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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

BERNARDO SANTOS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

TORRES FARM LABOR CONTRACTOR,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. BCV-19-102470

*[Assigned for All Purposes to the Hon. David R.
Lampe, Dept. 11]*

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

Date: June 24, 2021

Time: 8:30 a.m.

Dept.: 18

Complaint Filed: August 30, 2019

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June
3 24, 2021 in Department 18 of the above-entitled Court, located at 1415 Truxtun Ave., Bakersfield,
4 California 93301, Plaintiff Bernardo Santos (“Plaintiff”), individually and on behalf of a class of similarly
5 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 of
8 the following Settlement Class defined as follows:

9 All current and former non-exempt, hourly, employees of Defendant Torres Farm
10 Labor Contractor, Inc. who worked at Grimmway Enterprises, Inc. and related
11 entities’ facilities (including, but not limited to, Grimmway Enterprises, Inc. aka
12 Grimmway Farms and Cal-Organic Farms) in California at any time between
August 29, 2015 and May 1, 2021.

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

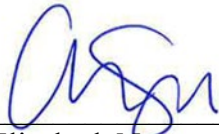
27 This Motion is based on this notice of motion, the memorandum of points and authorities, the
28 declarations of Scott M. Lidman, Elizabeth Nguyen, Romina Tamiry, Milan Moore, Paul K. Haines,

1 Plaintiff Bernardo Santos, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits
2 attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
3 evidence or argument presented at the time of hearing.

4
5 Dated: April 26, 2021

Respectfully submitted,
LIDMAN LAW, APC

6
7
8 By:



Elizabeth Nguyen
Scott M. Lidman
Attorneys for Plaintiff
BERNARDO SANTOS

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1 **I. INTRODUCTION**¹

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

10 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
11 class action settlement,² in which Defendant have agreed to pay One Million Three Hundred Fifty
12 Thousand Dollars and Zero Cents (\$1,350,000) to the following Settlement Class:

13 All current and former non-exempt, hourly, employees of Defendant Torres Farm
14 Labor Contractor, Inc. who worked at Grimmway Enterprises, Inc. and related
15 entities’ facilities (including, but not limited to, Grimmway Enterprises, Inc. aka
16 Grimmway Farms and Cal-Organic Farms) in California at any time between
August 29, 2015 and May 1, 2021.

17 Significantly, Settlement Class Members do not need to file a claim to benefit from the Settlement
18 because all Settlement Class Members will automatically receive a payment unless they affirmatively opt-
19 out. There are approximately 5,472 Settlement Class Members, rendering the average payment to
20 participating Settlement Class Members to be approximately **\$147.02**.³

21 The Settlement was reached only after the parties mediated the action with Steven G. Mehta, Esq.,
22 a well-respected wage and hour class action mediator. In connection with mediation, Defendant produced
23 timekeeping and payroll records for 20% of the putative class, as well as applicable documents regarding

24
25 ¹ Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court allow
26 Plaintiff to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the Court consider
the attached memorandum of points and authorities which is 21 pages in length.

27 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen as Exhibit 1. The
28 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.

³ This amount includes the PAGA Allocation for each Settlement Class member.

its wage and hour policies, and other information. After extensive research and analysis, including a detailed analysis of Defendant’s potential exposure by Plaintiff’s retained expert who holds a Ph.D. in economics, a full-day mediation was held on October 30, 2020. After a full day of mediation, the Parties agreed on a class-wide resolution. In the months that followed, the Parties finalized the terms of settlement that Plaintiff now submits to this Court for preliminary approval.

If the Settlement is approved, Defendant will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$1,350,000.00. After deducting administration costs, Plaintiff’s service award, attorneys’ fees and costs, and payment of PAGA penalties to the LWDA, the remaining Net Settlement Amount (“NSA”) of approximately \$804,500.00 will be distributed to all Settlement Class Members who do not opt-out of the Settlement. This amount includes the \$10,000.00 (or 25% of the \$40,000.00 PAGA Amount) that will be distributed to certain Settlement Class Members.

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

II. SUMMARY OF THE LITIGATION⁴

A. THE PARTIES

According to its website, Defendant is a farm labor contractor that provides farming and staffing needs to its clients. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. Plaintiff was employed by Defendant as a non-exempt employee between March 2016 and November 2018. *See* Declaration of Bernardo Santos (“Santos Decl.”), ¶ 2. During his employment, Defendant assigned him to work at Grimmway Farms and his duties included without limitation, labor and driving a forklift. *Id.*

B. PROCEDURAL HISTORY

On August 30, 2019, Plaintiff filed a putative class action complaint against Defendant in Kern County Superior Court. Nguyen Decl., ¶ 10. Submitted concurrently herewith, is a joint stipulation pursuant to the terms of the Settlement, subject to Court approval, to allow Plaintiff to file a First Amended

⁴ All declarations referenced herein are being submitted concurrently herewith in Plaintiff’s Compendium of Declarations Filed in Support of Motion for Preliminary Approval of Class Action Settlement.

1 Complaint Class and Representative Action Complaint (“FAC”) adding a cause of action for civil
2 penalties under the PAGA. Nguyen Decl., ¶ 10. Therefore, in order to effectuate the terms of the
3 Settlement, Plaintiff also seeks leave from the Court to file FAC, which is attached as Exhibit A to the
4 Joint Stipulation to File FAC submitted concurrently herewith.⁵

5 **C. DISCOVERY**

6 After agreeing to participate in early mediation, Defendant informally produced time records and
7 payroll data for the 20% of the putative class randomly selected by Plaintiff, as well as its wage and hour
8 policies and other relevant documents and information relevant to the claims alleged in advance of
9 mediation. Nguyen Decl., ¶ 11. Plaintiff retained an expert to conduct an analysis of the payroll data and
10 time records produced by Defendant. After the detailed review of the payroll and time records and other
11 documents and policies produced by Defendant, Class Counsel drew on their extensive experience in
12 similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* The discovery allowed the
13 Parties to discuss the strengths and weaknesses of Plaintiff’s contemplated claim for civil penalties under
14 the PAGA and various theories of liability on his claim. This discovery allowed the parties to assess the
15 merits and value of Plaintiff’s claims and Defendant’s defenses thereto for mediation. *Id.*

16 **D. ARMS-LENGTH NEGOTIATIONS**

17 On October 30, 2020 after extensive research and analysis, including a detailed analysis of
18 Defendant’s potential exposure by Plaintiff’s retained expert who holds a Ph.D. in economics, a full-day
19 mediation was held with Steven G. Mehta, Esq., a well-respected wage and hour class action mediator.
20 Nguyen Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the
21 likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* As
22 part of the negotiations and settlement discussions, the Parties agreed that Plaintiff would file a FAC which
23 adds a claim for civil penalties under the PAGA. *Id.* After a full day mediation, the Parties reached
24 agreement on a class-wide resolution. In the months that followed, the Parties finalized the terms of the
25 settlement and executed the Stipulation of Settlement (“Settlement”). *Id.*

26 //

27 //

28 ⁵ Plaintiff submitted a letter to the Labor and Workforce Development Agency with respect to Plaintiff’s intent to bring a
claim for civil penalties under the PAGA on March 9, 2021. The sixty-five day exhaustion period will expire on May 14,
2021. *See* Nguyen Decl., ¶ 10 and 33, Exh. 2.

1 **III. ARGUMENT**

2 **A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

3 California Rule of Court 3.769 conditions settlement of a class action on court approval, which is
4 generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil
5 Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial court to
6 determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*
7 (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine “whether a proposed settlement is
8 fundamentally fair, adequate, and reasonable”).

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

15 **1. Numerosity is Satisfied.**

16 Here, the proposed Settlement Class consists of approximately 5,472 members, and is therefore
17 sufficiently numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v. Sup.*
18 *Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).
19 Thus, numerosity is satisfied.

20 Further, a class is “ascertainable” where the members “may be readily identified without
21 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*
22 (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined
23 as “All current and former non-exempt, hourly, employees of Defendant Torres Farm Labor Contractor,
24 Inc. who worked at Grimmway Enterprises, Inc. and related entities’ facilities (including, but not limited
25 to, Grimmway Enterprises, Inc. aka Grimmway Farms and Cal-Organic Farms) in California at any time
26 between August 29, 2015 and the date of preliminary approval or May 1, 2021 whichever comes first.”
27 Nguyen Decl., ¶ 12, Exh. 1 (*See* Settlement, ¶ 1) and ¶ 14.

28 In addition, PAGA Employees is defined as “All current and former non-exempt, hourly, employees

1 of Defendant Torres Farm Labor Contractor, Inc. in California who worked at Grimmway Enterprises, Inc.
2 and related entities' facilities (including, but not limited to, Grimmway Enterprises, Inc. aka Grimmway
3 Farms and Cal-Organic Farms) at any time between August 29, 2018 and the date of preliminary approval
4 or May 1, 2021 whichever comes first." *Id.* at Settlement, ¶ 2.

5 **2. Commonality is Satisfied.**

6 The focus in a certification dispute is not the merits, but rather on what types of questions, "common
7 or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)*
8 (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members' claims arise from Defendant's common,
9 uniform policies and practices that applied to Plaintiff and Settlement Class Members during the class
10 period. Nguyen Decl., ¶ 15. As a result of the common and uniform policies and practices that applied to
11 all Settlement Class Members, their claims involve common questions of law and fact, including but not
12 limited to: (1) whether Defendant properly paid all minimum wages; (2) whether Defendant properly paid
13 all overtime wages; (3) whether Defendant provided all legally compliant meal periods; (4) whether
14 Defendant authorized and permitted all legally required rest periods; (5) whether Defendant failed to furnish
15 accurate, itemized wage statements; (6) whether Defendant failed to timely pay all wages owed upon
16 separation; and (7) whether Defendant's conduct constituted unlawful and/or unfair business practices.
17 These alleged practices result in common questions as to the affected Settlement Class Members. *See e.g.,*
18 *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

19 **3. Typicality is Satisfied.**

20 The typicality requirement is satisfied where class representatives have claims that are typical of
21 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
22 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
23 in a consumer class action).

24 Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class.
25 First, Plaintiff was employed by Defendant during the Class Period as a non-exempt employee and was
26 subject to Defendant's wage and hour policies at issue in this case. *See Santos Decl.*, ¶ 2. Second,
27 Plaintiff was injured by the same challenged policies that injured the Settlement Class as a whole. For
28 example, Plaintiff asserts that he, like the members of the Class, was not provided with all required meal

1 periods, was not provided all legally required minimum wages and overtime wages, was not authorized
2 and permitted to take all required rest periods, did not receive meal and rest period premium wages, was
3 not provided with accurate, itemized wage statements, and was not paid all of his wages owed upon
4 separation of employment. *Id.* Given that Defendant’s policies and practices applied to all non-exempt
5 employees, Settlement Class Members possess a similar interest and have suffered similar alleged injuries
6 as Plaintiff. Accordingly, because Plaintiff’s claims and those of the Settlement Class all arise from the
7 same conduct, typicality is satisfied.

8 **4. Adequacy is Satisfied.**

9 The adequacy requirement examines conflicts of interest between named parties and the class(es)
10 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
11 Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
12 Settlement Class he seeks to represent. *See Santos Decl.*, ¶ 11. Indeed, Plaintiff’s interests are aligned
13 with those of the Settlement Class Members, as they all seek monetary relief under the same facts and
14 legal theories. *Id.* Additionally, Class Counsel does not have any conflict of interest with the Settlement
15 Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where
16 there was no indication that Class Counsel were not qualified and the named plaintiff had no interests
17 antagonistic to those of the proposed class). Further, Class Counsel also have extensive experience in
18 wage and hour class action litigation and have vigorously litigated this case. *See Nguyen Decl.*, ¶¶ 2-8;
19 Declaration of Scott M. Lidman (“Lidman Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines Decl.”),
20 ¶¶ 2-8; Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4; Declaration of Romina Tamiry (“Tamiry
21 Decl.”), ¶¶ 2-3.

22 **B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE**
23 **PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR,**
24 **ADEQUATE, AND REASONABLE**

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

1 class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

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

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

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

12 Although Plaintiff maintains that his claims are meritorious, Plaintiff acknowledges that there were
13 substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented
14 multiple defenses to Plaintiff’s claims, both on the merits and class certification. Thus, while Plaintiff
15 was prepared to litigate these claims through certification and trial, success was not certain.

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

17 Although the parties engaged in significant informal discovery throughout this action, the parties
18 still had significant discovery to complete in formal litigation had the matter not settled. Nguyen Decl., ¶
19 32. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the
20 wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.*
21 Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur
22 considerably more attorneys’ fees and costs through a possible decertification motion, trial, and possible
23 appeal. *Id.* This Settlement avoids those risks and the accompanying expense. Thus, this factor supports
24 preliminary approval.

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

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

//

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

2 If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount (“GSA”) of
3 \$1,350,000.00.⁶ Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 5) and ¶ 13. Significantly, this Settlement is
4 **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a
5 Settlement Award. *Id.* (Settlement, ¶ 5.D). Each Settlement Class member will automatically receive a
6 Settlement Award unless he or she affirmatively opts out of the Settlement.⁷ *Id.* The monetary terms of
7 the Settlement are summarized below:

8 Gross Settlement Amount (“GSA”):	\$1,350,000.00
9 Minus Court-approved attorneys’ fees (1/3 of GSA):	\$450,000.00
10 Minus Court-approved, verified costs (up to):	\$25,000.00
11 Minus Court-approved Class Representative Service Award (up to):	\$5,000.00
12 Minus Settlement Administration Costs:	\$35,500.00
13 Minus PAGA payment to LWDA:	\$30,000.00
14 Net Settlement Amount (“NSA”):	\$804,500.00

15 Defendant will have the option to pay the Gross Settlement Amount in two (2) payments up to 90
16 days apart to the Administrator with the first payment commencing 30 days of the Effective Date of the
17 Settlement and the second payment due no later than 120 days of the Effective Date. Defendant agrees to
18 deposit the full amount of the Gross Settlement Amount with the Settlement Administrator by no later
19 than 120 days of the Effective Date. *See* Nguyen Decl., ¶ 12, Exh. 1 (Settlement ¶ 5.B) and ¶ 13. The
20 Effective Date occurs after certain conditions have been satisfied, including the expiration of the period
21 for filing any appeal. *See* Nguyen Decl., ¶12, Exh. 1 (Settlement ¶ 5.B) and ¶ 13.

22 _____
23 ⁶ Defendant represents that there are an estimated 163,000 workweeks worked by the Settlement Class Members
24 during the Class Period as of February 26, 2021. If the number of workweeks during the Class Period is more than
25 20% greater than this figure (i.e., if there are 195,600 or more workweeks worked by the Settlement Class Members
26 during the Class Period), Defendant has the option to either: (1) agree to increase the Gross Settlement Amount on
27 a proportional basis (i.e., if there was 21% increase in the number workweeks during the Class Period, Defendant
would agree to increase the Gross Settlement Amount by 1%); or (2) in the alternative, in the event that this escalator
provision is triggered, then Defendant has the option to elect to end the Class Period so as to have an earlier end
date at the Defendant's discretion in order to limit the covered workweeks to 195,600 in lieu of paying an increase
to the Gross Settlement Amount. *See* Nguyen Decl., ¶12, Exh. 1 (Settlement ¶ 12) and ¶13.

28 ⁷ Pursuant to the terms of the Settlement, Defendant will have the option of rescinding the Settlement if more than
5% of the Settlement Class opts out of the Settlement and all actions taken in furtherance of it will thereby be null
and void. *See* Nguyen Decl., ¶12, Exh. 1 (Settlement ¶ 13) and ¶13, Exh. 1.

1 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award
2 to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement requires
3 Defendant to pay a Net Settlement Amount ("NSA") of at least **\$804,500.00** to all Settlement Class
4 Members who do not timely opt out. This amount includes the \$10,000.00 PAGA Amount to be paid to
5 the PAGA Employees. Nguyen Decl., ¶ 13.

6 According to Defendant, there are approximately 5,472 total Settlement Class Members. Nguyen
7 Decl., ¶ 14. Thus, the average Individual Settlement Awards (assuming all Settlement Class Members
8 worked the same length of time and there are no opt-outs) is projected to be approximately **\$147.02**. *Id.*
9 The Individual Settlement Awards shall be determined based on the number of workweeks worked during
10 the Class Period and PAGA Period, as follows:

- 11 i. The Net Settlement Amount, not including the PAGA Amount, shall be allocated to
12 Settlement Class Members who worked during the Class Period, as follows: each
13 participating Settlement Class member shall receive a proportionate settlement share based
14 upon the number of workweeks worked during the Class Period, the numerator of which is
15 the Settlement Class member's total workweeks worked during the Class Period, and the
16 denominator of which is the total workweeks worked by all Settlement Class Members
17 who worked during the Class Period. Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 6.B.i).
- 18 ii. PAGA Amount: In addition, Ten Thousand Dollars and Zero Cents (\$10,000.00) of the
19 Gross Settlement Amount has been designated as the "PAGA Amount". Each PAGA
20 Employee shall receive a portion of the PAGA Amount proportionate to the number of
21 workweeks that he or she worked during the PAGA Period, which will be calculated by
22 multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA
23 Employee's number of workweeks worked during this time period, and the denominator
24 of which is the total number of workweeks worked by all PAGA Employees. *See* Nguyen
25 Decl., ¶ 12, Exh. 1 (Settlement, ¶ 6.B.iii.) The "PAGA Period" is defined in the Settlement
26 as the time period of August 29, 2018 through the date of preliminary approval or May 1,
27 2021, whichever comes first. *See* Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 2).

28 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* Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 11.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 August 29, 2015 through May 1, 2021.
See Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 4). 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.

1 As this is a non-reversionary Settlement, 100% of the NSA shall be consumed in that if a
2 Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-out
3 shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did not
4 opt-out. *See* Nguyen Decl., ¶ 13.

5 **e. The Parties Engaged in Fair and Honest Negotiations.**

6 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
7 of a mediator. In connection with mediation, Defendant produced timekeeping and payroll data for the
8 20% of the putative class randomly selected by Plaintiff. Plaintiff retained an expert to conduct an
9 analysis of the payroll data and time records produced by Defendant to calculate Defendant's potential
10 exposure for Plaintiff's claims, including a claim for civil penalties under the PAGA. Nguyen Decl., ¶
11 11. After the detailed review of the payroll and time records and other documents and policies produced
12 by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths
13 and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value
14 of Plaintiff's claims and Defendant's defenses thereto. *Id.*

15 On October 30, 2020, the Parties participated in a full-day mediation with Steven G. Mehta, Esq.,
16 a preeminent wage and hour class action mediator. Nguyen Decl., ¶¶ 11-12. During mediation, the
17 parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's
18 claims, as well as the legal basis for the claims and defenses. After a full day of mediation, the Parties
19 agreed on a class-wide resolution. Thereafter, the Parties finalized the terms of settlement and executed
20 the Settlement. Nguyen Decl., ¶ 12, Exh. 1.

21 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of:
22 factual investigation and data analysis; the exchange of substantial information and class data, including
23 timekeeping and payroll records; arm's length negotiations by counsel; and mediation before an
24 experienced wage and hour class action mediator. *See* Nguyen Decl., ¶¶ 11-12; *See Kullar, supra*, 168
25 Cal.App.4th at 130. Thus, these factors support preliminary approval.

26 Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential
27 treatment to the class representative or segments of the class, and is within the range of possible approval,
28 as discussed in detail below. The Settlement will provide monetary relief to Settlement Class Members.

1 The amounts proposed for Class Counsel’s attorneys’ fees and costs, and service award are all reasonable
2 and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies,
3 this factor supports preliminary approval.

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

5 Unpaid Minimum Wages and Unpaid Overtime Wages: Plaintiff alleges that Defendant failed to
6 compensate its non-exempt employees for all time worked. Nguyen Decl., ¶ 16. Specifically, Plaintiff
7 alleges that Defendant would keep track of Plaintiff’s time worked and would unlawfully round/shave
8 Plaintiff’s work time such that Plaintiff would not be fully paid for all time worked. *Id.* Further, Plaintiff
9 was required to work and clock in 5 minutes before the start of his scheduled shift but was not
10 compensated until his scheduled start time. In addition, upon information and belief, Defendant had a
11 policy and practice of automatically-deducting 15 minutes from an employee’s work time if he or she
12 clocked in after the scheduled start time regardless of the actual number of minutes the employee clocked
13 in late. This time-shaving and/or rounding practice utilized by Defendant was not even-handed over time
14 and would almost exclusively round and shave in Defendant’s favor such that Plaintiff was routinely
15 underpaid for all his time worked. *Id.* Plaintiff also alleges that he and other Settlement Class Members
16 often worked in excess of ten hours per workday, but Defendant failed to provide overtime compensation
17 equal to one and one-half times their regular rate of pay for all such overtime hours. In the complaint,
18 Plaintiff alleged, upon information and belief during at least a portion of the class period, Defendant paid
19 Plaintiff and other Settlement Class Members weekly “Units” pay and/or bonuses. These “Units” pay,
20 bonuses, and/or other forms of pay were not excludable as a matter of law when calculating an
21 employee’s regular rate (hereinafter the aforementioned forms of pay are collectively referred to as
22 “Incentive Pay”). *Id.* Plaintiff alleged, upon information and belief, that despite Defendant’s payment
23 of Incentive Pay to Plaintiff and other Settlement Class Members, Defendant failed to include all forms
24 of Incentive Pay when calculating employee’s regular rate of pay, thereby causing Plaintiff and other
25 Settlement Class Members to be underpaid all of their overtime wages owed. Based a review of the time
26 punch data and payroll records, Plaintiff’s retained expert, who holds a Ph.D. in economics, calculated
27 Defendant’s maximum exposure at approximately \$128,568.27.

28 Defendant contends that it compensated non-exempt employees for all of their time worked and

1 that the time punch data would necessarily include minutes that were not compensable work time because
2 the employee would not start performing any work prior to the start of the shift and/or would not perform
3 any work after the scheduled stop time. Nguyen Decl., ¶ 17. Defendant also contends that its rounding
4 practices were lawful and any unpaid time was *de minimis* and therefore non-compensable. *Id.* Defendant
5 further asserts that Plaintiff would be unable to certify a rounding or off-the-clock claim given the
6 individualized inquiries that would be required, given that Defendant's rounding mechanism was,
7 according to Defendant, allegedly favored the employees. Defendant further contends that Settlement
8 Class Members received all overtime wages to which they were entitled. Defendant contends that
9 Settlement Class Members received all overtime wages to which they were entitled and that it maintained
10 pay codes for shift differentials, shift differential based on regular hours, shift differential based on
11 overtime hours, shift differential based on double overtime hours and properly paid overtime wages and
12 the correct regular rate of pay. Defendant contends that the use of "Units" on the wage statements were
13 not for payment of any bonuses and were labels for the different shift differentials paid. *Id.* Based on
14 these risks, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an
15 additional 30% to account for Defendant's defenses on the merits to arrive at an estimated exposure of
16 approximately \$53,998.67. *Id.*

17 Meal Period Violations: Plaintiff alleges that he and Settlement Class Members were not provided
18 with all legally-required off-duty meal periods in compliance with California law due to Defendant's
19 unlawful meal period policies and practices. Nguyen Decl., ¶ 18. Specifically, Plaintiff alleges that
20 Defendant had a policy and practice of staggering the meal periods for non-exempt employees, resulting
21 Defendant providing non-exempt employees with a meal period after the start of their fifth hour of work.
22 As a result, Plaintiff's and other non-exempt employees' meal periods were often late or otherwise
23 unlawful. Additionally, for at least a portion of the class period, Defendant would automatically-deduct
24 30 minutes from Plaintiff's and other non-exempt employee's work time and regardless of whether they
25 actually took a meal period, and regardless of how long a meal period was if in fact taken. Further, when
26 Plaintiff worked shifts of over 10.0 hours, he was not always provided a second 30-minute meal period
27 due to Defendant's meal period policies/practices that failed to provide for a second meal period for shifts
28 of over 10.0 hours. *Id.* Therefore, Plaintiff calculated Defendant's maximum exposure for the alleged

1 first meal period violations at approximately \$1,670,600 (686,473 shifts over 6.0 hours x \$15.21 [average
2 hourly rate]). *Id.* This estimated exposure is based on Defendant’s practice of automatically-deducting 30
3 minutes for a purported meal period for 91% of all meal enabling shifts, or shifts over 6.0 hours.

4 Defendant counters that it has always provided non-exempt employees with an opportunity to take
5 legally compliant meal periods, the supervisors stagger breaks, and that it maintains and track compliance
6 meal breaks utilizing detailed handwritten records. In addition, Defendant contends that it maintains
7 forms that non-exempt employees can complete if they were not provided with a meal period in order to
8 be paid a meal period premium. Further, any purported non-compliant meal periods reflected in employee
9 timekeeping records were solely the result of employee choice, rather than any policy or practice of
10 Defendant. Nguyen Decl., ¶ 19. Defendant points out that under *Brinker Restaurant Corp. v. Superior*
11 *Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not
12 “ensure” meal periods are taken, and that it has always done so. *Brinker, supra*, 53 Cal.4th at 1038
13 (rejecting “ensure” standard). Finally, Defendant contends Plaintiff’s meal period claim is not suited for
14 class certification, since individual inquiries would be required to assess which employees took non-
15 compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a
16 particular employee took a non-compliant meal period or missed a meal period during a particular shift.
17 *Id.* Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and
18 an additional 65% to account for Defendant’s defenses on the merits to arrive at an estimated exposure of
19 approximately \$1,461,776. *Id.*

20 Third Rest Period Violations: Plaintiff alleges that he and other Settlement Class Members were
21 not authorized and permitted to take all required rest periods due to Defendant’s rest period
22 policies/practices which fail to authorize and permit a third 10-minute rest period on all shifts worked in
23 excess of 10.0 hours. Nguyen Decl., ¶ 20. Accordingly, Plaintiff calculated Defendant’s maximum
24 exposure at approximately \$1,599,666 (105,172 shifts over 10.0 hours x \$15.21). *Id.*

25 Defendant contends it has always maintained and enforced lawful rest period policies and
26 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
27 periods in compliance with California law. Nguyen Decl., ¶ 21. Defendant argues that Plaintiff’s rest
28 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. Therefore, Plaintiff discounted the maximum exposure by 70% for the risk of non-certification, and an additional 70% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately \$143,970. *Id.*

Wage Statement Violations: Plaintiff further alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages described above. Nguyen Decl., ¶ 22. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid. *Id.* Specifically, Plaintiff alleges that Defendant issued inaccurate wage statements with respect the payment of wages for "units", which is vague and ambiguous and requires Plaintiff to speculate to its meaning. *Id.* Therefore, Plaintiff calculated Defendant's maximum exposure for wage statement violations at approximately \$6,458,950 ((\$50.00 x 725 current employees) + (\$100.00 x 64,227 subsequent wage statements)). *Id.*

Defendant argues that meal and rest period claims cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g., Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Nguyen Decl., ¶ 23. Defendant further argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Nguyen Decl., ¶ 23. As such, Plaintiff discounted the calculated exposure by 60% for a risk of non-certification and an additional 40% for a risk of being unsuccessful on the merits to arrive at an estimated total of approximately \$1,550,148. *Id.*

Waiting Time Penalties: Plaintiff alleges that Defendant is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages upon separation of employment. Nguyen Decl., ¶ 24. Based on the data provided by Defendant, there were approximately 4,295 Settlement Class Members who have separated their employment with Defendant during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Defendant's maximum

1 exposure for waiting time penalties at approximately \$15,678,468 (4,295 former employees x \$15.21
2 [average regular rate] x 30 days x 8 hours/day). *Id.*

3 Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith
4 disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 25. *See*
5 *also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of
6 waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith
7 dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested
8 wages owed). *Id.* Accordingly, Plaintiff discounted the maximum exposure by 70% for the risk of non-
9 certification, and an additional 70% to account for Defendant's defenses on the merits to arrive at an
10 estimated exposure of approximately \$1,411,062. *Id.*

11 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
12 foregoing alleged Labor Code violations. Nguyen Decl., ¶ 26. Plaintiff calculated Defendant's exposure
13 at \$6,495,200 (64,952 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas Corp. No. 2*
14 (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that
15 it is violating a Labor Code provision).

16 Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying
17 claims will fail. Nguyen Decl., ¶ 27; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
18 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
19 Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to
20 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims.
21 Nguyen Decl., ¶ 27; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
22 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.
23 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
24 \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 70% for
25 a risk of being unsuccessful on the merits, and an additional 60% to account for the possibility of this Court
26 reducing penalties, to arrive at an estimated exposure of approximately \$779,424.00. *Id.*

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

28 Using these estimated figures for each of the claims described above, Plaintiff predicted the

1 realistic total recovery for the Settlement Class would be approximately \$5,400,378. Nguyen Decl., ¶ 28.
2 The proposed settlement of \$1,350,000.00 therefore represents approximately 24.99% of the reasonably
3 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
4 will provide tangible monetary relief to Settlement Class Members, and will still provide an average
5 recovery to Settlement Class Members of over \$140.

6 The proposed settlement reflects approximately 24.99% of the estimated recovery the Settlement
7 Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary
8 compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this
9 case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal.
10 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35%
11 of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement
12 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D.
13 Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even
14 though it amounts to only a fraction of the potential recovery that might be available to the Settlement
15 Class members at trial”). Thus, Plaintiff submits that the proposed settlement is within the range of
16 possible approval, such that notice should be provided to the Settlement Class so that they can consider
17 the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement
18 after the Settlement Class has had the opportunity to opt-out or object.

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

20 “Parties represented by competent counsel are better positioned than courts to produce a
21 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
22 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
23 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
24 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
25 Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
26 review of Defendant’s policies and timekeeping and payroll records, with the assistance of a retained
27 expert with a Ph.D. in economics, and drew on their extensive experience in similar cases to assess the
28 strengths and weaknesses of Plaintiff’s case. *See* Nguyen Decl., ¶¶ 10-26. The Settlement was also

reached with the assistance of an experienced and respected class action mediator, a factor that strongly supports preliminary approval. *See Kullar, supra*, 168 Cal.App.4th at 130.

i. Attorneys' Fees and Costs

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

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be \$450,000.00, and up to \$25,000.00 in verified costs reimbursement. *See* Nguyen Decl., ¶12, Exh. 1 (Settlement, ¶ 7) and ¶ 29. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen Decl., ¶ 29. 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 Settlement Class Members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expect to expend additional attorney time in attending the hearings on this Motion and the Final Approval Motion, overseeing the notice process and fielding questions from Settlement Class Members, and preparing the final approval papers. *Id.*

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

1 **j. Administration Costs**

2 Phoenix Settlement Administrator’s (“PSA”) fees and expenses are estimated not to exceed
3 \$35,500.00. *See* Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary Approval
4 filed concurrently herewith (“Lawrence Decl.”). This includes sending the Notice in both English and
5 Spanish due to the nature of Defendant’s workforce. This request is reasonable in light of the proposed
6 class size of approximately 5,472 Settlement Class Members and the costs and expenses associated with
7 administering the notices in English and Spanish and distributing the awards.

8 **k. Class Representative Service Award**

9 “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class
10 representatives for work done on behalf of the class [and] to make up for financial or reputational risk
11 undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,
12 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of
13 seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for his services
14 to the Settlement Class. Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 5) and ¶ 31; Santos Decl., ¶¶ 3-12. As
15 will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to
16 recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing
17 substantial factual information and documents to Class Counsel, attending multiple meetings with Class
18 Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff
19 undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to
20 a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶ 31; Santos
21 Decl., ¶¶ 3-11; Settlement ¶ 4.

22 **l. PAGA Civil Penalties**

23 The parties have agreed to a PAGA award of \$40,000.00 and in accordance with California Labor
24 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or
25 \$30,000.00. Settlement ¶ 6. This \$40,000.00 represents roughly 2.9% of the \$1,350,000.00 Gross
26 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.
27 *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D.
28 Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or

1 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr.
2 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
3 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
4 claims and PAGA claims under which no money was allocated to the PAGA claims).

5 **m. Payroll Taxes**

6 The Settlement provides that the employer’s share of payroll taxes shall be paid separately from,
7 and in addition to, the Gross Settlement Amount. Nguyen Decl., ¶12, Exh. 1 (Settlement ¶ 5.E).

8 **n. Uncashed Funds**

9 The Settlement provides that any funds remaining uncashed after 120 days from the date the
10 Settlement Administrator mails the checks shall be distributed to a non-profit organization to be selected
11 by Defendant and approved by the Court. At this time, the Parties seek the Court’s approval to designate
12 Juvenile Diabetes Research Foundation (JDRF) as the non-profit recipient of any uncashed funds. *See*
13 Nguyen Decl., ¶ 34. If the Court does not approve JDRF, the Settlement proposes other alternative non-
14 profit organizations for the Court’s consideration. *See* Nguyen Decl., ¶12, Exh. 1 (Settlement ¶ 6.E).
15 Plaintiff’s counsel does not have any connection with the identified organization that could create the
16 appearance of impropriety as between identified organization and the interests of the class. Nguyen
17 Decl., ¶ 34; Haines Decl., ¶ 10. Defendant and counsel for Defendant have also confirmed that they do
18 not have a connection to or a relationship with the identified organization that could create the appearance
19 of impropriety as between the identified organization and the interests of the class.

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

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

26 //

27 //

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

3 Before the final approval hearing, the Court requires adequate notice of the settlement be given
4 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
5 Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and
6 Notice of Individual Settlement Award) by first-class regular U.S. Mail, postage prepaid, using last
7 known mailing address information provided by Defendant. *See* Settlement, ¶ 11, Exh. A. The Notice
8 Packet will be mailed in both English and Spanish due to the nature of Defendant’s workforce.

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

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

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

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

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

12 **IV. CONCLUSION**

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

16 Dated: April 26, 2021

Respectfully submitted,
LIDMAN LAW, APC

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18 By:



Elizabeth Nguyen
Attorneys for Plaintiff
BERNARDO SANTOS