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ENEDINA SANCHEZ DE SEGURA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ENEDINA SANCHEZ DE SEGURA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

KELCOURT PLASTICS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No. 30-2021-01219806-CU-OE-CXC

*[Assigned for all purposes to the Hon. Randall J.
Sherman, Dept. CX105]*

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

Date: August 4, 2023

Time: 10:00 a.m.

Dept.: CX105

Reservation No.: 74015581

[Complaint Filed: September 3, 2021]

[FAC Filed: November 19, 2021]

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 4, 2023 at 10:00 a.m. in Department CX 105 of the above-entitled Court, located at 751 West
4 Santa Ana Blvd, Santa Ana, CA 92701, Plaintiff Enedina Sanchez de Segura (“Plaintiff”), individually
5 and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former non-exempt, hourly employees of Defendant Kelcourt
10 Plastics, Inc. who worked at any time in California during the Class Period,
11 except for non-exempt, hourly employees who both: (a) worked at Defendant’s
12 facility located in San Diego, California; and (b) signed a Separation Agreement
and General Release of All Claims in connection with the reductions in force at
the San Diego facility between 2017 and August 31, 2020.

13 The “Class Period” is defined as September 3, 2017 through March 11, 2023.

- 14 3. Preliminary appointment of Plaintiff Enedina Sanchez de Segura as Class Representative;
15 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
16 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class 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 the court-approved Notice Packets; and
23 7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
24 Class Action and Proposed Settlement, Notice of Individual Settlement Award, Objection
25 Form and Request for Exclusion Form) and an order that it be disseminated to the proposed
26 Settlement Class Members as provided in the Settlement Agreement.

1 This Motion is based on this notice of motion, the memorandum of points and authorities, the
2 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Enedina
3 Sanchez de Segura, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits
4 attached thereto, the pleadings and other papers filed in this action, and on any further oral or
5 documentary evidence or argument presented at the time of hearing.

6
7 Dated: May 15, 2023

Respectfully Submitted,
LIDMAN LAW, APC

8
9
10 By:



Elizabeth Nguyen
Attorney for Plaintiff
ENEDINA SANCHEZ DE SEGURA

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Enedina Sanchez de Segura (“Plaintiff”) brought this class and representative action
4 against Defendant Kelcourt Plastics, Inc. (hereinafter “Kelcourt” or “Defendant”) alleging various wage
5 and hour and related violations. Plaintiff’s primary allegations are that Kelcourt: (1) failed to pay all
6 overtime wages owed; (2) failed to provide all legally required meal periods; (3) failed to authorize and
7 permit all legally required rest periods; (4) failed to provide accurate, itemized wage statements; (5)
8 failed to pay all wages owed upon termination; (6) engaged in unlawful business practices; (7) is liable
9 for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

10 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
11 class action settlement,¹ in which Kelcourt has agreed to pay Two Million, Two Hundred Fifty
12 Thousand Dollars (\$2,250,000.00) to the following Settlement Class:

13 All current and former non-exempt, hourly employees of Defendant Kelcourt
14 Plastics, Inc. who worked at any time in California during the Class Period,
15 except for non-exempt, hourly employees who both: (a) worked at Defendant’s
16 facility located in San Diego, California; and (b) signed a Separation Agreement
and General Release of All Claims in connection with the reductions in force at
the San Diego facility between 2017 and August 31, 2020.

17 The “Class Period” is defined as September 3, 2017 through March 11, 2023.

18 Additionally, for the purposes of this settlement only, PAGA Employees shall be defined
19 as:

20 All current and former non-exempt, hourly employees of Defendant Kelcourt
21 Plastics, Inc., who worked at any time during the PAGA Period.

22 The “PAGA Period” shall mean the time period between September 3, 2020 and
23 March 11, 2023.

24 Significantly, Settlement Class members do not need to file a claim. All Settlement Class

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

1 members will automatically receive a payment unless they affirmatively opt-out. After deducting
2 administration costs, Plaintiff's service award, attorneys' fees and costs, and PAGA civil penalties, the
3 remaining Net Settlement Amount ("NSA") of approximately \$1,299,000.00 will be distributed to all
4 Settlement Class members who do not opt-out of the Settlement. There are approximately 350
5 Settlement Class members, which means the average payment to each Settlement Class member is
6 currently expected to be approximately **\$3,711.43**, which does not include the \$37,500.00 PAGA
7 Amount to PAGA Employees.

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

12 **II. SUMMARY OF THE LITIGATION**

13 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS- 14 LENGTH NEGOTIATIONS**

15 **1. The Parties**

16 Kelcourt manufactures medical grade tubing in Southern California. Plaintiff worked for
17 Kelcourt as a non-exempt employee between approximately 2016 and approximately March 2021, at
18 which time she began a medical leave of absence. *See* Declaration of Enedina Sanchez de Segura
19 ("Sanchez de Segura Decl."), ¶ 2. She worked as a Packer and her job duties included, inspecting and
20 preparing items for shipment. *Id.* After the lawsuit was filed, Plaintiff's employment was separated
21 on March 10, 2022.

22 **2. Procedural History**

23 On September 3, 2021, Plaintiff filed a putative class action complaint against Kelcourt in
24 Orange County Superior Court. Declaration of Elizabeth Nguyen ("Nguyen Decl."), ¶ 10. On
25 November 19, 2021, Plaintiff filed a First Amended Complaint against Defendant. *Id.* On May 15,
26 2023, to effectuate the terms of the Settlement, the Parties filed a joint stipulation for Plaintiff to file a
27 Second Amended Class and Representative Action Complaint. Once Plaintiff receives a Court order
28 granting Plaintiff leave to amend, he will file the Second Amended Complaint. Therefore, Plaintiff

1 alleges that Kelcourt: failed to pay all overtime wages owed; (2) failed to provide all legally required
2 meal periods; (3) failed to authorize and permit all legally required rest periods; (4) failed to provide
3 accurate, itemized wage statements; (5) failed to pay all wages owed upon termination; (6) engaged in
4 unlawful business practices; (7) is liable for civil penalties under the PAGA. *Id.*

5 **3. Discovery**

6 In the instant action, the Parties have engaged in formal discovery. Nguyen Decl., ¶ 11. On
7 November 12, 2021, Plaintiff served the following written discovery on Defendant: Form
8 Interrogatories—Employment Law (Set One), Form Interrogatories—General (Set One), Requests for
9 Production of Documents (Set One), Special Interrogatories (Set One), and Special Interrogatories (Set
10 Two). On December 17, 2021, Defendant served its objections to Plaintiff's Special Interrogatories
11 (Set One). On January 31, 2022, Defendant served its responses and objections to Plaintiff's Form
12 Interrogatories—Employment Law (Set One), Form Interrogatories—General (Set One), Requests for
13 Production of Documents (Set One), and Special Interrogatories (Set Two), and produced documents in
14 response to Plaintiff's Requests for Production of Documents (Set One). On May 2, 2022, Defendant
15 served further responses to Plaintiff's Form Interrogatories—Employment Law (Set One), and Requests
16 for Production of Documents (Set One). *Id.*

17 On November 24, 2021, Defendant served on Plaintiff Form Interrogatories—Employment Law
18 (Set One) and Form Interrogatories—General (Set One). On January 31, 2022, Plaintiff served her
19 responses and objections to Defendant's Form Interrogatories—Employment Law (Set One) and Form
20 Interrogatories—General (Set One). On May 2, 2022, Plaintiff served further responses to Defendant's
21 Form Interrogatories—Employment Law (Set One) and Form Interrogatories—General (Set One). *Id.*

22 On April 13, 2022, Plaintiff served Requests for Production of Documents (Set Two), Form
23 Interrogatories—General (Set Two), and Requests for Admission (Set One). On May 17, 2022,
24 Defendant served responses to Plaintiff's Requests for Production of Documents (Set Two), Form
25 Interrogatories—General (Set Two), and Requests for Admission (Set One). *Id.*

26 On May 24, 2022, Plaintiff served Form Interrogatories—Employment Law (Set Two) and
27 Requests for Production of Documents (Set Three). On August 26, 2022, Defendant served responses

1 to Plaintiff's Form Interrogatories—Employment Law (Set Two) and Requests for Production of
2 Documents (Set Three). *Id.*

3 The *Belair-West* notice process has been completed and the contact information for the putative
4 class members who did not opt out was provided on April 28, 2022. *Id.*

5 Then after agreeing to participate in mediation, Kelcourt informally produced the time records
6 and payroll data for Plaintiff and the putative class members, its wage and hour policies and other
7 relevant documents and information relevant to the claims alleged in advance of mediation. Nguyen
8 Decl., ¶ 11. After the detailed review of the payroll and time records and other documents and policies
9 produced by Kelcourt, Class Counsel drew on their extensive experience in similar cases to assess the
10 strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits
11 and value of Plaintiff's claims and Kelcourt's defenses thereto, if a settlement could not be reached.

12 **4. Arms-Length Negotiations**

13 On December 6, 2022, after research and analysis, a mediation was held with Jeffrey A. Ross,
14 Esq. a well-respected wage and hour class action mediator. Nguyen Decl., ¶ 12. During mediation, the
15 Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's
16 claims, and the legal basis for the claims and defenses. *Id.* The Parties did not settle at mediation and
17 continued to discussions with the assistance of the mediator. Ultimately, the parties agreed in principle
18 on a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement
19 and executed the Stipulation of Class and PAGA Action Settlement ("Settlement"). *Id.*

20 **III. ARGUMENT**

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

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

27 As further explained below, the Settlement Class satisfies the criteria for certification of a

1 settlement class under California law because: (1) the Settlement Class is so numerous that joinder
2 would be impractical; (2) common questions of law and fact predominate over individual questions
3 such that class certification is the most efficient and desirable way to maintain this litigation; (3)
4 Plaintiff's claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and
5 her counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc.
6 § 382.

7 **1. Numerosity is Satisfied.**

8 Here, the proposed Settlement Class consists of approximately 350 members, and is therefore
9 sufficiently numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v.*
10 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
11 numerous). Thus, numerosity is satisfied.

12 Further, a class is "ascertainable" where the members "may be readily identified without
13 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
14 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class
15 is defined as "all current and former non-exempt, hourly employees of Defendant Kelcourt Plastics,
16 Inc. who worked at any time in California during the Class Period, except for non-exempt, hourly
17 employees who both: (a) worked at Defendant's facility located in San Diego, California; and (b) signed
18 a Separation Agreement and General Release of All Claims in connection with the reductions in force
19 at the San Diego facility between 2017 and August 31, 2020." Here, the proposed Settlement Class is
20 ascertainable through Kelcourt's personnel files and employee records maintained in the regular course
21 of business. *See* Nguyen Decl., ¶ 14.

22 **2. Commonality is Satisfied.**

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

25 Here, Plaintiff contends that Settlement Class Members' claims arise from Kelcourt's common,
26 uniform policies and practices that applied to Settlement Class members during the class period.
27 Nguyen Decl., ¶ 15. Specifically, Plaintiff alleged that Kelcourt's common and uniform policies and
28

1 practices resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure to
2 provide all legally required meal periods; (3) failure to authorize and permit all legally required rest
3 periods; (4) failure to provide accurate, itemized wage statements; (5) failure to pay all wages owed
4 upon termination; (6) unlawful business practices; and (7) liability for civil penalties under PAGA. *Id.*
5 As a result of the common and uniform policies and practices that applied to all Settlement Class
6 Members, their claims involve common questions of law and fact, including but not limited to:

- 7 1. Whether Kelcourt properly paid all overtime wages;
- 8 2. Whether Kelcourt provided all legally required meal periods;
- 9 3. Whether Kelcourt authorized and permitted all legally required rest periods;
- 10 4. Whether Kelcourt failed to furnish accurate, itemized wage statements;
- 11 5. Whether Kelcourt paid all wages owed upon termination; and
- 12 6. Whether Kelcourt's conduct constituted unlawful and/or unfair business practices;

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

15 **3. Typicality is Satisfied.**

16 The typicality requirement is satisfied where class representatives have claims that are typical
17 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
18 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative
19 class in a consumer class action).

20 Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement
21 Class. First, Plaintiff was employed by Kelcourt during the Class Period as a non-exempt employee
22 and was subject to Kelcourt's wage and hour policies at issue in this case. *See Sanchez de Segura*
23 *Decl.*, ¶ 2. Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured
24 the Settlement Class as a whole. For example, Plaintiff asserts that she, like the members of the Classes,
25 was not provided all legally required overtime wages, was not provided all legally required meal
26 periods, was not authorized nor permitted to take all legally required rest periods, was not paid all
27 wages upon separation of his employment with Defendant, and was not provided with accurate,
28 itemized wage statements. *Id.* Given that Kelcourt's policies and practices applied to all non-exempt

1 employees, Settlement Class Members possess a similar interest and have suffered similar alleged
2 injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise
3 from the same conduct, typicality is satisfied.

4 **4. Adequacy is Satisfied.**

5 The adequacy requirement examines conflicts of interest between named parties and the
6 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
7 (2007) Cal.App.4th 676, 697.

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

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

21 Settlement is the preferred means of dispute resolution, particularly in complex class action
22 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in
23 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
24 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
25 Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of an
26 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008)
27 168 Cal.App.4th 116, 130.

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

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

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

12 Although Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges that there
13 were substantial risks and uncertainty in proceeding with litigation. As described below, Kelcourt
14 presented multiple defenses to Plaintiff’s claims, both on the merits and class certification. Thus, while
15 Plaintiff was prepared to litigate these claims through certification, and ultimately trial, success was far
16 from certain.

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

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

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

27 Plaintiff had not yet filed her motion for class certification and as such, the extent to which
28 Plaintiff’s proposed classes were certifiable is not certain. This is especially true given that a number

of putative class members signed settlement releases that Kelcourt contends are enforceable and covers the claims alleged in the instant action. 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, Kelcourt will pay a Gross Settlement Amount (“GSA”) of \$2,250,000.² Nguyen Decl., ¶ 12, Exh. 2 (Settlement, ¶ 5). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* (Settlement at ¶ 5.D.). Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$2,250,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$750,000.00
Minus Court-approved, verified costs (up to):	\$30,000.00
Minus Court-approved Class Representative Service Award (up to):	\$10,000.00
Minus Settlement Administration Costs:	\$11,000.00
Minus PAGA Civil Penalties:	\$150,000.00
Net Settlement Amount (“NSA”):	\$1,299,000.00

Defendant shall deposit the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause if such increase is triggered and elected

² Defendant represents that there are an estimated 32,622 Workweeks during the Class Period. If the number of Workweeks worked by the Settlement Class Members during the Class Period is ten percent (10%) or greater than this figure (*i.e.*, if there are 35,884.20 or more Workweeks worked by the Class Members), Defendant agrees to, at its option, either: (1) increase the Gross Settlement Amount on a proportional basis (*i.e.*, if there was 12% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 2%); or (2) end the Class Period and PAGA Period, including the releases, on the first date on which the Workweeks worked by the Class Members is 35,884.20 or more. Defendant will notify Plaintiff’s counsel of its election by no later than fourteen (14) days of being notified by the Settlement Administrator that the Escalator Clause is triggered. As used herein, “Workweek” shall mean any week in which a Settlement Class Member worked for Defendant at least one (1) day, during the Class Period. *See* Settlement, ¶ 5.F.

1 by Defendant) and Defendant's share of all payroll taxes on the portion allocated as wages with the
2 Settlement Administrator within (30) days after the Effective Date.³ See Settlement, ¶ 5.C.

3 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service
4 Award to Plaintiff, Settlement Administrator costs, and the PAGA Civil Penalties, the Settlement
5 requires Kelcourt to pay a Net Settlement Amount ("NSA") of at least \$1,299,000.00 to all Settlement
6 Class members who do not timely opt out. Nguyen Decl., ¶ 13. This amount does not include the
7 \$37,500.00 PAGA Amount to be paid to the Settlement Class members.

8 According to Kelcourt, there are approximately 350 total Settlement Class members. Nguyen
9 Decl., ¶ 14. From the Net Settlement Amount, the Settlement Administrator will calculate each
10 Settlement Class member's Settlement Award based on the following formula:

11 Each participating Settlement Class member shall receive a proportionate settlement share based
12 upon the number of Workweeks worked during the Class Period, the numerator of which is the
13 Settlement Class member's total workweeks worked during the Class Period, and the denominator of
14 which is the total Workweeks worked by all Settlement Class Members who worked during the Class
15 Period. As used herein, "Workweek" shall mean any week during which a Class Member worked for
16 Defendant at least one (1) day, during the Class Period. Settlement, ¶ 6.B. Thus, the average Individual
Settlement Award is projected to be approximately **\$3,711.43**. *Id.*

17 In addition, Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), of the
18 Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA
19 Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that
20 he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA
21 Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked
22 during the PAGA Period, and the denominator of which is the total number of pay periods worked by
23 all PAGA Employees. Settlement, ¶ 6.B.b. There are approximately 190 PAGA Employees. Thus, the
24 average PAGA payment is about \$197.36.

25
26 ³ This Settlement shall become effective on the "Effective Date" which is defined as the latter of: (a)
27 the Court's final approval of the Settlement if no objections by or on behalf of Class Members have
28 been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed
or withdrawn; or (c) the final resolution of any appeal that has been filed. See Settlement, ¶ 5.B.

1 Settlement Class members will have 60 calendar days from the mailing of the Notice Packet to
2 opt-out or object to the Settlement, thereby providing ample time to review the Notice Packet without
3 unduly delaying the Settlement. *See* Settlement, ¶ 12.C. Those Settlement Class Members who do not
4 opt-out of the Settlement will be bound by its terms and will release all claims against Kelcourt included
5 within the Settlement, for the period between September 3, 2017 through March 11, 2023. *See*
6 Settlement, ¶ 2.

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

8 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
9 of a mediator. In connection with mediation, Kelcourt produced time records and payroll data and
10 other documents and policies, Class Counsel drew on their extensive experience in similar cases to
11 assess the strengths and weaknesses of Plaintiff's case. Nguyen Decl., ¶¶ 11-12. This discovery
12 allowed the parties to assess the merits and value of Plaintiff's claims and Kelcourt's defenses thereto,
13 if a settlement could not be reached. *Id.*

14 On December 6, 2022, the parties participated in full-day mediation with Jeffrey A. Ross, a
15 preeminent wage and hour class action mediator. Nguyen Decl., ¶ 11. During mediation, the parties
16 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims,
17 the legal basis for the claims and defenses. *Id.* A settlement was not reached at mediation. The parties
18 continued to engage in negotiations with the assistance of the mediator and ultimately reached an
19 agreement several weeks later. Since mediation, the Parties finalized the terms and executed the
20 Settlement. Nguyen Decl., ¶ 12, Exhibit 2.

21 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result
22 of factual investigation and data analysis; the exchange of 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.

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
28 approval, as discussed in detail below. The Settlement will provide monetary relief to Settlement Class

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

f. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. Plaintiff’s analysis of the maximum and realistic expected recoveries for each of the theories of liability pled is set forth below:

Miscalculation of Regular Rate (Incentive Pay): Plaintiff alleges that throughout the relevant time period, that she and the other non-exempt employees received shift premium pay, meal period premium pay, and/or other forms of pay not excludable as a matter of law when calculating an employee’s regular rate (“Incentive/Shift Pay”). Nguyen Decl., ¶ 16. Plaintiff alleges that Kelcourt failed, however, to include the Incentive/Shift Pay when calculating the regular rate of pay for purposes of paying Plaintiff and the other Settlement Class Members’ overtime wages. *Id.* Accordingly, Plaintiff contends that Kelcourt did not properly calculate the regular rate of pay for Plaintiff and the other Settlement Class Members, thereby causing them to be underpaid for all their required overtime wages. *Id.* Plaintiff calculated Kelcourt’s exposure for miscalculation of regular rate at \$104,595. *Id.*

Kelcourt contends that Settlement Class members received all overtime wages to which they were entitled. Nguyen Decl., ¶ 17. Kelcourt further counters that any meal period premiums paid to during the relevant time period did not to be included in the regular rate of pay for overtime purposes. *Id.* Accordingly, based on these risks, Plaintiff discounted the maximum exposure of by 20% for the risk of non-certification, and an additional 15% to account for Kelcourt’s defenses on the merits to arrive at an estimated exposure of \$71,124.60. *Id.*

Meal Period Violations: Plaintiff alleges that she and the Settlement Class Members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Nguyen Decl., ¶ 18. Specifically, Plaintiff alleges that Kelcourt’s written policy prohibited its employees from leaving the work premises in violation of California law. Moreover, as a result of Kelcourt’s rounding policies and practices, at least for a portion of the relevant time period, Plaintiff

1 alleges that Kelcourt rounded Plaintiff's and the other non-exempt employees' meal periods in violation
2 of California law. *Id.* Additionally, Plaintiff contends that Kelcourt failed to provide second meal
3 periods and that the timekeeping records will support Plaintiff's contentions that meal periods were not
4 provided during the relevant time period were over 10.0 hours. *Id.* Accordingly, Plaintiff calculated
5 Kelcourt's liability on the meal period claim based on the following violations: (1) late first lunch; (2)
6 missed first meal period; (3) short first meal break; and (4) missed second meal break on shifts over 10
7 hours is \$1,240,354. *Id.*

8 Kelcourt counters that it has always maintained a lawful meal period policy and provided non-
9 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
10 meal periods reflected in employee timekeeping records were solely the result of employee choice,
11 rather than any policy or practice of Kelcourt. Nguyen Decl., ¶ 19. Kelcourt points out that under
12 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide"
13 the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always
14 done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Kelcourt also contends that
15 it paid meal period premiums during the relevant time period. Additionally, Kelcourt argues that it
16 used meal period waivers for second meal periods. Finally, Kelcourt contends Plaintiff's meal period
17 claim is not suited for class certification, given that a number of Class Members signed arbitration
18 agreement and since individual inquiries would be required to assess which employees took non-
19 compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why
20 a particular employee took a non-compliant meal period or missed a meal period during a particular
21 shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 15% for the risk of non-
22 certification, and an additional 10% to account for Kelcourt's defenses on the merits to arrive at an
23 estimated exposure of \$948,870.81. *Id.*

24 Rest Period Violations: Plaintiff alleges that she and Settlement Class Members were also not
25 authorized and permitted to take all required rest periods due to Kelcourt's rest period policies and
26 practices. Nguyen Decl., ¶ 20. Specifically, Plaintiff alleges that in order to receive a paid rest period,
27 Kelcourt prohibited its employees from leaving the work premises. Thus, Plaintiff alleges that he and

1 other non-exempt employees experienced at least one rest period violation on every shift worked in
2 excess of 3.5 hours, which was approximately 65,847 shifts. *Id.* Therefore, Plaintiff calculated
3 Kelcourt's maximum exposure for the alleged rest period violations at approximately \$1,324,275. *Id.*

4 Kelcourt contends it has always maintained and enforced lawful rest period policies and
5 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
6 periods in compliance with California law. Nguyen Decl., ¶ 21. Kelcourt also argues that Plaintiff's
7 rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into
8 whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest
9 period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff
10 discounted the maximum exposure by 20% for the risk of non-certification, and an additional 15% to
11 account for Kelcourt's defenses on the merits to arrive at an estimated exposure of \$900,507.00. *Id.*

12 Wage Statement Violations: Plaintiff further alleges that Kelcourt issued inaccurate wage
13 statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest
14 period premium wages described above. Nguyen Decl., ¶ 22. Specifically, Plaintiff contends that this
15 conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members
16 did not include all hours worked and the rate at which they were being paid. *Id.* There were
17 approximately 3,730 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff
18 calculated Kelcourt's maximum exposure for wage statement violations at approximately \$367,050. *Id.*

19 Kelcourt argues that its alleged wage statement violations could not be shown to be "knowing
20 and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a
21 result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of
22 penalties. Nguyen Decl., ¶ 23. As such, Plaintiff discounted the calculated exposure by 15% for a risk
23 of non-certification and an additional 10% for a risk of being unsuccessful on the merits, to arrive at an
24 estimated total of approximately \$280,793.25. *Id.*

25 Waiting Time Penalties: Plaintiff alleges that Kelcourt is also liable for waiting time penalties
26 under Labor Code section 203 as a result of its failure to pay all wages. Nguyen Decl., ¶ 24. Based on
27 the data provided by Kelcourt, there were approximately 173 Settlement Class Members who have
28 separated their employment with Kelcourt during the relevant time period who could be entitled to

1 waiting time penalties. *Id.* Therefore, Plaintiff calculated Kelcourt’s maximum exposure for waiting
2 time penalties at approximately \$692,138 (173 former employees x \$16.67 [average regular rate] x 30
3 days x 8 hours/day). *Id.*

4 Kelcourt asserts it has strong defenses to the waiting time claim because there exist good-faith
5 disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 25.
6 *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude
7 imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding
8 that “good faith dispute” over whether employee was exempt precluded imposition of waiting time
9 penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
10 10% for the risk of non-certification, and an additional 20% to account for Kelcourt’s defenses on the
11 merits, to arrive at an estimated exposure of approximately \$498,339.36. *Id.*

12 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
13 foregoing alleged Labor Code violations. Nguyen Decl., ¶ 26. Plaintiff calculated Kelcourt’s maximum
14 exposure at \$2,840,000 based on each unique Labor code violation for failure to pay all overtime wages
15 due, meal period violations, rest period violations, and wage statement violations. *Id.*; *see Amaral v.*
16 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until
17 employer is notified that it is violating a Labor Code provision).

18 Kelcourt argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying
19 claims will fail. Nguyen Decl., ¶ 27; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
20 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
21 Kelcourt also maintains that, given its good faith defenses, this Court would exercise its discretion to
22 substantially reduce any PAGA penalties if it were to find Kelcourt liable for any of Plaintiff’s claims.
23 *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112,
24 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED
25 CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to
26 \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 10% for a risk of being
27 unsuccessful on the merits, and an additional 15% to account for the possibility of this Court reducing
28 penalties, to arrive at an estimated exposure of \$2,172,600. *Id.*

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

2 Using these estimated figures for each of the claims described above, Plaintiff predicted the
3 realistic total recovery for the Settlement Class would be approximately \$4,872,235.02. Nguyen Decl.,
4 ¶ 28. The proposed settlement of \$2,250,000.00 therefore represents approximately 46% of the
5 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the
6 settlement will provide tangible monetary relief to Settlement Class members, and will still provide an
7 average recovery to Settlement Class members of over \$3,700.00. *Id.*

8 The proposed settlement reflects approximately 46% of the estimated recovery the Settlement
9 Class could reasonably expect in light of the significant litigation and collection risks, and will provide
10 tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability
11 exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v.*
12 *UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving
13 settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213
14 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat’l Rural*
15 *Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a
16 proposed settlement may be acceptable even though it amounts to only a fraction of the potential
17 recovery that might be available to the Settlement Class members at trial”). Thus, Plaintiff submits
18 that the proposed settlement is within the range of possible approval, such that notice should be
19 provided to the Settlement Class so that they can consider the Settlement. The Court will have the
20 opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the
21 opportunity to opt-out or object.

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

23 “Parties represented by competent counsel are better positioned than courts to produce a
24 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
25 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
26 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
27 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
28 Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-

1 depth review of Kelcourt’s policies and timekeeping and payroll records, and drew on their extensive
2 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Nguyen
3 Decl., ¶¶ 10-25. The Settlement was also reached with the assistance of an experienced and respected
4 wage and hour class action mediator. *Id.* This factor strongly supports preliminary approval of the
5 Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

6 **i. Attorneys’ Fees and Costs**

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

14 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
15 is currently estimated to be \$750,000.00, and up to \$30,000.00 in verified costs reimbursement. *See*
16 Nguyen Decl., ¶ 29 and Exh. 2 (Settlement, ¶ 8). Plaintiff submits the requested fee is fair compensation
17 for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee
18 basis. *Id.* Further, Plaintiff has provided written approval of the split of attorneys’ fees in this action.
19 Nguyen Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing
20 investigation, analyzing Plaintiff’s claims, conducting legal research, propounding multiple sets of
21 written discovery, responding to written discovery, lengthy meet and confer conferences with defense
22 counsel, participating in the *Belaire-West* opt out notice mailing, opposing a Demurrer, reviewing
23 Kelcourt’s documents and policies, analyzing Plaintiff’s timekeeping data and payroll records,
24 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
25 Motion, and otherwise litigating the case. Nguyen Decl., ¶ 29. Class Counsel expects to expend
26 additional attorney time in attending the hearing on this Motion, overseeing the Notice process and
27 fielding questions from Settlement Class members, preparing the final approval papers and attending
28 the Final Approval hearing. *Id.*

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

7 **j. Administration Costs**

8 Phoenix Settlement Administrator's fees and expenses are estimated not to exceed \$11,000.00.
9 See Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed
10 concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the proposed class size
11 of approximately 350 Settlement Class Members and the costs and expenses associated with
12 administering the Notice Packets and distributing the awards, including translating the documents to
Spanish by a Court certified translator.

13 **k. Class Representative Service Award**

14 "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate
15 class representatives for work done on behalf of the class [and] to make up for financial or reputational
16 risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
17 1380, 1393-94.

18 Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of
19 seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for her
20 services to the Settlement Class. Nguyen Decl., ¶ 12, Exh. 2 (Settlement, ¶ 9); Sanchez de Segura
21 Decl., ¶¶ 3-12. As will be fully briefed at the time of final approval, Plaintiff's requested service award
22 is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class,
23 including providing substantial factual information and documents to Class Counsel, fielded multiple
24 calls from putative class members, multiple conferences with Class Counsel to discuss the claims and
25 theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve
26 as the named plaintiff in this case. At the time this lawsuit was filed, Plaintiff was on a leave of
27 absence and was concerned the company would not return her to work because she filed this lawsuit.

1 In addition, Plaintiff's husband is a current employee at Kelcourt and she feared retaliation against her
2 husband. This was particularly risky for Plaintiff since she was on a leave of absence and her husband
3 was the only source of income. She still decided to take on the risk for the benefit of the class. *See*
4 *Nguyen Decl.*, ¶ 31; *Sanchez de Segura Decl.*, ¶¶ 3-12.

5 **I. PAGA Civil Penalties**

6 The parties have agreed to a PAGA award of \$150,000.00 and in accordance with California
7 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
8 – or \$112,500. Settlement ¶ 5.D.5. This \$112,500.00 represents 5% of the \$2,250,00.00 Gross
9 Settlement Amount and is within the range approved by Courts. *See, e.g., In re M.L. Stern Overtime*
10 *Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving
11 PAGA settlement of 2 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008
12 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500);
13 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour
14 class action claims and PAGA claims under which no money was allocated to the PAGA claims).

15 **m. Payroll Taxes and Tax Allocation**

16 The Settlement provides that the employer's share of payroll taxes shall be paid separately from,
17 and in addition to, and the Gross Settlement Amount. Settlement ¶ 5.E.

18 **n. Uncashed Funds**

19 The Settlement provides that Settlement Class members with 180 days from the date the
20 Settlement Administrator mails the checks and any funds remaining after 180 days escheat to the
21 California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name
22 of the Settlement Class member. Settlement ¶ 7.E. As all settlement funds will be distributed to the
23 Settlement Class members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

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

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

1 deficiencies, this factor supports preliminary approval.

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

4 Before the final approval hearing, the Court requires adequate notice of the settlement be given
5 to all class members. This Court should order distribution to the Settlement Class of the proposed
6 Notice Packet by first-class regular U.S. Mail, postage prepaid, using last known mailing address
7 information provided by Kelcourt, as updated by the Settlement Administrator through the National
8 Change of Address database. *See* Settlement, ¶ 12.B. The Notice Packets, which shall include the
9 Notice of Pendency of Class Action and Proposed Settlement, Notice of Individual Settlement Award,
10 Objection Form and Request for Exclusion Form, will be mailed in both English and Spanish. This
11 manner of giving notice is the “best notice practicable” under the circumstances because it provides
12 “individual notice to all members who can be identified through reasonable effort.” *See Eisen v.*
13 *Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be
14 administered by Phoenix, an experienced class action settlement administrator. *See generally*
15 Lawrence Decl. and attached exhibits. Settlement Class Members’ addresses will be ascertainable
16 through Kelcourt’s personnel and payroll records, which Kelcourt will provide to Phoenix within 20
17 days of preliminary approval of the Settlement. *See* Settlement ¶ 12.A. Within 10 business days of
18 receipt of the Settlement Class Members’ addresses, Phoenix will run the addresses through the United
19 States Postal Service Notice of Change of Address database (which provides updated addresses for any
20 individual who has moved in the previous four years and has notified the U.S. Postal Service of a
21 forwarding address) and mail the notices to Settlement Class members. *See* Settlement ¶ 10.B. To the
22 extent that any notices are returned, Phoenix will perform a “skip trace” to track any Class Member’s
23 current mailing address. *See* Settlement ¶ 12.F.

24 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because
25 it advises Settlement Class members of the nature of the claims, basic contentions and denials of the
26 parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement
27 and the procedures by which to do so, explains the recovery formula and expected recovery amount
28 for each Settlement Class Member, provides them the opportunity to contest their total workdays

1 included in the notice, and advises them that they will be bound by the terms of the Settlement if they
2 do not opt-out. *See* Nguyen Decl., Exh. 2 (Settlement, Exh. A). The proposed Notice Packet will also
3 notify Settlement Class members of the final approval hearing date and provides Settlement Class
4 Members the contact information for Class Counsel, and advises Settlement Class members that they
5 may enter an appearance through counsel if they wish to. This manner of giving notice satisfies
6 California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement
7 Class members.

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

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

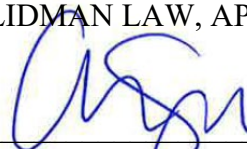
12 **IV. CONCLUSION**

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

16 Dated: May 15, 2023

Respectfully submitted,
LIDMAN LAW, APC

17
18 By:


Elizabeth Nguyen
Attorney for Plaintiff
ENEDINA SANCHEZ DE SEGURA