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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ANGEL MEDINA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

NATIONAL PAVING COMPANY, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. CIVSB2108801

*[Assigned for all purposes to the Hon. David S. Cohn,
Dept. S-26]*

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

Date: December 8, 2022

Time: 10:00 a.m.

Dept.: S26

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 December 8, 2022 at 10:00 a.m. in Department S-26 of the above-entitled Court, located at 247 West
4 Third Street, San Bernardino, California 92415, Plaintiff Angel Medina (“Plaintiff”), individually and
5 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former non-exempt, hourly employees of Defendant National
10 Paving Company, Inc. who worked in California at any time from March 19,
11 2017 through the date of preliminary approval.

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

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

1
2 Dated: August 17, 2022
3

Respectfully submitted,
LIDMAN LAW, APC

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5 By:



Elizabeth Nguyen
Attorneys for Plaintiff
ANGEL MEDINA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Angel Medina (“Plaintiff”) brought this class and representative action against Defendant National Paving Company, Inc. (hereinafter referred to as “National Paving” or “Defendant”) alleging various wage and hour violations. Plaintiff’s primary allegations are that National Paving: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failure to reimburse necessary business expenses; (6) failed to provide accurate, itemized wage statements; (7) failed to timely pay all wages upon separation of employment; (8) engaged in unlawful business practices; and (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,¹ in which Defendant have agreed to pay One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) to the following Settlement Class:

All current and former non-exempt, hourly employees of Defendant National Paving Company, Inc. who worked in California at any time from March 19, 2017 through the date of preliminary approval (“Class Period”).

Settlement Class members do not need to file a claim and will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees and costs, and PAGA civil penalties, the remaining Net Settlement Amount (“NSA”) of approximately \$61,050 will be distributed to all Settlement Class members who do not opt-out. With approximately 200 Settlement Class members, the average payment to each Settlement Class member is currently expected to be approximately \$305.25, which does not include the \$2,500.00 PAGA Amount to PAGA Employees.

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

¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen as Exhibit 2. The proposed Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award) is attached to the Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the Settlement.

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

3 **II. SUMMARY OF THE LITIGATION**

4 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH**
NEGOTIATIONS

5 **1. The Parties**

6 According to its website, Defendant is a provider of a variety of site and maintenance and new
7 construction trades, including full-depth replacement, asphalt, and concrete repairs, and ADA retrofits.
8 *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. Plaintiff was employed by Defendant as
9 an hourly, non-exempt employee and performed work for Defendant from approximately January 2018
10 through November 2020. *See* Declaration of Angel Medina (“Medina Decl.”), ¶ 2. During his
11 employment, Plaintiff worked at National Paving’s job sites throughout Southern California, including
12 San Bernardino County, Bakersfield, Coachella, San Diego, Barstow, among other cities. *Id.*

13 **2. Procedural History**

14 On March 19, 2021, Plaintiff filed a putative class action complaint against Defendant in San
15 Bernardino County Superior Court. Nguyen Decl., ¶ 10. On March 19, 2021, Plaintiff sent a letter to
16 the California Labor Workforce Development Agency (“LWDA”) regarding Defendant’s alleged Labor
17 Code violations and Plaintiff’s intent to bring a claim for civil penalties under the Labor Code Private
18 Attorneys General Act (“PAGA”). After exhausting his administrative requirements under the PAGA,
19 Plaintiff filed a First Amended Class and Representative Action Complaint on May 24, 2021 adding
20 one cause of action for civil penalties under the PAGA. Plaintiff’s operative complaint alleges that
21 National Paving: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed;
22 (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally
23 required rest periods; (5) failure to reimburse necessary business expenses; (6) failed to provide
24 accurate, itemized wage statements; (7) failed to timely pay all wages upon separation of employment;
25 (8) engaged in unlawful business practices; and (9) is liable for civil penalties under the PAGA. *Id.*

26 **3. Discovery**

27 After agreeing to participate in early mediation, Defendant informally produced time records
28 and payroll data as well as its wage and hour policies and other relevant documents and information
relevant to the claims alleged in advance of mediation. Nguyen Decl., ¶ 11. Plaintiff conducted an

analysis of the payroll data and time records produced by Defendant. After the detailed review of the payroll and time records and other documents and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case.

4. Arms-Length Negotiations

On January 24, 2022, after extensive research and analysis, including a detailed analysis of Defendant's potential exposure by Plaintiff, a full-day mediation was held with Tripper Ortman, Esq., a well-respected wage and hour class action mediator. Nguyen Decl., ¶ 12. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses, as well as the legal basis for the claims and defenses. *Id.* The Parties were unable to reach a settlement at mediation. *Id.*

After the Parties' unsuccessful mediation, National Paving produced information and records regarding its financial condition. *Id.* As a result, Plaintiff's counsel retained a forensic accountant to review and analyze the financial documents, who confirmed that National Paving's representations regarding its financial condition and ability to pay issues were supported by the financial documents.² *Id.* Ultimately, after months of settlement negotiations both with the mediator, the Parties agreed in principle on a class-wide resolution. *Id.* Thereafter, in the weeks that followed, the Parties signed the Stipulation of Settlement ("Settlement"). Nguyen Decl., ¶ 12, Exh. 2.

III. ARGUMENT

A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

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

As explained below, the Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be

² Following National Paving's representation of its financial condition, it turned over its financials to Plaintiff's retained forensic accountant, Keith Messerschmidt, who opined that National Paving could not afford to pay any larger amount without substantially impacting its ability to continue operating on a go-forward basis. Nguyen Decl., ¶12. Upon the Court's request, Plaintiff will submit a declaration from Mr. Messerschmidt attesting to these facts.

1 impractical; (2) common questions of law and fact predominate over individual questions such that
2 class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims
3 are typical of the claims of absent Settlement Class Members; and (4) Plaintiff and his counsel will
4 fairly and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

5 **1. Numerosity is Satisfied.**

6 Here, there are approximately 200 Settlement Class Members. Therefore, numerosity is
7 satisfied. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class
8 representing 10 beneficiaries of a trust sufficiently numerous).

9 Further, a class is "ascertainable" where the members "may be readily identified without
10 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
11 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class
12 is defined as "All current and former non-exempt, hourly employees of Defendant National Paving
13 Company, Inc. who worked in California from March 19, 2017 through the date of preliminary
14 approval." Nguyen Decl., ¶ 14.

15 In addition, PAGA Employees is defined as: "All current and former non-exempt, hourly,
16 employees of Defendant National Paving Company, Inc. who worked in California at any time from
17 March 19, 2020 through the date of preliminary approval. *Id.*

18 **2. Commonality is Satisfied.**

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

- 26 1. Whether National Paving properly paid all minimum wages;
- 27 2. Whether National Paving properly paid all overtime wages;
- 28 3. Whether National Paving provided all legally compliant meal periods;
4. Whether National Paving authorized and permitted all legally required rest periods;

5. Whether National Paving properly reimbursed all necessary business expenses incurred;
6. Whether National Paving failed to furnish accurate, itemized wage statements;
7. Whether National Paving failed to timely pay all wages owed upon separation; and
8. Whether National Paving's conduct constituted unlawful and/or unfair business practices.

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

3. Typicality is Satisfied.

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

Here, Plaintiff's claims are typical of those held by the Settlement Class. First, Plaintiff was employed by National Paving during the Class Period as a non-exempt employee and was subject to Defendant's wage and hour policies at issue in this case. *See Medina Decl.*, ¶ 2. Second, Plaintiff was injured by the same challenged policies that injured the Settlement Class as a whole. For example, Plaintiff asserts that she, like the Settlement Class, was not paid all legally required minimum wages and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal or rest periods, was not provided with accurate, itemized wage statements, and was not paid all of his wages owed upon separation of employment. *Id.* Given that Defendant's policies and practices applied to all non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

4. Adequacy is Satisfied.

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

1 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he
2 seeks to represent. *See* Medina Decl., ¶ 11. Indeed, Plaintiff’s interests are aligned with those of the
3 Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. *Id.*
4 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See*
5 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was
6 no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic
7 to those of the proposed class). Further, Class Counsel also have extensive experience in wage and
8 hour class action litigation and have vigorously litigated this case. *See* Nguyen Decl., ¶¶2-8;
9 Declaration of Scott M. Lidman (“Lidman Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines
10 Decl.”), ¶¶ 2-8; Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4.

11 **B. THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE,**
12 **AND REASONABLE**

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

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

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

//

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

2 Although Plaintiff maintains that his claims are meritorious, he acknowledges there were
3 substantial risks and uncertainty in proceeding with litigation. As described below, National Paving
4 presented multiple defenses to Plaintiff’s claims, both on the merits and class certification. Thus, while
5 Plaintiff was prepared to litigate these claims through certification and trial, success was not certain.

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

7 Although the parties engaged in informal discovery throughout this action, the parties still had
8 significant discovery to complete in formal litigation had the matter not settled. Nguyen Decl., ¶ 34.
9 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
10 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.*
11 Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur
12 considerably more attorneys’ fees and costs through a possible decertification motion, trial, and possible
13 appeal. *Id.* This Settlement avoids those risks and the accompanying expense. Further, as stated above,
14 National Paving’s financial condition and ability to pay an eventual judgment was a large factor in the
15 settlement decision. Thus, this factor supports preliminary approval.

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

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

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

21 If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount (“GSA”)
22 of \$150,000.00.³ Nguyen Decl., ¶ 13, Exh. 1 (Settlement, ¶ 4). Significantly, this Settlement is **non-**
23 **reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement
24 Award. *Id.* (Settlement, ¶ 5). Each Settlement Class member will automatically receive a Settlement

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³ Defendant represents that there are an estimated 7,337 workweeks during the Class Period as of April 1, 2022. If the number of workweeks during the Class Period is more than 10% greater than this figure (*i.e.*, if there are 8,071 or more workweeks worked by the Settlement Class Members during the Class Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis (*i.e.*, if there was 10% increase in the number workweeks during the Class Period above 8,071, Defendant would agree to increase the Gross Settlement Amount by 10%). Defendant agrees to deposit any increase to the Gross Settlement Amount owed pursuant to this term by the date on which the fourth and final installment payment is due. Alternatively, should the number of workweeks actually worked by Class members in the Class Period trigger this escalator clause, Defendant, at its sole option, can agree to shorten the end date of the Class Period to a date prior to the date of Preliminary Approval such that the escalator clause is not triggered (*i.e.* the end date of the Class Period and PAGA Period would be the date prior to the date of Preliminary Approval on which the total workweeks worked by the Class Members is closest to but does not exceed 8,071). See Settlement ¶ 4.D.

Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$150,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$50,000.00
Minus Court-approved, verified costs (up to):	\$18,000.00
Minus Court-approved Class Representative Service Award (up to):	\$5,000.00
Minus Settlement Administration Costs:	\$5,950.00
Minus PAGA civil penalties:	\$10,000.00
Net Settlement Amount (“NSA”):	\$61,050.00

The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of the participating Settlement Class members, in four (4) equal installments of \$37,500.00, with the first payment due within ten (10) calendar days of the date the Court enters the Final Approval Order/Judgment followed by three more payments of \$37,500 each starting six months after Final Approval Order/Judgment is entered and every six months thereafter until the Gross Settlement Amount is fully funded. Nguyen Decl., ¶ 13, Exh. 1 Settlement ¶ 4.B.

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) of at least **\$61,050.00** to all Settlement Class Members who do not timely opt out. This amount does not include the \$2,500.00 PAGA Amount to be paid to the PAGA Employees. Nguyen Decl., ¶ 13, Exh. 2 (Settlement ¶ 5.A).

According to Defendant, there are approximately 200 total Settlement Class Members. Nguyen Decl., ¶ 14. Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is projected to be approximately **\$305.25, exclusive of any PAGA civil penalties.** *Id.* The Individual Settlement Awards shall be determined as follows:

- i. The Net Settlement Amount, not including the PAGA Amount payable to Settlement Class Members as described above, shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class

Member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period. *See* Settlement, ¶ 5.B.i.

- ii. PAGA Amount: In addition, Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period, which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of workweeks worked during this time period, and the denominator of which is the total number of workweeks worked by all PAGA Employees. *See* Settlement, ¶ 5.B.ii.

Based on these formulas, with approximately 7,337 workweeks during the Class Period, the Settlement equates to about \$8.32 per workweek (\$61,050/7,337). The average individual portion of PAGA Amount is approximately \$12.50. There are about 1,361 biweekly pay periods during the PAGA Period, which equates to about \$1.84 per pay period (\$2,500/1,361).

Settlement Class Members will have sixty (60) calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶ 10.D. Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement, for the period of March 19, 2017 through the date of preliminary approval. *See* Settlement, ¶ 3. Settlement Class Members who opt-out of Settlement will still receive a portion of the PAGA Amount if they are a PAGA Employee during the PAGA Period.

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

e. The Parties Engaged in Fair and Honest Negotiations.

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance of a mediator. In connection with mediation, Defendant produced timekeeping and payroll data. Plaintiff conducted an analysis of the payroll data and time records produced by Defendant to calculate Defendant's potential exposure for Plaintiff's claims. Nguyen Decl., ¶ 11. After the detailed review of the payroll and time records and other documents and policies produced by Defendant, Class

1 Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of
2 Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's
3 claims and Defendant's defenses thereto, if a settlement could not be reached. *Id.*

4 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result
5 of: factual investigation and data analysis; the exchange of substantial information and class data,
6 including timekeeping and payroll records; arm's length negotiations by counsel; and mediation before
7 an experienced wage and hour class action mediator. *See* Nguyen Decl., ¶¶ 11-12; *See Kullar, supra*,
8 168 Cal.App.4th at 130. In addition, the Parties attended a full-day mediation and continued
9 negotiations with the mediator after a deal was not reached mediation. *Id.* Thus, these factors support
10 preliminary approval.

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

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

18 Unlawful Rounding/Off-the-Clock: Plaintiff alleges that Defendant failed to compensate its
19 non-exempt employees for all time worked because Defendant would keep track of Plaintiff's time
20 worked and would unlawfully round/shave time worked such that Plaintiff would not be fully paid for
21 all time worked. Nguyen Decl., ¶ 16. *Id.* This time-shaving and/or rounding practice utilized by
22 Defendant was not even-handed over time and would almost exclusively round and shave in
23 Defendant's favor such that Plaintiff was routinely underpaid for all his time worked. *Id.* Additionally,
24 during the relevant time period, Defendant had policies and practices of having supervisors fill out
25 employee timecards. As a result of Defendant's failure to properly track the time worked by Plaintiff
26 and other non-exempt employees, Defendant failed to pay Plaintiff and other non-exempt employees
27 for all minimum and overtime wages owed. *Id.* Accordingly, conservatively based on 15 minutes of
28 unpaid time each shift, or 1.25 hours per workweek, and based on a review of the time punch data and

1 payroll records, Plaintiff estimates Defendant's exposure for unlawful rounding at the overtime rate (as
2 overwhelming majority of shifts were 8+ hours) at approximately \$321,007 [7,098 workweeks x 1.25
3 per workweek x \$36.18 (average overtime rate)]. *Id.*

4 National Paving contends that it compensated Settlement Class members for all of their time
5 worked, that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-
6 compensable. Nguyen Decl., ¶ 17. National Paving further asserts that Plaintiff would be unable to
7 certify a rounding class given the individualized inquiries that would be required, and also that National
8 Paving rounding mechanism was, according to it, allegedly facially neutral. Further, National Paving
9 contends that Plaintiff's assessment of the claim at the overtime rate is incorrect. In light of these
10 defenses, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and an
11 additional 45% to account for Defendant's defenses on the merits to arrive at an estimated exposure of
12 approximately \$70,621.54.

13 Meal Period Violations: Plaintiff alleges that he and Settlement Class Members were not
14 provided with all legally-required meal periods in compliance with California law due to Defendant's
15 unlawful meal period policies/practices. Nguyen Decl., ¶ 18. Due to Plaintiff's job duties, Plaintiff was
16 often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or
17 which were at least 30 minutes in length. Specifically, when using handwritten timesheets, Plaintiff and
18 the other non-exempt employees did not write down his start/stop time for lunch, and instead the foreman
19 wrote down the exact same time for every employee or most would simply put an arrow down. *Id.* As
20 such, the reliability and accuracy of the timesheets are questionable. Therefore, based on a review of
21 the time punch data and payroll records, Plaintiff calculated Defendant's maximum exposure for the
22 alleged meal period violations at approximately \$512,156 [7,098 workweeks x 5 shifts/week x .965 (%
23 of shifts over 6.0) x .62 (shifts with non-compliant meal periods) x \$24.12 (average hourly rate)]. *Id.*

24 National Paving counters that it has always provided non-exempt employees with an opportunity
25 to take legally compliant meal periods, and any non-compliant meal periods reflected in employee
26 timekeeping records were solely the result of employee choice, rather than any policy or practice of
27 National Paving. Nguyen Decl., ¶ 19. National Paving also points out that under *Brinker Restaurant*
28 *Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take

meal periods, not “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally, National Paving contends Plaintiff’s meal period claim is not suited for class certification and individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an additional 45% to account for National Paving’s defenses on the merits to arrive at an estimated exposure of \$169,011.48. *Id.*

Rest Period Violations: Plaintiff alleges that he and other Settlement Class Members were not authorized and permitted to take all required rest periods due to National Paving’s rest period policies/practices which fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Nguyen Decl., ¶ 20. Specifically, Plaintiff worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period worked, *or major fraction thereof* as a result of the work demands imposed by Defendant. *Id.* In addition, Defendant’s policy and practice required employees to remain on the work premises during rest periods, failing to relinquish all control of employees and restricting their movement during required rest periods, and thereby failed to authorize and permit off-duty rest periods. Accordingly, Plaintiff calculated Defendant’s maximum exposure at approximately \$856,019 (7,098 workweeks x 5 shifts over 3.5 hours x \$24.12 average hourly rate). *Id.*

National Paving contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 21. National Paving argues that Plaintiff’s rest period claims are inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 55% to account for Defendant’s defenses on the merits to arrive at an estimated exposure of \$134,822.99. *Id.*

Unreimbursed Business Expenses: Plaintiff alleges that National Paving failed to reimburse them

1 and Settlement Class members for necessary business expenditures, including the maintenance of their
2 uniform required for work activities, as required under Labor Code section 2802. Nguyen Decl., ¶ 22.
3 Plaintiff contends that National Paving deducted from Plaintiff's wages towards to cost of cleaning and
4 maintaining mandatory uniforms between \$4 and \$75 per pay period per employee. *Id.* Accordingly,
5 Plaintiff estimates employees should have been reimbursed approximately \$25.00/month or about
6 \$6.25/week for reasonable uniform related expenses Accordingly, Plaintiff calculates National Paving's
7 maximum exposure for this claim at approximately \$44,363.00 (7,098 workweeks x \$6.25). *Id.*

8 National Paving contends that any purportedly necessary expenses incurred by employees were
9 minimal. Nguyen Decl., ¶ 23. National Paving also argues that this claim is not suitable for class
10 treatment, it maintained a lawful expense reimbursement policy, Plaintiff did not submit a request to be
11 reimbursed, and individualized determinations would be required as to how often each employee cleaned
12 their uniform and how much the cleaning costs. *Id.* Accordingly, Plaintiff discounted the maximum
13 exposure by 50% for the risk of non-certification, and an additional 55% to account for National Paving's
14 defenses on the merits and financial condition, to arrive at an estimated exposure of \$9,981.68. *Id.*

15 Wage Statement Violations: Plaintiff further alleges that National Paving issued inaccurate wage
16 statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest
17 period premium wages described above. Nguyen Decl., ¶ 24. Specifically, Plaintiff contends that this
18 conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members
19 did not include all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff
20 calculated National Paving's maximum exposure for wage statement violations at approximately
21 \$134,650 [(\$50.00 x 29 current employees) + (\$100.00 x 1,332 subsequent wage statements)]. *Id.*

22 National Paving argued that meal and rest period claims could not support a claim for wage
23 statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, review
24 granted⁴ and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (see, e.g., *Jones v. Spherion*
25 *Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Nguyen Decl.,
26 ¶ 25. National Paving further argues that its alleged wage statement violations could not be shown to
27

28 ⁴ The California Supreme Court issued its decision in *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, on May 23, 2022, two months after the Parties reached a settlement.

1 be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed]
2 injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
3 imposition of penalties. Nguyen Decl., ¶ 25. As such, Plaintiff discounted the calculated exposure by
4 45% for a risk of non-certification and an additional 50% for a risk of being unsuccessful on the merits
5 to arrive at an estimated total of \$37,028.75. *Id.*

6 Waiting Time Penalties: Plaintiff alleges that National Paving is also liable for waiting time
7 penalties under Labor Code section 203 as a result of its failure to pay all wages upon separation of
8 employment. Nguyen Decl., ¶ 26. Based on the data provided by National Paving, there were
9 approximately 156 Settlement Class Members who have separated their employment with Defendant
10 during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff
11 calculated National Paving’s maximum exposure for waiting time penalties at approximately
12 \$903,053.00 (156 former employees x \$24.12 [average regular rate] x 30 days x 8 hours/day). *Id.*

13 National Paving asserts it has strong defenses to the waiting time claim because there exist good-
14 faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen Decl., ¶
15 27. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude
16 imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding
17 that “good faith dispute” over whether employee was exempt precluded imposition of waiting time
18 penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
19 45% for the risk of non-certification, and an additional 40% to account for National Paving’s defenses
20 on the merits to arrive at an estimated exposure of approximately \$298,007.49. *Id.*

21 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
22 foregoing alleged Labor Code violations. Nguyen Decl., ¶ 28. Plaintiff calculated National Paving’s
23 exposure at approximately \$136,100 (1,361 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v.*
24 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until
25 employer is notified that it is violating a Labor Code provision).

26 National Paving argues that Plaintiff’s PAGA claim will fail for the same reasons that his
27 underlying claims will fail. Nguyen Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
28 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also

fail.”). National Paving also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find National Paving liable for any of Plaintiff’s claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 50% for a risk of being unsuccessful on the merits, and an additional 35% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$44,232.50. *Id.*

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

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$763,706.43. Nguyen Decl., ¶ 30. The proposed settlement of \$150,000.00 therefore represents approximately 20% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class Members, and will still provide an average recovery to Settlement Class Members of over \$300.00, which is a good result in light of National Paving’s financial condition and the possibility that National Paving would not have been able to pay any final judgment if this case proceeded to through trial.

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

1 that they can consider the Settlement. The Court will have the opportunity to again assess the
2 reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

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

4 “Parties represented by competent counsel are better positioned than courts to produce a
5 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
6 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
7 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
8 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
9 *Nguyen Decl.*, ¶¶ 2-8; *Lidman Decl.*, ¶¶ 2-8; *Haines Decl.*, ¶¶ 2-8. Class Counsel conducted an in-
10 depth review of Defendant’s policies and timekeeping and payroll records and drew on their extensive
11 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See Nguyen*
12 *Decl.*, ¶¶ 10-26. The Settlement was also reached with the assistance of an experienced and respected
13 wage and hour class action mediator. *Id.* This factor strongly supports preliminary approval of the
14 Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

15 **i. Attorneys’ Fees and Costs**

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

23 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
24 is currently estimated to be \$50,000, and up to \$18,000 in verified costs reimbursement. *See Settlement*,
25 ¶ 6; *Nguyen Decl.*, ¶ 31. Plaintiff submits the requested fee is fair compensation for undertaking
26 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Further,
27 Plaintiff has provided written approval of the split of attorneys’ fees in this action. *Nguyen Decl.*, ¶ 32.
28 Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing
Plaintiff’s claims, conducting legal research, reviewing Defendant’s documents and policies, analyzing

1 Settlement Class Members’ timekeeping data and payroll records, preparing for and attending
2 mediation, reviewing National Paving’s financials, negotiating and revising the long-form Settlement,
3 preparing this Motion, and otherwise litigating the case. Nguyen Decl., ¶ 31. Class Counsel expect to
4 expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process
5 and fielding questions from Settlement Class Members, preparing the final approval papers and
6 attending the Final Approval hearing. *Id.*

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

13 **j. Administration Costs**

14 Phoenix Settlement Administrator’s fees and expenses are estimated not to exceed \$5,950.00.
15 See Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary Approval filed
16 concurrently herewith (“Lawrence Decl.”). This includes sending the Notice in both English and
17 Spanish due to the nature of Defendant’s workforce. This request is reasonable in light of the proposed
18 class size of approximately 200 Settlement Class Members and the costs and expenses associated with
19 administering the notices in Spanish and English and distributing the awards.

20 **k. Class Representative Service Award**

21 “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate
22 class representatives for work done on behalf of the class [and] to make up for financial or reputational
23 risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
24 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the
25 time of seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for
26 his services to the Settlement Class. Nguyen Decl., ¶ 33; Settlement, ¶ 4.3.C; Medina Decl., ¶¶ 3-12.
27 As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to
28 recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing
substantial factual information and documents to Class Counsel, attending multiple meetings with Class

1 Counsel to discuss the claims and theories at issue in the litigation, participating in the mediation, as
2 well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case,
3 the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code §
4 1542. *See* Nguyen Decl., ¶ 33; Medina Decl., ¶¶ 3-11; Settlement ¶ 3.E.

5 **I. PAGA Civil Penalties**

6 The parties have agreed to a PAGA award of \$10,000.00 and in accordance with California
7 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
8 – or \$7,500.00. Settlement ¶ 4.C.5. This \$10,000.00 represents roughly 6.67% of the \$150,000.00
9 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved
10 by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
11 at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or
12 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal.
13 Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
14 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
15 claims and PAGA claims under which no money was allocated to the PAGA claims).

16 **m. Payroll Taxes**

17 The Settlement provides that the employer’s share of payroll taxes shall be paid separately from,
18 and in addition to, the Gross Settlement Amount. Settlement ¶ 4.E.

19 **n. Uncashed Funds**

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

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

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

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

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

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

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

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

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

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

12 **IV. CONCLUSION**

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

16
17 Dated: August 17, 2022

Respectfully submitted,
LIDMAN LAW, APC

18
19 By:



Elizabeth Nguyen
Attorneys for Plaintiff
ANGEL MEDINA