff Samantha Owens' Unopposed Motion for Preliminary Approval of Class Action
18 Settlement ("Motion") came on for hearing on _____, at 9:00 a.m., before the
19 Honorable Charles S Treat. Jenny D. Baysinger appeared on behalf of Plaintiff Owens ("Plaintiff") and
20 Curt Graham appeared on behalf of Defendant Fidelity National Home Warranty Company ("FNHW").
21 The Court, having fully and carefully reviewed Plaintiff's Motion, the memorandum and declaration in
22 support thereof, and the Settlement Agreement including the proposed Class Notice, hereby makes the
23 following determinations and orders¹:

- 24 1. Plaintiff Samanth Owens is preliminarily appointed as Class Representative.
25
26

27 _____
28 ¹ All terms used in this Order of Preliminary Approval of Class Action Settlement (the "Order") shall have the same meanings given those terms in the Parties' Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement" or "Settlement"), a copy which is attached hereto as Exhibit 1 and made a part of this Order.

1 2. Mayall Hurley P.C., by and through Jenny D. Baysinger and Robert J. Wassermann, is
2 hereby preliminarily approved and appointed as Class Counsel.

3 3. Phoenix Class Action Administration Solutions is appointed as the Settlement
4 Administrator and shall administer the Settlement in accordance with the terms set forth in the
5 Settlement Agreement and perform the functions set forth therein. The Court also preliminarily
6 approves declared fees and costs of administering the Settlement of up to \$7,500.

7 4. The Class of employees covered by the Parties' Settlement consists of:

- 8 a. All non-exempt individuals who worked for Defendant in California at any time
9 during the Class Period and who are members of one or more of the following
10 subclasses: (1) the "Meal Period Subclass," which includes those who worked at
11 least one shift of more than five (5) hours from March 1, 2020, through and
12 including September 21, 2023; (2) the "Overtime Subclass," which includes
13 those who earned a non-discretionary bonus or other remuneration pertaining to
14 a workweek when he or she also worked overtime on at least one occasion from
15 April 12, 2017, through and including September 21, 2023, and who were not
16 part of the "Overtime Class" in the matter of *Dillard/Menchaca v. Fidelity*
17 *National Financial, Inc., et al.*, Contra Costa County Superior Court Case No.
18 C18-00394; and (3) the "Wage Statement Subclass," which includes those who
19 received one or more wage statements at any time from April 12, 2020, through
20 and including September 21, 2023. SA ¶ 15.

21 5. Pursuant to California Civil Procedure section 382, and for purposes of settlement only,
22 the Class is preliminarily and conditionally certified. The Meal Period Subclass is estimated to consist
23 of 104 individuals, the Overtime Subclass is estimated to consist of 106 individuals, and the Wage
24 Statement Subclass is expected to consist of 104 individuals.

25 6. The Court grants preliminary approval of the Settlement between Plaintiff and
26 Defendant, based upon the terms set forth in the Settlement Agreement.

27 ///

28 ///

- 1 a. As to the Class and subclasses, the Settlement Agreement appears to be fair,
2 adequate and reasonable, and the Court preliminarily approves the terms of the
3 Settlement Agreement.
- 4 b. The Court approves, as to form and content, the Class Notice, in substantially the
5 form attached as **Exhibit A** to the Settlement Agreement. The Court further
6 approves the procedure by which Class Members may opt out of, and object to, the
7 Settlement as set forth in the Settlement Agreement and the Class Notice.

8 7. The Court directs mailing of the Class Notice in accordance with the terms of the
9 Settlement Agreement and on the schedule set forth below. The Court finds the dates selected for the
10 mailing and distribution of the Class Notice, as set forth below, meet the requirements of due process
11 and provide the best notice practicable under the circumstances and shall constitute due and sufficient
12 notice to all persons entitled thereto.

13 8. Subject to further consideration by the Court at the time of the Final Approval Hearing,
14 the proposed PAGA allocation of \$10,000 and payment to the LWDA of \$7,500 is preliminarily
15 approved. Distribution of \$2,500 to the Settlement Class Members employed during the PAGA Period
16 based on the formula outlined in the Settlement Agreement is also approved.

17 9. Subject to further consideration by the Court at the time of the Final Approval Hearing,
18 the proposed Class Representative Enhancement Award of \$10,000 each, 3.5% of the Gross
19 Settlement Amount, to Plaintiff for her service as Class Representative is preliminarily approved.

20 10. Subject to further consideration by the Court at the time of the Final Approval Hearing,
21 Class Counsel's request of attorneys' fees in the amount of 33.33% of the Gross Settlement Amount,
22 presently expected to be \$95,000, and declared costs of up to \$15,000, are preliminarily approved.

23 11. The Court adopts the following dates and deadlines:

24 Administrator to mail Class Notice	Within 20 calendar days of the POA
25 Deadline for Class Members to object or opt out	Within 45 calendar days after Notice mailed.
26 Plaintiff to file Motion for Attorneys' Fees, Costs and Service Payment.	Not less than 16 court days before the Final Approval hearing.
27 Deadline for Plaintiff to file Motion for Final Approval.	Not less than 16 court days before the Final Approval hearing.
28 Final Approval Hearing.	Not less than 100 days after the POA

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2
3 12. A Final Approval hearing on the question of whether the proposed Settlement,
4 attorneys' fees to Class Counsel, and the Class Representatives' Service Payments should be finally
5 approved as fair, reasonable and adequate is scheduled in for _____, 2024 at
6 ____:____ a.m. / p.m.. The parties to the Agreement are directed to carry out their obligations under
7 the Settlement Agreement.

8
9 Dated: _____

10 _____
11 HON. CHARLES S. TREAT
12 SUPERIOR COURT JUDGE
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EXHIBIT C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

SAMANTHA OWENS,

Plaintiff,

vs.

FIDELITY NATIONAL HOME WARRANTY
COMPANY; and DOES 1-100, inclusive,

Defendants.

Case No.: MSC21-00731

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

Date:

Time: 9:00 a.m.

Dept.: 12

Judge: Charles S. Treat

1 The motion of Plaintiff Samnatha Owens ("Plaintiff") for an order finally approving the
2 Parties' Joint Stipulation of Class Action Settlement and Release ("Agreement") with Defendant
3 Fidelity National Home Warranty Company ("Defendant"), and the motion for attorneys' fees and
4 costs, enhancement payment, and the fees and expenses of the Settlement Administrator, duly came on
5 for hearing on _____ before the Honorable Charles S. Treat.

6 I.

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Agreement.

11 2. This Court has jurisdiction over the subject matter of this litigation pending before the
12 California Superior Court for the County of Contra Costa, and over all Parties to this litigation,
13 including the Class.

14 3. Based on a review of the papers submitted by Plaintiff and a review of the applicable
15 law, the Court finds that the GSA of \$285,000 and the terms set forth in the Agreement are fair,
16 reasonable, and adequate.

17 4. The Court further finds that the Settlement was the result of arm's length negotiations
18 conducted after Class Counsel had adequately investigated the claims and became familiar with the
19 strengths and weaknesses of those claims. In particular, the amount of the Settlement, the significant
20 risks relating to certification, liability, and damages issues, and the assistance of an experienced
21 mediator in the settlement process, among other factors, support the Court's conclusion that the
22 Settlement is fair, reasonable, and adequate.

23 **Preliminary Approval of the Settlement**

24 5. On _____ the Court granted preliminary approval of the Settlement.
25 At this same time, the Court approved conditional certification of the Class for settlement purposes
26 only.

27 ///

28 ///

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed by
3 first class mail to members of the Class at their last known addresses on or about _____.
4 Mailing of the Class Notice to their last known addresses was the best notice option under the
5 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
6 proposed settlement to the Class. The Class Notice given to the Class Members fully and accurately
7 informed the Class Members of all material elements of the proposed Settlement and of their
8 opportunity to object to or comment thereon or to seek exclusion from the Settlement; was valid,
9 due, and sufficient notice to all Class Members; and complied fully with the laws of the State of
10 California, the United States Constitution, due process and other applicable law. The Class Notice
11 fairly and adequately described the Settlement and provided Class Members adequate instructions
12 and a variety of means to obtain additional information.

13 7. The deadline for opting out of the Class or submitting written objections to the
14 Settlement was _____, or _____ if the Class Notice was remailed. There
15 was an adequate interval between notice and the deadline to permit Class Members to choose what to
16 do and act on their decision. A full opportunity has been afforded to the Class Members to participate
17 in this hearing, and all Class Members and other persons wishing to be heard have been heard. Class
18 Members also have had a full and fair opportunity to exclude themselves from the proposed
19 Settlement and Class. Accordingly, the Court determines that all Class Members who did not timely
20 and properly submit a request for exclusion are bound by the Settlement and this Final Approval
21 Order and Judgment.

22 **Fairness Of Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.* 48
24 Cal. App. 4th 1794, 1801 (1996).
25 a. The settlement was reached through arm's-length bargaining between the parties
26 during an all-day mediation before David Phillips, Esq., a respected and experienced
27 mediator of wage and hour class actions. There has been no collusion between the
28 parties in reaching the proposed settlement.

- 1 b. Plaintiff's investigation and discovery have been sufficient to allow the Court and
2 counsel to act intelligently.
- 3 c. Counsel for both parties are experienced in similar employment class action litigation.
4 All counsel recommended approval of the Agreement.
- 5 d. The percentage of objectors and requests for exclusion is small. _____ objections
6 were received and _____ requests for exclusion were received.
- 7 e. The participation rate was high. _____ Class Members are Qualified Class
8 Members and will be mailed a settlement payment, representing _____ of the
9 overall Class.

10 9. The consideration to be given to the Class Members under the terms of the Agreement
11 is fair, reasonable and adequate considering the strengths and weaknesses of the claims asserted in
12 this action and is fair, reasonable and adequate compensation for the release of Class Members'
13 claims, given the uncertainties and significant risks of the litigation and the delays which would
14 ensue from continued prosecution of the action.

15 10. The Agreement is approved as fair, adequate and reasonable and in the best interests
16 of the Class Members.

17 **Attorneys' Fees and Costs**

18 11. An award of \$95,000 for attorneys' fees, representing one-third (1/3) of the Gross
19 Settlement Amount, and \$15,000 for litigation costs and expenses, is reasonable, in light of the
20 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
21 achieved by Class Counsel. The requested awards have been supported by Class Counsel's lodestar
22 and billing statement.

23 **Class Representative Enhancement Payment**

24 12. The Agreement provides for a Class Representative Enhancement Payment of not
25 more than \$10,000 to Plaintiff, subject to the Court's approval. The Court finds that a Class
26 Representative Enhancement Payment in the amount of \$10,000 to Plaintiff is reasonable in light of
27 the risks and burdens undertaken by Plaintiff in the litigation, for her time and effort in bringing and
28 prosecuting this matter on behalf of the Class, and for her execution of a general release.

1 **Settlement Administration Expenses**

2 13. The Settlement Administrator shall calculate and administer the payment to be made
3 to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
4 Class Representative Service Payments to the Plaintiffs, distribute the PAGA Payment, issue any
5 required tax reporting forms, calculate withholdings and perform the other remaining duties set forth
6 in the Agreement. The Settlement Administrator has documented \$7,500 in fees and expenses, and
7 this amount is reasonable in light of the work performed by the Settlement Administrator.

8 **PAGA Payment**

9 14. The Agreement provides for a PAGA Allocation out of the Gross Settlement Amount
10 of \$10,000, which shall be allocated \$7,500 to the LWDA as the LWDA's 75% share of the
11 settlement of civil penalties paid pursuant to the PAGA and \$2,500 to be distributed to Settlement
12 Class Members employed during the PAGA Period based on their respective pay periods employed
13 during the PAGA Period (April 12, 2020 through September 21, 2023). All Settlement Class
14 Members who were employed during the PAGA Period, regardless of whether they opt-out of the
15 Settlement, will share in a portion of the PAGA Allocation. The Court finds this PAGA Allocation to
16 be reasonable. All Aggrieved Employees will be sent their share of the PAGA Payment and will be
17 subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of
18 the Settlement.

19 **II.**

20 **ORDERS**

21 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

- 22 1. The certification of the Class for the purposes of settlement is confirmed. The Class is
23 defined as follows:
- 24 a. All non-exempt individuals who worked for Defendant in California at any time during the
25 Class Period and who are members of one or more of the following subclasses: (1) the
26 "Meal Period Subclass," which includes those who worked at least one shift of more than
27 five (5) hours from March 1, 2020, through and including September 21, 2023; (2) the
28 "Overtime Subclass," which includes those who earned a non-discretionary bonus or other

1 remuneration pertaining to a workweek when he or she also worked overtime on at least
2 one occasion from April 12, 2017, through and including September 21, 2023, and who
3 were not part of the "Overtime Class" in the matter of *Dillard/Menchaca v. Fidelity*
4 *National Financial, Inc., et al.*, Contra Costa County Superior Court Case No. C18-00394;
5 and (3) the "Wage Statement Subclass," which includes those who received one or more
6 wage statements at any time from April 12, 2020, through and including September 21,
7 2023. SA ¶ 15.

8 2. All persons who meet one or more of the foregoing definitions are members of the
9 Class, except for those individuals who filed a valid request for exclusion ("opt out") from the Class.

10 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
11 best interest of the Class.

12 4. Class Counsel are awarded attorneys' fees in the amount of \$95,000 and costs in the
13 amount of \$15,000. Class Counsel shall not seek or obtain any other compensation or
14 reimbursement from Defendant, Plaintiff or members of the Class.

15 5. The payment of the Class Representative Enhancement Payment in the amount of
16 \$10,000 to Plaintiff is approved.

17 6. The payment of \$7,500 to the Settlement Administrator for their fees and expenses is
18 approved.

19 7. The PAGA Payment of \$10,000 is approved and shall be allocated in accordance with
20 the Agreement.

21 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
22 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
23 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
24 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
25 document referred to herein, nor any action taken to carry out the Agreement is, may be construed as,
26 or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
27 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or proceedings
28 related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or

1 concession with regard to the denials or defenses by Defendant. Notwithstanding these restrictions,
2 Defendant may file in the Action or in any other proceeding this Final Approval Order and
3 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
4 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim or
5 issue preclusion or similar defense as to the Released Claims and/or the Released PAGA Claims.

6 9. Notice of entry of this Final Approval Order and Judgment shall be given to all Parties
7 by Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send
8 notice of entry of this Final Approval Order and Judgment to individual Class Members.

9 10. If the Agreement does not become final and effective in accordance with the terms of
10 the Agreement, then this Final Approval Order and Judgment, and all orders entered in connection
11 therewith, shall be rendered null and void and shall be vacated, and the Parties shall revert to their
12 respective positions as of before entering into the Agreement, and expressly reserve their respective
13 rights regarding the prosecution and defense of this Action, including all available defenses and
14 affirmative defenses, and arguments that any claim in the Action could not be certified as a class
15 action and/or managed as a representative action.

16 **IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED THAT:**

17 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
18 Plaintiff, and all members of the Class, shall take nothing in the Action.

19 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
20 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
21 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
22 arising from or in connection with distribution of settlement benefits.

23 3. The Parties are authorized to agree to and to adopt such amendments, modifications
24 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
25 Final Approval Order and Judgment and as approved by the Court.

26 4. Each party shall bear its own attorney's fees and costs, except as otherwise provided
27 in the Agreement and in this Final Approval Order and Judgment.

1 5. Upon the Effective Date, Plaintiff and each Qualified Class Member shall fully
2 release and discharge the Released Parties for the entire Class Period as follows:

3 a. Meal Period Subclass Members shall release the Released Parties from causes of
4 action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses,
5 interest, attorneys' fees, penalties, and damages, whether suspected or unsuspected,
6 contingent or accrued, known or unknown, arising from the factual allegations and
7 claims set forth in the Action, and occurring during the Class Period relevant to that
8 subclass (March 1, 2020 through September 21, 2023) that were alleged or could have
9 been alleged based on the factual allegations related to that subclass, including,
10 without limitation: Class Allegations predicated on allegations of Meal Period
11 violations; any claims for alleged violations of California Labor Code sections 201,
12 202, 203, 204, 210, 226, 226.3, 226.7, 512, 558, 1174, and their subparts and
13 applicable IWC Wage Orders to the extent such claims are predicated on allegations
14 of Meal Period violations; any derivative claims for unpaid wages or penalties, and
15 for unfair, unlawful, and fraudulent business practices under the California Business
16 and Professions Code sections 17200, *et seq.* to the extent they are predicated on
17 allegations of Meal Period violations; any other state or federal statute, rule, or
18 regulating arising from or relating to allegations of Meal Period violations; and all
19 related remedies of any nature whatsoever, including without limitation all claims for
20 restitution and other equitable relief, injunctive relief, statutory damages, liquidated
21 damages, exemplary damages, punitive damages, waiting-time penalties, statutory
22 penalties, civil penalties, interest, attorneys' fees, costs, and expenses to the extent
23 they are predicated on allegations of Meal Period violations (collectively, the "Meal
24 Period Subclass Released Claims").

25 b. Overtime Subclass Members shall release the Released Parties from causes of action,
26 disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses, interest,
27 attorneys' fees, penalties, and damages, whether suspected or unsuspected, contingent
28 or accrued, known or unknown, arising from the factual allegations and claims set

1 forth in the Action, and occurring during the Class Period relevant to that subclass
2 (April 12, 2017 through September 21, 2023) that were alleged or could have been
3 alleged based on the factual allegations related to that subclass, including, without
4 limitation: Class Allegations predicated on allegations of Regular Rate or overtime
5 violations; any claims for alleged violations of California Labor Code sections 201,
6 202, 203, 204, 210, 233, 246, 510, 558, 1174, 1194, and 1198 and their subparts and
7 applicable IWC Wage Orders to the extent such claims are predicated on allegations
8 of Regular Rate or overtime violations; any derivative claims for unpaid wages or
9 penalties, and for unfair, unlawful, and fraudulent business practices under the
10 California Business and Professions Code sections 17200, *et seq.* to the extent they
11 are predicated on allegations of Regular Rate or overtime violations; any other state or
12 federal statute, rule, or regulation arising from or relating to allegations of Regular
13 Rate or overtime violations; and all related remedies of any nature whatsoever,
14 including without limitation all claims for restitution and other equitable relief,
15 injunctive relief, statutory damages, liquidated damages, exemplary damages, punitive
16 damages, waiting-time penalties, statutory penalties, civil penalties, interest,
17 attorneys' fees, costs, and expenses to the extent they are predicated on allegations of
18 Regular Rate or overtime violations (collectively, the "Overtime Subclass Released
19 Claims").

- 20 c. Wage Statement Subclass Members shall release the Released Parties from causes of
21 action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses,
22 interest, attorneys' fees, penalties, and damages, whether suspected or unsuspected,
23 contingent or accrued, known or unknown, arising from the factual allegations and
24 claims set forth in the Action, and occurring during the Class Period relevant to that
25 subclass (April 12, 2020 through September 21, 2023) that were alleged or could have
26 been alleged based on the factual allegations related to wage statements, including,
27 without limitation: Class Allegations predicated on wage statement violations; any
28 claims for alleged violations of California Labor Code sections 226, 226.3, and 1174

1 and their subparts and applicable IWC Wage Orders to the extent such claims are
2 predicated on allegations of wage statement violations; any derivative claims for
3 penalties, and for unfair, unlawful, and fraudulent business practices under the
4 California Business and Professions Code sections 17200, *et seq.* to the extent they
5 are predicated on allegations of wage statement violations; any other state or federal
6 statute, rule, or regulation arising from or relating to allegations of wage statement
7 violations; and all related remedies of any nature whatsoever, including without
8 limitation all claims for restitution and other equitable relief, injunctive relief,
9 statutory damages, liquidated damages, exemplary damages, punitive damages,
10 waiting-time penalties, statutory penalties, civil penalties, interest, attorneys' fees,
11 costs, and expenses to the extent they are predicated on allegations of wage statement
12 violations (collectively, the "Wage Statement Subclass Released Claims").

13 6. In addition, other than the rights created by this Settlement Agreement, upon the
14 Effective Date, Plaintiff, each Settlement Class Member, and the LWDA, in exchange for the PAGA
15 Allocation, shall fully release and discharge the Released Parties for the entire PAGA Period from
16 any and all claims seeking penalties, or any other relief under PAGA based on or arising from the
17 allegations in the Action, including and any claims that could have been asserted under PAGA based
18 on the facts and statutes pled in the Action, which include any applicable Industrial Welfare
19 Commission Wage Order and claims under the California Labor Code, including but not limited to
20 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1182.12 *et*
21 *seq.*, 1174, 1194, 1197, 1198, and their subparts, and any and all claims for Plaintiff's costs,
22 expenses, interest, and attorneys' fees pertaining to them (collectively, the "PAGA Release").

23 7. In addition, other than the rights created by this Settlement Agreement, in addition to
24 the Meal Period Subclass Released Claims, the Overtime Subclass Released Claims, the Wage
25 Statement Subclass Released Claims, and PAGA Release, Plaintiff individually and on behalf of
26 each of her executors, administrators, representatives, attorneys, successors and assigns knowingly
27 and voluntarily releases and forever discharges Defendant and the Released Parties, to the full extent
28 permitted by law, of and from any and all claims, known and unknown, asserted and unasserted,

1 which Plaintiff has or may have against the Released Parties as of the Effective Date of this
2 Settlement Agreement, including, but not limited to, any alleged violation of Title VII of the Civil
3 Rights Act of 1964; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990; the
4 Age Discrimination in Employment Act of 1967; the Family and Medical Leave Act; the Equal Pay
5 Act; the California Family Rights Act – Cal. Gov’t Code § 12945.2; the California Fair Employment
6 and Housing Act – Cal. Gov’t Code § 12900 *et seq.*; the California Equal Pay Law – Cal. Lab. Code
7 § 1197.5; any other federal, state or local civil or human rights law or any other federal, state or local
8 law, regulation or ordinance; any public policy, contract, tort or common law; or; any basis for fees
9 or other expenses including attorneys’ fees incurred in these matters.

10 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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12 Dated: _____

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15 HON. CHARLES S. TREAT
16 JUDGE, SUPERIOR COURT OF CALIFORNIA
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