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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELIAS MORALES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

JBI INTERIORS, LLC., a Delaware limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 21STCV43284

*[Assigned for all purposes to the Hon. Kenneth R.
Freeman, Dept. SSC-14]*

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

Date: June 6, 2023
Time: 10:00 a.m.
Dept.: SSC-14

Action Filed: November 24, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 6, 2023 at 10:00 a.m. in Department SSC-14 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California, 90012, Plaintiff Elias Morales (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the following Settlement Class defined as follows:

All current and former hourly-paid, non-exempt employees who worked for Defendant JBI Interiors, LLC in California at any time from November 24, 2017 through granting of preliminary approval of Class Action Settlement.

3. Preliminary appointment of Plaintiff Elias Morales as Class Representative;
4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) and is attached to the Settlement as Exhibit A and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Elias Morales, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits

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

3
4 Dated: January 9, 2023

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Elizabeth Nguyen
Attorney for Plaintiff
ELIAS MORALES

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which JBI has agreed to pay Six Hundred Thousand Dollars and Zero Cents
13 (\$600,000.00) on behalf of the following Settlement Class:

14 All current and former hourly-paid, non-exempt employees who worked for
15 Defendant JBI Interiors, LLC in California at any time from November 24, 2017
16 through granting of preliminary approval of Class Action Settlement.

17 Significantly, Settlement Class Members do not need to file a claim to benefit from the
18 Settlement because all Settlement Class Members will automatically receive a payment unless they
19 affirmatively opt-out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees
20 and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount (“NSA”) of
21 approximately \$340,550.00 will be distributed to all Settlement Class Members who do not opt-out of
22 the Settlement. There were approximately 154 Settlement Class Members as of the date of mediation,
23 and not including the \$7,500 for 116 Aggrieved Employees, the average payment to participating
24 Settlement Class Members is estimated to be approximately **\$2,211.36**.

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

28 ¹ The Settlement is attached to the Declaration of Elizabeth Nguyen as Exhibit 2. The proposed Class
Notice is attached to the Settlement as Exhibit A.

respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

JB I manufactures furniture for various industries. Plaintiff, a former employee, was employed by JB I as an hourly, non-exempt Painter from approximately June 6, 2018 through approximately January 11, 2021. *See* Declaration of Elias Morales (“Morales Decl.”), ¶ 2.

B. BRIEF PROCEDURAL HISTORY

On November 24, 2021, Plaintiff filed the instant putative class action complaint. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. On November 24, 2021, Plaintiff submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and JB I of his intention of filing a PAGA claim based on the labor code violations alleged in his complaint. *Id.*, **Exhibit 1**. On April 22, 2022, after exhausting his administrative remedies, Plaintiff filed a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the PAGA. *Id.*

Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date he files this Motion and will submit a supplemental declaration showing the submission. Nguyen Decl., ¶ 34.

III. DUNK/KULLAR ANALYSIS

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

A. INVESTIGATION AND DISCOVERY

In advance of mediation, JB I produced a 16% sampling timekeeping and payroll data for the putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. Nguyen Decl., ¶ 11. JB I also provided a class list for Plaintiff to calculate the necessary metrics, including without limitation, class size, number of workweeks and pay periods. After the detailed review of the documents and data produced by JB I, Class Counsel drew on their

extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and JBI's defenses.

B. ARMS-LENGTH NEGOTIATIONS

On September 12, 2022, a mediation was held with Jeffrey Krivis, Esq., a well-respected wage and hour class action mediator. Nguyen Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. Ultimately, the Parties agreed on a class-wide resolution. *Id.*

C. THE EXPERIENCE AND VIEWS OF COUNSEL

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

D. 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:

JB Failed to Pay for All Hours Worked: Plaintiff alleges that he and the Class Members were not fully compensated for all of their time worked because JBI would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. Nguyen Decl., ¶ 16. Plaintiff also alleges that this time shaving and/or rounding practice utilized by JBI was not-even handed over time and would almost exclusively round and shave in JBI's favor such that the employees were routinely underpaid for their time worked and it appeared on average to be an underpayment of

1 approximately 40 minutes per week. *Id.* Accordingly, Plaintiff analyzed this rounding issue and found
2 that it appeared to favor the employer, and then calculated a total wage underpayment of approximately
3 \$337,577 (27,807 workweeks x .666 hours (40 mins/workweek x \$18.21 average hourly rate). *Id.*

4 JBI contends that it compensated Class Members for all of their time worked. Nguyen Decl., ¶
5 17. JBI also contends that its rounding practices were lawful, and any unpaid time, if any, was *de*
6 *minimis* and therefore non-compensable. *Id.* JBI argues that a number of the Class Members signed
7 arbitration agreements and that Plaintiff is unable to certify a class to include individuals who signed
8 arbitration agreements. *Id.* JBI further asserts that Plaintiff would be unable to certify a rounding class
9 given the individualized inquiries that would be required, and also that JBI's rounding
10 policy/mechanism was, according to it, neutral on its face and in its application. *Id.* In light of these
11 defenses, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an
12 additional 30% to account for JBI's defenses on the merits, to arrive at an estimated exposure of
13 \$129,967.15. *Id.*

14 JBI Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and the Class
15 Members were not provided with all legally-compliant first meal periods beginning before the end of
16 the fifth hour of work. Nguyen Decl., ¶ 18. Specifically, Plaintiff alleges that JBI utilized a bell signaling
17 system for meal periods, with the bell ringing exactly at 12:02 p.m. and 12:28 p.m. This means that
18 Plaintiff and the other non-exempt employees did not receive a full 30-minute meal period because they
19 were required to be back at their workstations ready to work within 2 minutes after the bell rang at 12:30
20 p.m. *Id.* As such, Plaintiff alleges that he and other non-exempt employees were not provided a full
21 uninterrupted 30-minute meal period because they had to return from their meal periods early and be at
22 their workstations ready to commence work. *Id.* Moreover, Plaintiff alleges that he and some other non-
23 exempt employees were required to carry walkie talkie radios at all times, essentially being on call for
24 their meal periods and unable to have duty-free meal periods in violation of California law. Further,
25 based on the timekeeping data produced by JBI in connection with mediation, it appears JBI did not
26 require its non-exempt employees to clock in and out for meal periods. Instead, Plaintiff alleges that
27 JBI automatically deducted 30 minutes of work time for purported meal periods whether or not a
28 compliant meal period was actually taken. *Id.* As such, Plaintiff contends that Settlement Class

Members experienced at least one meal period violation on every shift in excess of 6.0 hours, which is approximately 95% of the shifts during the relevant time period. Accordingly, Plaintiff calculated JBI's maximum exposure for the alleged meal period violations at approximately \$2,405,236 (27,807 x 5 shifts/week x .95 (% of shifts over 6.0 hours) x \$18.21). *Id.*

JBI counters that it has always maintained a lawful meal period policy and 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 JBI. Nguyen Decl., ¶ 19. JBI points 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, JBI contends Plaintiff's meal period claim is not suited for class certification, given that a number of Class Members signed arbitration agreement and 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 55% for the risk of non-certification, and an additional 60% to account for JBI's defenses on the merits to arrive at an estimated exposure of \$432,942.48. *Id.*

JBI Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and Settlement Class Members were also not authorized and permitted to take all required rest periods due to JBI's rest period policies and practices. Nguyen Decl., ¶ 20. Specifically, Plaintiff alleges that JBI only authorized and permitted one 15-minute rest period during each shift, irrespective of the shift length. Thus, Plaintiff alleges that he and other non-exempt employees experienced at least one rest period violation on every shift worked in excess of 6.0 hours. *Id.* Therefore, Plaintiff calculated JBI's maximum exposure for the alleged rest period violations at approximately \$2,405,236 (27,807 x 5 shifts/week x .95 (% of shifts over 6.0 hours) x \$18.21). *Id.*

JBI contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in

1 compliance with California law. Nguyen Decl., ¶ 21. JBI also argues that Plaintiff's rest period claim
2 is inherently unsuited for class treatment as a number of Class Members signed arbitration agreements
3 and it requires an individualized inquiry into whether each Settlement Class Member was in fact
4 authorized and permitted to take a compliant rest period, which would devolve into an unmanageable
5 series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk
6 of non-certification, and an additional 55% to account for JBI's defenses on the merits to arrive at an
7 estimated exposure of \$541,178.10. *Id.*

8 JBI Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that JBI issued
9 inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum
10 wages and overtime wages, and meal and rest period premium wages described above. Nguyen Decl.,
11 ¶ 22. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage
12 statements issued to Settlement Class Members did not include all hours worked and the rate at which
13 they were being paid. *Id.* Plaintiff also alleges that JBI faces independent liability for issuing wage
14 statements with "JBI LLC" as the employer's name, which is not its legal name – "JBI Interiors, LLC."
15 *Id.* Plaintiff's data analysis reflected that there were approximately 9,405 wage statements issued during
16 the relevant time period. *Id.* Therefore, Plaintiff calculated JBI's maximum exposure for wage
17 statement violations at approximately \$935,700 (($\50.00×96 current employees) + ($\$100.00 \times 9,309$
18 subsequent wage statements)). *Id.*

19 JBI argues that its alleged wage statement violations could not be shown to be "knowing and
20 intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result
21 of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties.
22 Nguyen Decl., ¶ 23. As such, and given JBI's contention that Class Members signed arbitration
23 agreements, Plaintiff discounted the calculated exposure by 45% for a risk of non-certification and an
24 additional 55% for a risk of being unsuccessful on the merits, to arrive at an estimated total of
25 \$231,585.75. *Id.*

26 JBI is Liable for Waiting Time Penalties: Plaintiff alleges that JBI is also liable for waiting time
27 penalties under Labor Code section 203 as a result of its failure to timely pay all wages upon separation.
28 Nguyen Decl., ¶ 24. There are approximately 57 Settlement Class Members who have separated their

1 employment with JBI during the relevant time period who could be entitled to waiting time penalties.
2 *Id.* Therefore, Plaintiff calculated JBI's maximum exposure for waiting time penalties at approximately
3 \$249,090 (57 former employees x \$18.21/hour x 30 days x 8 hours/day). *Id.*

4 JBI 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 45% for the risk of non-certification, and an additional 40% to account for JBI's defenses on the merits,
11 to arrive at an estimated exposure of \$82,199.70. *Id.*

12 JBI is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a
13 result of the foregoing alleged Labor Code violations. Nguyen Decl., ¶ 26. Plaintiff calculated JBI's
14 maximum exposure at \$940,500 (9,405 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v.*
15 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until
16 employer is notified that it is violating a Labor Code provision).

17 JBI argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims
18 will fail. Nguyen Decl., ¶ 27; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
19 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). JBI
20 also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially
21 reduce any PAGA penalties if it were to find JBI liable for any of Plaintiff's claims. *See* Lab. Code §
22 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming
23 reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487
24 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.*
25 Therefore, Plaintiff discounted the maximum exposure figure by 50% for a risk of being unsuccessful
26 on the merits, and an additional 55% to account for the possibility of this Court reducing penalties, to
27 arrive at an estimated exposure of \$211,612.50. *Id.*

1 **E. 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 \$1,629,485.68. Nguyen Decl.,
4 ¶ 28. The proposed settlement of \$600,000.00 therefore represents approximately 37% of the reasonably
5 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
6 will provide tangible monetary relief to Settlement Class Members, and will still provide an average
7 recovery to Settlement Class Members of over \$2,200.00.

8 The proposed settlement reflects approximately 37% of the estimated recovery the Settlement
9 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
10 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
11 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Dunleavy v. Nadler*
12 (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
13 recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus,
14 Plaintiff submits that the proposed settlement is within the range of approval, such that notice should
15 be provided to the Settlement Class so that they can consider the Settlement. The Court will have the
16 opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has
17 expired.

18 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER**
19 **LITIGATION, AND RISK OF MARINATING CLASS ACTION STATUS**

20 Although the parties engaged in informal discovery throughout this action, the parties still had
21 significant discovery to complete in formal litigation had the matter not settled. Nguyen Decl., ¶ 32.
22 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
23 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.*
24 Even if the classes were certified, the parties would incur considerably more attorneys' fees and costs
25 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those
26 risks and the accompanying expense. Thus, this factor supports preliminary approval.
27
28

1 **IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

2 California Rule of Court 3.769 conditions settlement of a class action on court approval, which
3 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of
4 Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322.

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

11 **A. NUMEROSITY IS SATISFIED.**

12 Here, the proposed Settlement Class consists of at least 154 members, and is therefore
13 sufficiently numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v.*
14 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
15 numerous). Thus, numerosity is satisfied.

16 Further, the class is "ascertainable" because it is defined as "all current and former hourly-paid,
17 non-exempt employees who worked for Defendant JBI Interiors, LLC in California at any time from
18 November 24, 2017 through granting of preliminary approval of Class Action Settlement" and such
19 members can be identified from Defendant's personnel/business records. Nguyen Decl., ¶ 14.

20 **B. COMMONALITY IS SATISFIED.**

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

24 Here, Plaintiff alleges Settlement Class Members' claims arise from JBI's common, uniform
25 policies and practices that applied to Settlement Class Members during the class period. Nguyen Decl.,
26 ¶ 15. Specifically, Plaintiff alleged that JBI's common and uniform policies and practices resulted in
27 the following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime
28 wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit
all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure

1 to pay all final wages upon separation of employment; (7) engagement in unlawful business practices;
2 and (8) liability for civil penalties under the PAGA. As a result of the common and uniform policies
3 and practices that applied to all Settlement Class Members, their claims involve common questions of
4 law and fact as to whether in fact JBI committed these alleged violations.

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

7 **C. TYPICALITY IS SATISFIED.**

8 The typicality requirement is satisfied where class representatives have claims that are typical
9 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
10 1341, 1347. Here, Plaintiff's claims are typical of those held by the members of the proposed
11 Settlement Class. Plaintiff was employed by JBI during the Class Period as a non-exempt Painter and
12 was subject to JBI's wage and hour policies at issue in this case. *See* Morales Decl., ¶ 2. Further,
13 Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Settlement
14 Class as a whole. *Id.* Given that JBI's policies and practices applied to all non-exempt employees,
15 Settlement Class Members possess a similar interest and have suffered similar alleged injuries as
16 Plaintiff. Accordingly, typicality is satisfied.

17 **D. ADEQUACY IS SATISFIED.**

18 The adequacy requirement examines conflicts of interest between named parties and the
19 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
20 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
21 Settlement Class he seeks to represent. Morales Decl., ¶ 11. Indeed, Plaintiff's interests are aligned
22 with those of the Settlement Class Members, as they all seek monetary relief under the same facts and
23 legal theories. Additionally, Class Counsel does not have any conflict of interest with the Settlement
24 Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51.

25 Further, Class Counsel also have extensive experience in wage and hour class action litigation
26 and have vigorously litigated this case. *See* Nguyen Decl., ¶¶2-8; Declaration of Scott M. Lidman
27 ("Lidman Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Milan
28 Moore ("Moore Decl."), ¶¶ 2-4.

1 **V. SETTLEMENT AGREEMENT**

2 **A. THE BASICS**

3 1. Class Definition and Release Period

4 The proposed Settlement Class is defined as “current and former hourly-paid, non-exempt
5 employees who worked for Defendant JBI Interiors, LLC in California at any time from November 24,
6 2017 through granting of preliminary approval of Class Action Settlement.” Nguyen Decl., ¶ 14. For
7 purposes of this Settlement Agreement, the “Class Period” shall mean the time period of November 24,
8 2017 through granting of preliminary approval of Class Action Settlement.” *Id.*

9 2. Aggrieved Employees and PAGA Period

10 The proposed Aggrieved Employees are defined as “all current and former hourly-paid, non-
11 exempt employees of Defendant JBI Interiors, LLC who were employed in the state of California at any
12 time from November 24, 2020, and ending on the date the Court signs an order granting preliminary
13 approval of the Settlement.” Nguyen Decl., ¶ 14. For purposes of this Settlement Agreement, the
14 “PAGA Period” shall mean the time period of November 24, 2020, and ending on the date the Court
15 signs an order granting preliminary approval of the Settlement.” *Id.*

16 **B. RELEASE OF CLAIMS**

17 1. Scope of Participating Class Members’ Release

18 All Participating Class Members, on behalf of themselves and their respective former and
19 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
20 Released Parties, which means Defendant, its past and present officers, directors, shareholders,
21 managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and
22 its respective successors and predecessors in interest, subsidiaries, affiliates contractors/staffing
23 agencies (including SkillsetGroup), parents and attorneys, from all claims, demands, rights, liabilities
24 and causes of action that were pled or could have been pled based on the facts alleged in the Complaints
25 in the Action, that arose during the Class Periods defined above, including but not limited to: (a) failure
26 to pay all overtime wages owed (Labor Code §§ 1194, 1194.2, 1197); (b) failure to pay all minimum
27 wages owed (Labor Code §§ 204, 510, 558, 1194, 1198); (c) failure to provide meal periods, or premium
28 pay for non-compliant meal periods (Labor Code §§226.7, 512, 558); (d) failure to authorize and permit
rest periods, or premium pay for non-compliant rest periods (Labor Code §§ 226.7, 516); (e) failure to

1 timely pay all wages due upon separation of employment (Labor Code §§ 201-203); (f) failure to issue
2 accurate, itemized wage statements (Labor Code §§ 226, et seq.); (g) all claims for unfair business
3 practices (Bus. & Prof. Code § 17200, et seq.); and (h) any corresponding FLSA claims during the Class
4 Period that could have been premised on the facts, claims, causes of action or legal theories described
5 above. The Release Period is the same as the Class Period. The release of FLSA claims will be
6 effectuated when Class Members cash their settlement checks. Except as set forth in Section 5.3 of this
7 Agreement, Participating Class Members do not release any other claims, including claims for vested
8 benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment
9 insurance, disability, social security, workers' compensation, or claims based on facts occurring outside
10 the Class Period. Settlement, ¶ 5.2.

11 2. Scope of Aggrieved Employees' Release

12 All Aggrieved Employees are deemed to release, on behalf of themselves and their respective
13 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
14 Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
15 alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice,
16 including, but not limited to: (a) failure to pay all overtime wages owed (Labor Code §§ 1194, 1194.2,
17 1197); (b) failure to pay all minimum wages owed (Labor Code §§ 204, 510, 558, 1194, 1198); (c)
18 failure to provide meal periods, or premium pay for non-compliant meal periods (Labor Code §§ 226.7,
19 512, 558); (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods
20 (Labor Code §§ 226.7, 516); (e) failure to timely pay all wages due upon separation of employment
21 (Labor Code §§ 201-203); and (f) failure to issue accurate, itemized wage statements (Labor Code §§
22 226, et seq.). Settlement, ¶ 5.3.

23 3. Releases Effective Date

24 The releases described above are effective on the date when Defendant fully funds the entire
25 Gross Settlement Amount (including any increase pursuant to the Escalator Clause) and funds all
26 employer payroll taxes owed on the Wage Portion of the Individual Class Payments. Settlement, ¶ 5.

27 C. **MONETARY TERMS OF SETTLEMENT**

28 1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, JBI will pay a Gross Settlement Amount ("GSA") of

\$600,000.00.² Nguyen Decl., ¶¶ 12, Exh. 2 (Settlement, ¶ 3.1) and ¶ 13. Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.*

Defendant shall fully fund the Gross Settlement Amount, (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause) and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator as follows: (1) the first payment of \$300,000.00 shall be deposited with the Administrator within three months after the Court enters an order granting preliminary approval of the settlement; (2) the second payment of \$300,000.00 shall be deposited with the Administrator within three months after the Effective Date; and (3) the employer's share of payroll taxes and any increase to the Gross Settlement Amount due pursuant to the Escalator Clause shall be deposited with the Administrator along with the second payment. *See* Settlement, ¶ 4.3.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$600,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$200,000.00
Minus Court-approved, verified costs (up to \$25,000.00):	\$25,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$6,950.00
Minus PAGA payment to the LWDA:	\$22,500.00
Net Settlement Amount ("NSA"):	\$340,550.00

² Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 146 Class Members and 27,807 Total Workweeks from November 24, 2017 to August 12, 2022 and (2) there were 116 Aggrieved Employees who worked 9,405 Pay Periods from November 24, 2020 to August 12, 2022. If the number of workweeks during the Settlement Class Period increases by more than 10% above 27,807 (i.e., if there are 30,558 or more workweeks worked by the Class Members), Defendant will at its option either (a) agree to increase the Gross Settlement Amount on a proportional basis (i.e., if there was 10% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 10%), or (b) agree to shorten and close the Class Period on the date that is closest to without exceeding 30,558 workweeks worked by the Class Members so as to eliminate the need to increase the Gross Settlement Amount. Defendant will notify Plaintiff's counsel of its election after the hearing date of the preliminary hearing motion is known and within 7 days of being notified by the Administrator that the Escalator Clause has been triggered. Settlement, ¶ 8.

Settlement Class Members

154

Average Individual Payment: NSA/Settlement Class

\$2,211.36

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement results in a Net Settlement Amount ("NSA") of at least \$340,550.00 to be paid out to all Settlement Class Members who do not timely opt out. Nguyen Decl., ¶ 13, Exh. 2.

Therefore, this calculation of $\$340,550/154 = \$2,211.36$, assumes the Court approves the requested attorneys' fees, maximum attorneys' costs, enhancement award, settlement administration costs, and payment to the LWDA. *Id.* This calculation also assumes that all 154 putative class members participate in the settlement and do not submit timely requests for exclusions. *Id.*

3. Class Representative Service Payment

Incentive awards are typical in class action cases and are intended to compensate class representatives for work done on behalf of the class and to make up for reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Plaintiff will separately apply for a service payment at the time of seeking final approval in the amount of \$5,000.00. Nguyen Decl., ¶ 31, Exh. 2 (Settlement, ¶ 3.2.1.); Morales Decl., ¶¶ 3-12. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶41; Morales Decl., ¶¶ 3-12; Settlement ¶ 3.2.1.

The Class Representative Service Payment awarded by the Court shall be paid by the Settlement Administrator to Plaintiff from the Gross Settlement Amount within 14 days after Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

1 4. Attorneys' Fees and Costs

2 California courts recognize an appropriate method for awarding attorneys' fees in class actions
3 is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v.*
4 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506. Class Counsel's request for fees of one-third of the
5 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common
6 fund settlements.

7 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
8 is currently estimated to be \$200,000.00, and up to \$25,000.00 in verified costs reimbursement. *See*
9 Settlement, ¶ 3.2.2.; Nguyen Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for
10 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
11 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen
12 Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
13 analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records,
14 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
15 Motion, and otherwise litigating the case. Nguyen Decl., ¶ 29. Class Counsel expect to expend
16 additional attorney time in attending the hearing on this Motion, overseeing the Notice process and
17 fielding questions from Settlement Class Members, preparing the final approval papers and attending
the Final Approval hearing. *Id.*

18 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
19 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
20 include a lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the
21 Settlement Administrator to Class Counsel from the Gross Settlement Amount 14 days after Defendant
22 funds the Gross Settlement Amount. Settlement, ¶ 4.4.

23 5. Payroll Taxes

24 The Settlement provides that JBI's payroll taxes shall be paid separately from, and in addition
25 to, and the Class Settlement Amount. Settlement ¶ 4.3. The employer-side taxes shall be deposited
26 when the second and final payment is made by Defendant. *Id.*

1 6. Payment Formula

2 There were approximately 154 total Settlement Class Members as of the date of mediation.
3 Nguyen Decl., ¶ 14. An Individual Class Payment calculated by (a) dividing the Net Settlement Amount
4 by the total number of Workweeks worked by all Participating Class Members during the Class Period
5 and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4.
6 Thus, the average Individual Class Payment is **\$2,211.36**.

7 Additionally, there were approximately 116 Aggrieved Employees. Nguyen Decl., ¶ 14. The
8 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
9 Aggrieved Employees' 25% share of PAGA Penalties \$7,500.00 by the total number of PAGA Period
10 Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result
11 by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full
12 responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

13 Thus, the average Individual PAGA Payment is projected to be approximately **\$64.66**. *Id.*

14 7. Tax Allocation

15 For purposes of calculating applicable taxes and withholdings, 33% of each Participating Class
16 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage
17 Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form.
18 The 67% of each Participating Class Member's Individual Class Payment will be allocated to settlement
19 of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject
20 to wage withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 3.2.5.

21 8. PAGA Penalty

22 The parties have agreed to a PAGA award of \$30,000.00 and in accordance with California
23 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
24 – or \$22,500.00. Settlement ¶ 3.2.7. This \$22,500.00 represents roughly 3.75% of the \$600,000.00
25 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved
26 by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
27 at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom*
28 *Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
 claims and PAGA claims under which no money was allocated to the PAGA claims).

1 **VI. NOTICE ADMINISTRATION**

2 **A. SETTLEMENT ADMINISTRATOR**

3 Phoenix Class Action Administration Solutions (“Phoenix”) costs are estimated not to exceed
4 \$6,950.00. *See* Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary
5 Approval filed concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the
6 proposed class size of approximately 154 Settlement Class Members and the costs and expenses
7 associated with administering the notices and distributing the awards. Additionally, Phoenix will
8 translate the Class Notice and mail the Class Notice in both English and Spanish to Settlement Class
9 Members.

10 Phoenix has extensive experience administering class action matters. Phoenix has administered
11 complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA,
12 ERISA and PAGA class action matters, though final approval and distribution. Phoenix has developed
13 a system of quality assurance measures, to ensure the highest quality service is provided in our cases
14 and to class members. Lawrence Decl., ¶ 5. Class Counsel does not have any conflict of interest. Class
15 Counsel also confirmed that Defendant nor its counsel has any conflicts of interests with Phoenix as the
16 proposed settlement administrator.

16 **B. CLASS LIST FROM DEFENDANT**

17 No later than 30 calendar days after entry of an order preliminarily approving the Settlement,
18 Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft
19 Excel spreadsheet. Settlement, ¶ 4.2.

20 To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in
21 confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict
22 access to the Class Data to Administrator employees who need access to the Class Data to effect and
23 perform under this Agreement. *Id.*

24 **C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING AND MAILING**

25 Before mailing Class Notices, the Administrator shall update Class Member addresses using the
26 National Change of Address database. Settlement, ¶ 7.4.2. Using best efforts to perform as soon as
27 possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send
28

1 to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”)
2 mail, the Class Notice with Spanish translation. *Id.*

3 **D. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)**

4 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
5 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the
6 parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement
7 and the procedures by which to do so, explains the recovery formula and expected recovery amount
8 for each Settlement Class Member, provides them the opportunity to contest their total workweeks
9 included in the notice, and advises them that they will be bound by the terms of the Settlement if they
10 do not opt-out. *See* Settlement, Exh. A. The proposed Class Notice will also notify Settlement Class
11 Members of the final approval hearing date and provides Settlement Class Members the contact
12 information for Class Counsel, and advises Settlement Class Members that they may enter an
13 appearance through counsel if they wish to. This manner of giving notice satisfies California Rule of
14 Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

15 **E. PROCESSING OF PAYMENTS**

16 Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail
17 checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment,
18 the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
19 Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
20 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
21 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
22 Settlement, ¶ 4.4.

23 Before mailing any checks, the Settlement Administrator must update the recipients’ mailing
24 addresses using the National Change of Address Database. Settlement, ¶ 4.4.1.

25 **F. UNDELIVERABLE SETTLEMENT NOTICES**

26 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by
27 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address
28 provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall
conduct a Class Member Address Search, and re-mail the Class Notice to the most current address

1 obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice
2 to Class Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 7.4.3.

3 The Administrator will send checks for Individual Settlement Payments to all Participating Class
4 Members (including those for whom Class Notice was returned undelivered). The Administrator will
5 send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating
6 Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was
7 returned undelivered). Settlement, ¶ 4.4.1.

8 **VII. RESPONSES TO SETTLEMENT NOTICE**

9 **A. REQUESTS FOR EXCLUSION**

10 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the
11 Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after
12 the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class
13 Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative
14 that reasonably communicates the Class Member's election to be excluded from the Settlement and
15 includes the Class Member's name, address and email address or telephone number. To be valid, a
16 Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
Settlement, ¶ 7.5.1.

17 **B. RE-MAILED NOTICES**

18 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay
19 Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days
20 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The
21 Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
22 Settlement, ¶ 7.4.4.

23 **C. OBJECTION PROCEDURES**

24 Only Participating Class Members may object to the class action components of the Settlement
25 and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested
26 for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class
27 Representative Service Payment. Settlement, ¶ 7.7.1.

1 Participating Class Members may send written objections to the Administrator, by fax, email,
2 or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to
3 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class
4 Member who elects to send a written objection to the Administrator must do so not later than 45 days
5 after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members
6 whose Class Notice was re-mailed). Settlement, ¶ 7.7.2.

7 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

8 The face of each check shall prominently state the date (not less than 180 days after the date of
9 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the
10 void date. Settlement ¶ 4.4.1.

11 For any Class Member whose Individual Class Payment check or Individual PAGA Payment
12 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds
13 represented by such checks to the California Controller's Unclaimed Property Fund in the name of the
14 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
15 Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.

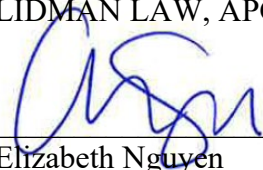
16 **IX. CONCLUSION**

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

20 Dated: January 9, 2023

Respectfully submitted,
LIDMAN LAW, APC

21
22 By:


Elizabeth Nguyen
Attorney for Plaintiff
ELIAS MORALES