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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GILBERTO RODRIGUEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

CARDINAL PAINT AND POWDER, INC., a
Nevada corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 20STCV14711

*[Assigned for all purposes to Hon. Yvette M.
Palazuelos, Dept. SSC-9]*

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

Date: August 12, 2021
Time: 10:00 a.m.
Dept.: SSC-9

Complaint Filed: April 15, 2020
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
3 August 12, 2021 in Department SSC-9 of the above-entitled Court, located at 312 N. Spring Street, Los
4 Angeles, California 90012, Plaintiff Gilberto Rodriguez ("Plaintiff"), individually and on behalf of a
5 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 Class defined as follows:

9 All current and former hourly-paid or non-exempt employees who worked for
10 Cardinal Paint and Powder, Inc. and/or Cardinal Industrial Finishes in the state
11 of California at any time from April 16, 2016 through the date of preliminary
12 approval or the date on which the Workweeks are equal to or do not exceed
51,750, whichever comes first.

- 13 3. Preliminary appointment of Plaintiff Gilberto Rodriguez 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
18 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
19 payable to the California Labor Workforce Development Agency, and attorneys' fees and
20 costs to Class Counsel;
21 6. Appointment of Phoenix Settlement Administrators ("Phoenix") as the third-party
22 Settlement Administrator for mailing notices; and
23 7. Approval of the proposed Notice of Class Action Settlement and an order that it be
24 disseminated to the proposed Class Members as provided in the 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 Gilberto
27 Rodriguez, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached
28

1 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
2 evidence or argument presented at the time of hearing.

3
4 Dated: June 23, 2021

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:

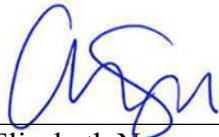

Elizabeth Nguyen
Scott M. Lidman
Attorneys for Plaintiff
GILBERTO RODRIGUEZ

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**¹

2 **I. INTRODUCTION**

3 Plaintiff Gilberto Rodriguez (“Plaintiff”) brought this class and representative action against
4 Defendants Cardinal Paint and Powder, Inc., and Cardinal Industrial Finishes (hereinafter collectively
5 referred to as “Cardinal” or “Defendants”) alleging various wage and hour violations. Plaintiff’s
6 primary allegations are that Defendants: (1) failed to pay all minimum wages owed; (2) failed to pay all
7 overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and
8 permit all legally required rest periods; (5) failed to timely pay all wages upon separation of
9 employment; (6) failed to provide accurate, itemized wage statements; (7) engaged in unlawful business
10 practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys General Act of
11 2004 (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
13 class action settlement,² in which Defendants have agreed to pay Seven Hundred Sixty-Five Thousand
14 Dollars and Zero Cents (\$765,000.00) to the following Class:

15 All current and former hourly-paid or non-exempt employees who worked for
16 Cardinal Paint and Powder, Inc. and/or Cardinal Industrial Finishes in the state
17 of California at any time during the time period of April 16, 2016 through the
date of preliminary approval or the date on which the Workweeks are equal to or
do not exceed 51,750, whichever comes first.

18 Significantly, Class Members do not need to file a claim to benefit from the Settlement because
19 all Class Members will automatically receive a payment unless they affirmatively opt-out. There are
20 approximately 414 Class Members, rendering the average payment to participating Class Members to
21 be approximately \$1,069.54.³

22 The Settlement was reached only after the parties mediated the action with Jeffrey Krivis, Esq.,
23 a well-respected wage and hour class action mediator. In connection with mediation, Defendants

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 proposed Notice of Class Action Settlement (“Class Notice”) is attached to the Settlement as Exhibit A. The
proposed Order Granting Preliminary Approval of Class Action Settlement is attached to the Settlement as
28 Exhibit B. All defined terms in this motion have the same definitions as used in the Settlement.

³ This amount includes the PAGA Payment for each Class Member.

1 produced timekeeping and payroll records for the putative class, as well as applicable documents
2 regarding its wage and hour policies, and other information. After extensive research and analysis,
3 including a detailed analysis of Defendants’ potential exposure by Plaintiff, a full-day mediation was
4 held on March 25, 2021. The Parties agreed on a class-wide resolution, subject to approval by this
5 Court, and memorialized the agreement in a Memorandum of Understanding at the mediation. Since
6 mediation, the Parties finalized the terms of settlement and executed the Settlement that is now
7 submitted for this Court’s preliminary approval.

8 If the Settlement is approved, Defendants will pay a non-reversionary Total Settlement Amount
9 (“GSA”) of \$765,000.00. After deducting administration costs, Plaintiff’s service award, attorneys’
10 fees and costs, and payment of PAGA penalties, the remaining Net Distribution Fund (“NDF”) of
11 approximately \$435,250.00 will be distributed to all Class Members who do not opt-out of the
12 Settlement (“Settlement Class Members”). This amount does not include the \$7,500.00 (or 25% of the
13 \$30,000.00 PAGA Payment) that will be distributed to certain Class Members.

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

18 **II. SUMMARY OF THE LITIGATION**

19 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS- 20 LENGTH NEGOTIATIONS**

21 **1. The Parties**

22 According to their website, Defendants are a manufacturing company that manufactures and
23 sells liquid and powder coating systems. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10.
24 Plaintiff commenced his employment with Defendants as an hourly, non-exempt employee in
25 approximately 2011. *See* Declaration of Gilberto Rodriguez (“Rodriguez Decl.”), ¶ 2. During his
26 employment, Plaintiff worked at Defendants’ manufacturing facility in City of Industry, California as a
27 Machine Operator. *Id.*

28 **2. Procedural History**

On April 15, 2020, Plaintiff filed a putative class action complaint against Defendant Cardinal

1 Paint and Powder, Inc. in Los Angeles County Superior Court. Nguyen Decl., ¶ 10. Submitted
2 concurrently herewith is a joint stipulation pursuant to the terms of the Settlement, subject to Court
3 approval, to allow Plaintiff to file a First Amended Class and Representative Action Complaint (“FAC”)
4 adding affiliate company Cardinal Industrial Finishes, one of the legal entities that employed the Class
5 Members in California,⁴ as a named Defendant and the following causes of action against both
6 Defendants for: (1) waiting time penalties; (2) wage statement violations; and (3) civil penalties under
7 the PAGA. *Id.* Therefore, in order to effectuate the terms of the Settlement, Plaintiff also seeks leave
8 from the Court to file the FAC, which is attached as Exhibit A to the Joint Stipulation to File FAC
9 submitted concurrently herewith.⁵

10 **3. Discovery**

11 After agreeing to participate in early mediation, Defendants informally produced time records
12 and payroll data for the putative class for both Cardinal Paint and Powder, Inc. and Cardinal Industrial
13 Finishes, as well as its wage and hour policies and other relevant documents and information relevant
14 to the claims alleged in advance of mediation. Nguyen Decl., ¶ 11. Plaintiff conducted an analysis of
15 the payroll data and time records produced by Defendants. After the detailed review of the payroll and
16 time records and other documents and policies produced by Defendants, Class Counsel drew on their
17 extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This
18 discovery also allowed the Parties to discuss the strengths and weaknesses of Plaintiff’s contemplated
19 claims for waiting time penalties, inaccurate wage statements, and civil penalties under the PAGA as
20 well as Plaintiff’s various theories of liability on his claims. This discovery further allowed the parties
21 to assess the merits and value of Plaintiff’s claims and Defendants’ defenses thereto, if a settlement
22 could not be reached. *Id.*

23 **4. Arms-Length Negotiations**

24 On March 25, 2021, after extensive research and analysis, including a detailed analysis of
25 Defendants’ potential exposure by Plaintiff, a full-day mediation was held with Jeffrey Krivis, Esq., a

26 ⁴ Cardinal Paint and Powder, Inc. manufactures the powder coating, while Cardinal Industrial Finishes is the
27 liquid paint portion of the business operations.

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 May 6, 2021. The sixty-five day exhaustion period will
expire on July 12, 2021. *See* Nguyen Decl., ¶¶ 10, 35, Exh. 2.

1 well-respected wage and hour class action mediator, at First Mediation. Nguyen Decl., ¶ 12. During
2 mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification
3 of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* As part of the negotiations and
4 settlement discussions, the Parties agreed that Plaintiff would file a FAC adding causes of action against
5 Defendants for: (1) waiting time penalties; (2) inaccurate wage statements; and (3) civil penalties under
6 the PAGA. *Id.* After a full day mediation, the Parties reached agreement and executed a Memorandum
7 of Understanding (“MOU”). Thereafter, the Parties signed the Stipulation of Settlement (“Settlement”).
8 *Id.*

9 **III. ARGUMENT**

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

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

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

23 **1. Numerosity is Satisfied.**

24 Here, the proposed Class consists of approximately 414 members, and is therefore sufficiently
25 numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.*
26 (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).
27 Thus, numerosity is satisfied.

28 Further, a class is “ascertainable” where the members “may be readily identified without
unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*

1 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Class is defined
2 as “All current and former hourly-paid or non-exempt employees who worked for Cardinal Paint and
3 Powder, Inc. and/or Cardinal Industrial Finishes in the state of California at any time during the time
4 period of April 16, 2016 through the date of Preliminary Approval or the date on which the Workweeks
5 are equal to or do not exceed 51,750, whichever comes first.” Nguyen Decl., ¶ 14, Exh. 1 (*See*
6 *Settlement* ¶¶ 2.2, 2.4).

7 In addition, PAGA Employees is defined as “All Class Members who worked for Defendants
8 any time during April 15, 2019 through the date of Preliminary Approval, or the date on which the
9 Workweeks are equal to or do not exceed 51,750, whichever comes first.” Nguyen Decl., ¶ 13, Exh. 1
10 (*See Settlement*, ¶¶ 2.21-2.22).

11 **2. Commonality is Satisfied.**

12 The focus in a certification dispute is not the merits, but rather on what types of questions,
13 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
14 *Court (Rocher)* (2004) 34 Cal.4th 319, 327.

15 Here, Class Members’ claims arise from Defendants’ common, uniform policies and practices
16 that applied to Plaintiff and Class Members during the class period. Nguyen Decl., ¶ 15. Specifically,
17 Plaintiff alleged that Defendants’ common and uniform policies and practices resulted in the following
18 violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3)
19 failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required
20 rest periods; (5) failure to timely pay all wages upon separation; (6) failure to provide accurate, itemized
21 wage statements; (7) unlawful business practices; and (8) liability for civil penalties under the PAGA.

22 As a result of the common and uniform policies and practices that applied to all Class Members,
23 their claims involve common questions of law and fact, including but not limited to:

- 24 1. Whether Defendants properly paid all minimum wages;
- 25 2. Whether Defendants properly paid all overtime wages;
- 26 3. Whether Defendants provided all legally compliant meal periods;
- 27 4. Whether Defendants authorized and permitted all legally required rest periods;
- 28 5. Whether Defendants failed to timely pay all wages owed upon separation;

1 6. Whether Defendants failed to furnish accurate, itemized wage statements; and

2 7. Whether Defendants' conduct constituted unlawful and/or unfair business practices.

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

5 **3. Typicality is Satisfied.**

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

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

23 **4. Adequacy is Satisfied.**

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

27 Here, there are no apparent conflicts of interest between Plaintiff and the Class he seeks to
28 represent. *See* Rodriguez Decl., ¶ 11. Indeed, Plaintiff's interests are aligned with those of the Class

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

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

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

1. The Preliminary Approval Standard is Met

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

a. The Strength of Plaintiff’s Case

Although Plaintiff maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described below, Defendants

presented multiple defenses to Plaintiff's claims, both on the merits and class certification. Thus, while Plaintiff was prepared to litigate these class claims through trial, success was far from certain.

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

Although the parties engaged in significant informal discovery throughout this action, the parties still had significant discovery to complete in formal litigation had the matter not settled. Nguyen Decl., ¶ 34. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

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

d. Overview of the Settlement Agreement

If the Court approves this Settlement, Defendants will pay a Total Settlement Amount ("TSA") of \$765,000.00.⁶ Nguyen Decl., ¶ 13, Exh. 1 (Settlement, ¶ 2.33). Significantly, this Settlement is **non-reversionary**, and no Class Member will have to submit a claim form to receive an Individual Settlement Payment. *Id.* (Settlement, ¶ 4.1). Each Class Member will automatically receive an Individual Settlement Payment unless he or she affirmatively opts out of the Settlement.⁷ *Id.* The monetary terms of the Settlement are summarized below:

Total Settlement Amount ("TSA"):	\$765,000.00
Minus Court-approved attorneys' fees (1/3 of GSA):	\$255,000.00
Minus Court-approved, verified costs (up to):	\$30,000.00
Minus Court-approved Service Award payable to Plaintiff (up to):	\$5,000.00

⁷ Pursuant to the terms of the Settlement, Defendants will have the option of rescinding the Settlement if more than 10% of the Class opts out of the Settlement and all actions taken in furtherance of it will thereby be null and void. *See* Settlement ¶ 7.3.

1	Minus Settlement Administration Expenses:	\$9,750.00
2	Minus PAGA Payment:	\$30,000.00
3	Net Distribution Fund (“NDF”):	\$435,250.00

4 Defendants shall pay the Total Settlement Amount within ten (10) calendar days of the Effective
5 Date.⁸

6 After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service
7 Award to Plaintiff, Settlement Administrator Expenses, and the PAGA Payment, the Settlement requires
8 Defendants to pay a Net Distribution Fund (“NDF”) of at least **\$435,250.00** to all Class Members who
9 do not timely opt out. This amount does not include the \$7,500.00 of the PAGA Payment to be paid to
10 the PAGA Employees. Nguyen Decl., ¶ 13, Exh. 1.

11 According to Defendants, there are approximately 414 total Class Members. Nguyen Decl., ¶
12 14. Thus, the average Individual Settlement Payment is projected to be approximately **\$1,069.54**. *Id.*
13 The Individual Settlement Payments shall be determined as follows:

14 Payment of Individual Settlement Shares to Settlement Class Members will be made from the
15 Net Distribution Fund on a *pro-rata* basis, based on Workweeks during the Class Period. Specifically,
16 the Net Distribution Fund shall be divided by the total of all Workweeks of Settlement Class Members
17 during the Class Period in order to establish the value of each Workweek. The Individual Settlement
18 Share to each Settlement Class Member shall be calculated by multiplying the value of a Workweek by
19 the number of Workweeks worked by the Settlement Class Member during the Class Period. *See*
20 Settlement, ¶ 4.8.

21 In addition, PAGA Employees will receive a *pro-rata* share of \$7,500.00 (or 25% of the
22 \$30,000.00 PAGA Payment) (“Individual PAGA Payment”) based on workweeks during the PAGA
23

24 ⁸ “Effective Date” means the date by which the Settlement is finally approved as provided herein and the Court’s
25 Final Approval Order becomes binding. For purposes of the Settlement Agreement, the Final Approval Order
26 becomes binding upon the later of: (1) the day after the last day by which a notice of appeal of the Final Approval
27 Order and/or of an order rejecting any motion to intervene may be timely filed, and none is filed; (2) if such an
28 appeal is filed, and the Final Approval Order is affirmed, the day after the last date for filing a request for further
review of the decision passes and no further review is requested; (3) if an appeal is filed and further review of
the decision affirming the Final Approval Order is requested, the day after the request for review is denied with
prejudice and/or no further review of the decision can be requested, or (4) if review is accepted, the day after the
United States or California Supreme Court affirms the Settlement. *See* Settlement ¶ 2.11.

1 Period. Specifically, 25% of the PAGA Payment (or 7,500.00) shall be divided by the total of all
2 workweeks worked by PAGA Employees during the PAGA Period in order to establish the value of
3 each workweek. The Individual PAGA Payment to be made to each PAGA Employee shall be
4 calculated by multiplying the value of a workweek by the number of workweeks worked by the PAGA
5 Employee during the PAGA Period. *See* Settlement, ¶ 4.9. The “PAGA Period” is defined in the
6 Settlement as the time period of April 15, 2019 through the date of Preliminary Approval, or the date
7 on which the Workweeks are equal to or do not exceed 51,750, whichever comes first. *See* Settlement,
8 ¶ 2.21.

9 Class Members will have forty-five (45) calendar days from the mailing of the Class Notice to
10 opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without
11 unduly delaying the Settlement. *See* Settlement, ¶ 2.28. Those Settlement Class Members who do not
12 opt-out of the Settlement will be bound by its terms and will release all claims against Defendants
13 included within the Settlement, for the period of April 15, 2016, through the date of Preliminary
14 Approval, or the date on which the Workweeks are equal to or do not exceed 51,750, whichever comes
15 first. *See* Settlement, ¶¶ 2.4, 2.26, 4.14. Class Members who opt-out of Settlement will still receive a
16 portion of the PAGA Payment if they are a PAGA Employee during the PAGA Period.

17 As this is a non-reversionary Settlement, 100% of the NSA shall be consumed in that if a Class
18 Member opts-out of the Settlement, the portion allocated to the individual who opts-out will necessarily
19 be added to the NDF and redistributed and allocated to the Settlement Class Members who did not opt-
20 out. *See* Settlement, ¶ 4.1.

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

22 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
23 of a mediator. In connection with mediation, Defendants produced timekeeping and payroll data.
24 Plaintiff conducted an analysis of the payroll data and time records produced by Defendants to calculate
25 Defendants’ potential exposure for Plaintiff’s claims. Nguyen Decl., ¶ 11. After the detailed review
26 of the payroll and time records and other documents and policies produced by Defendants, Class
27 Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of
28 Plaintiff’s case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff’s

1 claims and Defendants' defenses thereto, if a settlement could not be reached. *Id.*

2 On November 10, 2020, the Parties participated in a full-day mediation with Jeffrey Krivis,
3 Esq., a preeminent wage and hour class action mediator. Nguyen Decl., ¶¶ 11-12. During mediation,
4 the parties vigorously debated their opposing legal positions, the likelihood of certification of
5 Plaintiff's claims, as well as the legal basis for the claims and defenses. The Parties agreed on a class-
6 wide resolution and memorialized the agreement in a Memorandum of Understanding at the mediation.
7 Since mediation, the Parties finalized the terms of settlement and executed the Settlement. Nguyen
8 Decl., ¶ 12, Exhibit 1.

9 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result
10 of: factual investigation and data analysis; the exchange of substantial information and class data,
11 including timekeeping and payroll records; arm's length negotiations by counsel; and mediation before
12 an experienced wage and hour class action mediator. *See* Nguyen Decl., ¶¶ 11-12; *See Kullar, supra*,
13 168 Cal.App.4th at 130. In addition, the Parties attended a full-day mediation, and worked
14 collaboratively in the following weeks to finalize the Settlement. *Id.* Thus, these factors support
15 preliminary approval.

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

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

23 Unlawful Rounding/Off-the-Clock: Plaintiff alleges that Defendants failed to compensate its
24 non-exempt employees for all time worked. Nguyen Decl., ¶ 16. Specifically, Plaintiff alleges that
25 Defendants would keep track of Plaintiff's time worked and would unlawfully round/shave Plaintiff's
26 work time such that Plaintiff would not be fully paid for all time worked. *Id.* This time-shaving and/or
27 rounding practice utilized by Defendants was not even-handed over time and would almost exclusively
28 round and shave in Defendants' favor such that Plaintiff was routinely underpaid for all his time

1 worked. *Id.* In addition, Defendants' timekeeping policies and/or practices required Plaintiff and other
2 non-exempt employees to stand in a line in order to clock in. This timekeeping policy and/or practice
3 resulted in Plaintiff and other non-exempt employees routinely having to wait approximately five to
4 six minutes before being able to clock in for which they did not receive pay. Based a review of the
5 time punch data and payroll records, Plaintiff calculated Defendants' maximum exposure at
6 approximately \$150,736 (45,914 workweeks x .14 [hours per workweek underpaid] x \$23.45 [average
7 overtime rate]).

8 Defendants contend that they compensated non-exempt employees for all of their time worked
9 and that the time punch data would necessarily include minutes that were not compensable work time
10 because the employee would not start performing any work prior to the start of the shift and/or would
11 not perform any work after the scheduled stop time. Nguyen Decl., ¶ 17. Defendants also contend that
12 their rounding practices were lawful and any unpaid time was *de minimis* and therefore non-
13 compensable. *Id.* Defendants further assert that Plaintiff would be unable to certify a rounding or off-
14 the-clock claim given the individualized inquiries that would be required, given that Defendants
15 rounding mechanism was, according to Defendants, allegedly favored the employees. Based on these
16 risks, Plaintiff discounted the maximum exposure by 20% for the risk of non-certification, and an
17 additional 20% to account for Defendants' defenses on the merits to arrive at an estimated exposure of
18 \$96,471. *Id.*

19 Miscalculation of Regular Rate (Incentive Pay): Plaintiff alleges that throughout times during his
20 employment, he and other non-exempt employees would receive non-discretionary bonuses from
21 Defendants based on the earnings of the company, as well as other forms of non-discretionary pay
22 (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Nguyen
23 Decl., ¶ 18. Plaintiff alleges Defendants failed to include the Incentive Pay when calculating the regular
24 rate of pay for purposes of paying Plaintiff and the other non-exempt employees' overtime wages,
25 thereby causing them to be underpaid all of their required overtime wages. *Id.* Based a review of the
26 payroll records, Plaintiff calculated Defendants' maximum exposure at approximately \$87,129. *Id.*

27 Defendants contend that Class Members received all overtime wages to which they were entitled.
28 Nguyen Decl., ¶ 19. Defendants further counter that any bonuses paid to Class Members during the

relevant time period were discretionary and did not to be included in the regular rate of pay for overtime purposes. *See* 29 C.F.R. §§778.208, 778.211 (excluding “discretionary” bonuses from the regular rate); *see also* DLSE Manual § 49.1.2.4(3) (bonuses are discretionary, and therefore excludable, if “both the fact that payment is to be made and the amount of the payment” are discretionary). Based on these risks, Plaintiff discounted the maximum exposure by 10% for the risk of non-certification, and an additional 10% to account for Defendants’ defenses on the merits to arrive at an estimated exposure of approximately \$70,575. *Id.*

First Meal Period Violations: Plaintiff alleges that he and Class Members were not provided with all legally-required off-duty meal periods beginning before the end of the fifth hour of work. Nguyen Decl., ¶ 20. Specifically, Plaintiff contends that Defendants’ meal period policies/practices fail to require employees to record the start and stop time for meal periods. Additionally, on the occasions when Plaintiff worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period due to Defendants’ meal period policies/practices that fail to provide for a second meal period for shifts over 10.0 hours. These practices resulted in systematically unlawful meal periods. Despite Defendants’ failure to keep any records of Plaintiff’s meal periods, Plaintiff is informed and believes that Defendants unlawfully automatically deducted thirty minutes from Plaintiff’s work time each shift for his meal break regardless of if a meal period was taken or not. *Id.* Therefore, Plaintiff calculated Defendants’ maximum exposure for the alleged first meal period violations at approximately \$2,712,663 (206,613 shifts over 6.0 hours x 84% [violation rate] x \$15.63 [average hourly rate]). *Id.*

Defendants counter that they have always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendants. Nguyen Decl., ¶ 21. Furthermore, Defendants counter that the time records reflect compliant meal periods. Defendants point out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally, Defendants contend Plaintiff’s meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-

compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an additional 40% to account for Defendants' defenses on the merits to arrive at an estimated exposure of \$976,559. *Id.*

Third Rest Period Violations: Plaintiff alleges that he and other Class Members were not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices which fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Nguyen Decl., ¶ 22. Specifically, Plaintiff regularly worked shifts of over 10.0 hours, but Defendants did not authorize and permit Plaintiff to take a third 10-minute rest period. Accordingly, Plaintiff calculated Defendants' maximum exposure at \$430,575 (27,548 shifts over 10.0 hours x \$15.63 [average hourly rate]). *Id.*

Defendants contend they have always maintained and enforced lawful rest period policies and practices, and that Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 23. Defendants argue this claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each 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 60% for the risk of non-certification, and an additional 40% to account for Defendants' defenses on the merits to arrive at an estimated exposure of \$103,338. *Id.*

Wage Statement Violations: Plaintiff further alleges that Defendants 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., ¶ 24. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Class Members did not include all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff calculated Defendants' maximum exposure for wage statement violations at approximately \$1,143,400 ((\$50.00 * 168 current employees) + (\$100.00 x 11,350 subsequent wage statements)). *Id.*

Defendants argue 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., ¶ 25. Defendants further argue that their 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., ¶ 25. As such, Plaintiff discounted the calculated exposure by 40% 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 \$411,624. *Id.*

Waiting Time Penalties: Plaintiff alleges that Defendants are also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages. Nguyen Decl., ¶ 26. Based on the data provided by Defendants, there were approximately 160 Class Members who have separated their employment with Defendants during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Defendants’ maximum exposure for waiting time penalties at approximately \$600,192 (160 former employees x \$15.63 [average regular rate] x 30 days x 8 hours/day). *Id.*

Defendants assert they have strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 27. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). *Id.* Accordingly, Plaintiff discounted the maximum exposure by 30% for the risk of non-certification, and an additional 30% to account for Defendants’ defenses on the merits to arrive at an estimated exposure of approximately \$294,094. *Id.*

PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Nguyen Decl., ¶ 28. Plaintiff calculated Defendants’ exposure at \$1,151,800 (11,518 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until employer is notified

1 that it is violating a Labor Code provision).

2 Defendants argue that Plaintiff's PAGA claim will fail for the same reasons that his underlying
3 claims will fail. Nguyen Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
4 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
5 Defendants also maintain that, given their good faith defenses, this Court would exercise its discretion
6 to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiff's
7 claims. Nguyen Decl., ¶ 29; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.*
8 (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*
9 (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA
10 penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure
11 figure by 40% for a risk of being unsuccessful on the merits, and an additional 40% to account for the
12 possibility of this Court reducing penalties, to arrive at an estimated exposure of \$414,648. *Id.*

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

14 Using these estimated figures for each of the claims described above, Plaintiff predicted the
15 realistic total recovery for the Class would be approximately \$2,376,309. Nguyen Decl., ¶ 30. The
16 proposed settlement of \$765,000.00 therefore represents approximately 32% of the reasonably
17 forecasted recovery for the Class. *Id.* Preliminary approval is appropriate as the settlement will provide
18 tangible monetary relief to Class Members, and will still provide an average recovery to Class Members
19 of over \$1,050.

20 The proposed settlement reflects approximately 32% of the estimated recovery the Class could
21 reasonably expect in light of the significant litigation risks, and will provide tangible monetary
22 compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in
23 this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D.
24 Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25%
25 to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
26 settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v.*
27 *DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement
28 may be acceptable even though it amounts to only a fraction of the potential recovery that might be

1 available to the Settlement Class members at trial”). Thus, Plaintiff submits that the proposed
2 settlement is within the range of possible approval, such that notice should be provided to the Class so
3 that they can consider the Settlement. The Court will have the opportunity to again assess the
4 reasonableness of the Settlement after the Class has had the opportunity to opt-out or object.

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

6 “Parties represented by competent counsel are better positioned than courts to produce a
7 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
8 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
9 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
10 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
11 *Lidman Decl.*, ¶¶ 2-8; *Nguyen Decl.*, ¶¶ 2-8; *Haines Decl.*, ¶¶ 2-8. Class Counsel conducted an in-
12 depth review of Defendants’ policies and timekeeping and payroll records, and drew on their extensive
13 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See Nguyen*
14 *Decl.*, ¶¶ 10-28. The Settlement was also reached with the assistance of an experienced and respected
15 wage and hour class action mediator. *Id.* This factor strongly supports preliminary approval of the
16 Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

17 **i. Attorneys’ Fees and Costs**

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

25 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
26 is currently estimated to be \$255,000.00, and up to \$30,000.00 in verified costs reimbursement. *See*
27 *Settlement*, ¶ 2.6; *Nguyen Decl.*, ¶ 31. Plaintiff submits the requested fee is fair compensation for
28 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.

1 *Id.* Further, Plaintiff has provided written approval of the split of attorneys’ fees in this action. Nguyen
2 Decl., ¶ 31. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
3 analyzing Plaintiff’s claims, conducting legal research, reviewing Defendants’ documents and policies,
4 analyzing Class Members’ timekeeping data and payroll records, preparing for and attending mediation,
5 negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the
6 case. *Id.* Class Counsel expect to expend additional attorney time in attending the hearing on this
7 Motion, overseeing the Notice process and fielding questions from Class Members, preparing the final
8 approval papers and attending the Final Approval hearing. *Id.*

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

15 **j. Administration Costs**

16 Phoenix Settlement Administrator’s fees and expenses are estimated not to exceed \$9,750.00.
17 *See* Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary Approval filed
18 concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the proposed class size
19 of approximately 414 Class Members and the costs and expenses associated with administering the
20 notices and distributing the awards.

21 **k. Class Representative Service Award**

22 “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate
23 class representatives for work done on behalf of the class [and] to make up for financial or reputational
24 risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
25 1380, 1393-94.

26 Here, as part of the Settlement, Plaintiff will separately apply for a Service Award at the time
27 of seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for his
28 services to the Class. Nguyen Decl., ¶ 33, Exh. 1 (Settlement, ¶ 2.29); Rodriguez Decl., ¶¶ 3-12. As

1 will be fully briefed at the time of final approval, Plaintiff's requested Service Award is intended to
2 recognize the time and effort Plaintiff expended on behalf of the Class, including providing substantial
3 factual information and documents to Class Counsel, attending multiple meetings with Class Counsel
4 to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff
5 undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed
6 to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶ 33;
7 Rodriguez Decl., ¶¶ 3-11; Settlement ¶ 2.9.

8 **l. PAGA Civil Penalties**

9 The parties have agreed to a PAGA Payment of \$30,000.00 and in accordance with California
10 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
11 – or \$22,500.00. Settlement ¶ 2.20. This \$30,000 represents roughly 3.9% of the \$765,000.00 Total
12 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by
13 Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
14 at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or
15 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal.
16 Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
17 *Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
18 claims and PAGA claims under which no money was allocated to the PAGA claims).

19 **m. Payroll Taxes**

20 The Settlement provides that the employer's share of payroll taxes shall be paid separately from,
21 and in addition to, the Total Settlement Amount. Settlement ¶ 2.33.

22 **n. Uncashed Funds**

23 The Settlement provides that Settlement Class Members with 180 days from the date the
24 Settlement Administrator mails the checks and any funds remaining after 180 days escheat to the
25 California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name
26 of the Settlement Class Member. *See* Settlement ¶¶ 2.34, 10.4. As all settlement funds will be
27 distributed to the Settlement Class Members, there will be no residue and it is unnecessary to designate
28 *cy pres* recipients.

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

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

7 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
8 **NOTICE TO CLASS MEMBERS**

9 Before the final approval hearing, the Court requires adequate notice of the settlement be given
10 to all class members. This Court should order distribution to the Class of the proposed Class Notice
11 by first-class regular U.S. Mail, postage prepaid, using last known mailing address information
12 provided by Defendants. *See* Settlement, ¶ 6.2, Exh. A. The Class Notice will be mailed in English
13 and Spanish due to the nature of Defendants' workforce.

14 This manner of giving notice is the "best notice practicable" under the circumstances because
15 it provides "individual notice to all members who can be identified through reasonable effort." *See*
16 *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement
17 be administered by Phoenix, an experienced class action settlement administrator. *See generally*
18 Lawrence Decl. and attached exhibits. Class Information will be ascertainable through Defendants'
19 personnel and payroll records, which Defendants will provide to Phoenix within fifteen (15) calendar
20 days of preliminary approval of the Settlement. *See* Settlement ¶ 6.1. Within thirty (30) calendar days
21 of preliminary approval of the settlement, Phoenix will run the names of all Class Members through
22 the United States Postal Service Notice of Change of Address database (which provides updated
23 addresses for any individual who has moved in the previous four years and has notified the U.S. Postal
24 Service of a forwarding address), calculate the estimated Individual Settlement Share for each Class
25 member, and mail the notices to Class Members. *See* Settlement ¶ 6.2, 6.6. To the extent that any
26 notices are returned, Phoenix will perform a "skip trace" to track any Class Member's current mailing
27 address. *See* Settlement ¶ 6.6.

28 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
advises Class Members of the nature of the claims, basic contentions and denials of the parties, and the

1 key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the
2 procedures by which to do so, explains the recovery formula and expected recovery amount for each
3 Class Member, provides them the opportunity to contest their total workweeks included in the notice,
4 and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See*
5 Nguyen Decl., Exh. 1 (Settlement, Exh. A). The proposed Class Notice will also notify Class Members
6 of the final approval hearing date and provides Class Members the contact information for Class
7 Counsel, and advises Class Members that they may enter an appearance through counsel if they wish
8 to. Additionally, as stated in the proposed Class Notice, any changes to the Final Approval hearing
9 date or location will be posted on the Settlement Administrator's website. *Id.* Furthermore, the Notice
10 informs Class Members that Notice of the Court's final judgment will be posted on the Settlement
11 Administrator's website. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e)
12 as the most reliable and cost-effective method of reaching Class Members.

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

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

17 **IV. CONCLUSION**

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

21
22 Dated: June 23, 2021

Respectfully submitted,
LIDMAN LAW, APC

23
24 By: 

25 Elizabeth Nguyen
26 Attorneys for Plaintiff
27 GILBERTO RODRIGUEZ
28