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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IVAN LORENO, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

SOUTH COAST BEVERAGE LLC, a
Delaware limited liability company; and DOES
1 through 100,

Defendants.

Case No. 21STCV46865

*[Assigned for all purposes to Hon. Stuart M. Rice,
Dept. SSC-1]*

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

Date: February 4, 2025
Time: 10:30 a.m.
Dept.: SSC-1

Complaint Filed: December 23, 2021
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, February
3 4, 2025 at 10:30 a.m. in Department SSC-1 of the above-entitled Court, located at 312 N. Spring Street,
4 Los Angeles, California 90012, Plaintiff Ivan Lorenzo ("Plaintiff"), individually and on behalf of a class
5 of similarly situated individuals, will and hereby does move this Court for:

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

9 All individuals whom Defendant South Coast Beverage Service, LLC and/or its
10 successors classified as non-exempt employees and who worked for Defendant
11 in California at any time during December 23, 2017 through the date that the
court enters an order preliminarily approving the settlement.

- 12 3. Preliminary appointment of Plaintiff Ivan Lorenzo as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and
14 Paul K. Haines of Haines Law Group, APC as Class Counsel;
15 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
16 and to approve an enhancement award to Plaintiff, costs incurred by the Settlement
17 Administrator, civil penalties payable to the California Labor Workforce Development
18 Agency, and attorneys' fees and costs to Class Counsel;
19 6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement
20 Administrator for mailing notices; and
21 7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final
22 Court Approval, which is attached to the Settlement as Exhibit A and an order that it be
23 disseminated to the proposed Settlement Class Members as provided in the Settlement
24 Agreement.

25 This Motion is based on this notice of motion, the memorandum of points and authorities, the
26 declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Ivan Lorenzo, and Jodey
27 Lawrence of Phoenix Class Action Administration Solutions, and the exhibits attached thereto, the
28

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

3
4 Dated: November 6, 2024

Respectfully submitted,
LIDMAN LAW, APC

5
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7 By:



8 Scott M. Lidman
9 Attorney for Plaintiff
10 IVAN LORENO
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4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	18
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1 MEMORANDUM OF POINTS AND AUTHORITIES¹

2 I. INTRODUCTION

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

10 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
11 class action settlement,² in which Defendant has agreed to pay a total settlement amount of Four
12 Hundred Eighty-Five Thousand Dollars and Zero Cents (\$485,000.00), of which Defendant **has already**
13 **paid** One Hundred Nine Thousand Dollars and Zero Cents (\$109,000.00) to Settlement Class Members
14 as part of a *Pick-Up-Stix* settlement campaign which was a direct result of the filing of the instant
15 lawsuit, on behalf of the following Settlement Class:

16 All individuals whom Defendant South Coast Beverage Service, LLC and/or its
17 successors classified as non-exempt employees and who worked for
18 Defendant in California at any time during December 23, 2017 through the
19 date that the court enters an order preliminarily approving the settlement.

20 Significantly, Settlement Class members do not need to file a claim to benefit from the
21 Settlement because all Settlement Class members will automatically receive a payment unless they
22 affirmatively opt-out.

23 As explained below, beginning in November 2022, after this lawsuit was filed and as a direct
24 result of it, Defendant offered all of its employees (excluding Plaintiff) individual settlement agreements
25 to extinguish the claims brought on their behalf in this lawsuit pursuant to the process in *Chindarah v.*
26 *Pick Up Stix*, 71 Cal. App. 4th 796 (2009). Defendant paid these employees a total of \$109,000.00

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

² The Class Action and PAGA Settlement Agreement (“Settlement”) is attached to the Declaration of Scott M.
Lidman as Exhibit 2. All defined terms in this motion have the same definitions as used in the Settlement.

pursuant to this settlement campaign. As part of the settlement, Defendant has agreed to pay an additional \$376,000.00, for a total of \$485,000 in total settlement funds.

Thus, taking into account the funds already paid by Defendant for individual releases of the claims in this lawsuit, and after deducting administration costs, Plaintiff's service award, attorneys' fees and costs, and payment of PAGA penalties to the California Labor and Workforce Development Agency ("LWDA"), the remaining Net Settlement Amount ("NSA") of approximately \$154,333.33 will be paid to all Settlement Class members who do not timely opt out – *in addition* to the \$109,000.00 previously paid by Defendant ("*Pick-Up-Stix* Settlement Amount"). There are approximately 126 Settlement Class members, rendering the average payment to participating Settlement Class members to be approximately **\$2,100.00** as a direct result of this litigation.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

Defendant is in the business of providing technical service on beverage dispensing equipment found in retailers, restaurants, and convenience stores. See Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Plaintiff was a non-exempt employee of Defendant from about the year 2017 through approximately November 30, 2021. See Declaration of Ivan Loreno ("Loreno Decl."), ¶ 2. During his employment, Plaintiff held the position of Field Service Engineer. *Id.*

B. BRIEF PROCEDURAL HISTORY

On December 23, 2021, Plaintiff filed a putative class action complaint against Defendant in Los Angeles County Superior Court. Lidman Decl., ¶ 10. On March 3, 2022, Plaintiff submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and to Defendant advising of his intention of filing a PAGA claim based on the Labor Code violations alleged in his operative complaint. *Id.*, **Exhibit 1**. On March 28, 2022, Plaintiff filed a First Amended Class Action and Representative Action Complaint. *Id.* The primary allegations are that Defendant: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally

1 required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to
2 provide accurate, itemized wage statements; (6) failed to pay all wages owed upon termination; (7)
3 engaged in unlawful business practices; and (8) is liable for civil penalties under the Private Attorneys
4 General Act of 2004 (“PAGA”). *Id.*

5 Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the
6 same date he files this Motion and will submit a supplemental declaration evidencing the submission.
7 Lidman Decl., ¶ 32.

8 **III. DUNK/KULLAR ANALYSIS**

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

16 **A. INVESTIGATION AND DISCOVERY**

17 Throughout the approximate three-year litigation, Plaintiff propounded written discovery,
18 including without limitation, Special Interrogatories (Sets 1-3), Form Interrogatories General and
19 Employment, and Requests for Production (Sets 1-2), to which Defendant responded. Lidman Decl., ¶
20 11. Further, the Parties completed the *Belaire-West* notice and Defendant produced the contact
21 information for the putative class members that did not opt-out. *Id.*

22 After agreeing to participate in private mediation, Defendant informally produced a 20%
23 sampling of timekeeping and payroll data for the putative class, as well as its wage and hour policies
24 and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 12.

25 Specifically, Plaintiff received a list of unique Employee ID numbers. Lidman Decl., ¶ 12. The
26 Parties agreed that Plaintiff’s sample represented 20% of the total Employee ID numbers. *Id.* Using
27 Excel’s “RAND” function which randomly generates a value between 0 and 1, each of the 112
28 Employee ID numbers was randomly assigned such a value. *Id.* After the random assignment, the list
of Employee ID numbers was sorted in ascending order according to the values randomly assigned. *Id.*

1 After the list was sorted, Plaintiff selected the first 23 Employee ID numbers, which represents a 20%
2 sampling. *Id.*

3 Accordingly, a sample of this group is representative of the entire Settlement Class and is
4 statistically significant and reliable for purposes of evaluating a potential settlement. *See e.g., Tyson*
5 *Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016) (The Supreme Court held that statistical evidence
6 was admissible to prove liability and damages across a class, thereby allowing it to support class action
7 certification.). In *Tyson*, a case involving a class of employees claiming that they did not receive
8 statutorily mandated overtime pay for time spent “donning and doffing protective gear,” the court
9 upheld the use of statistical evidence to calculate the additional time class members spent donning and
10 doffing, even though differences in the type of gear worn meant that plaintiffs may have taken different
11 amounts of time to don and doff. *Id.* at pp. 1042, 1048–1409.

12 Here, the statistical analysis of the time punch and payroll data was used for the limited purpose
13 of determining the predominance of rounding and meal period violations in support of Plaintiff’s claims
14 that Defendant maintained policies and practices during the relevant time period of not paying its non-
15 exempt employees for all time worked and not providing all legally compliant meal periods. Lidman
16 Decl., ¶ 12. Indeed, based on the time punch data produced which included actual time punches and
17 rounded paid hours, Plaintiff was able to conduct a rounding analysis and conclude that Defendant’s
18 rounding practice was widespread during the entire relevant time period. *Id.* Moreover, from the time
19 and payroll data, Plaintiff was able to determine that Defendant maintained a policy and practice of
20 automatically deducting 30 minutes, and sometimes one hour, of work time for purported meal periods
21 and did not require its non-exempt employees to record the start and stop time of their meal periods as
22 required by California law. *Id.* The Settlement Class members did similar work and were paid under
23 the same wage and hour policies and procedures. *Id.* Given these circumstances, the experiences of a
24 subset of employees – the 20% sampling- can be probative as to the experiences of all of the Settlement
25 Class. *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938 (As in *Tyson*, under these
26 circumstances the percentage of the subset of employees who signed meal agreements lacking the
27 required revocation language during a given time period is probative as to the percentage of the class
28 that signed meal agreements lacking the required revocation language.). Further, if all Settlement Class
members brought lawsuits for unpaid wages and/or meal period violations, they would rely on

1 timekeeping records similar to the ones in this sampling which also supports a finding that the sampling
2 is statistically reliable. *Id.*

3 In addition to the representative sampling, Defendant produced key data points and all relevant
4 written wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff was
5 provided with the following:

- 6 • Plaintiff's personnel files and timekeeping and payroll documents;
- 7 • Spreadsheet with hire and term dates to determine key data points, including total number
8 of employees, workweeks, and pay periods during the relevant time period;
- 9 • Exemplars of the wage statements provided during the relevant time period; and
- 10 • Employee Handbook for relevant time period.

11 Lidman Decl., ¶ 12.

12 This information coupled with the representative data sampling enabled Plaintiff to extrapolate
13 to the entire class and aided in Plaintiff's creation of a class-wide exposure model for all the claims at
14 issue, including unpaid wages and penalties potentially owed for alleged minimum and overtime wages,
15 and meal and rest period violations, and unpaid wages. Lidman Decl., ¶ 12. Ultimately, this discovery
16 allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto.
17 *Id.*

18 **B. ARMS-LENGTH NEGOTIATIONS**

19 On September 14, 2023, after extensive research and analysis, a full-day mediation was held
20 with Mark S. Rudy, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 13. During
21 mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification
22 of Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* Additionally, the Parties
23 discussed at mediation the fact that in 2022, after the filing of and in direct response to this lawsuit,
24 Defendant conducted a "Pick Up Stix" campaign³ in which it offered individual settlement payments
25 directly to its current employees in exchange for a release of claims. *Id.* In total, Defendant paid
26 \$109,000.00 to then-current employees within the Settlement Class in exchange for releases. *Id.*; see
also Settlement, ¶ 18.

27 ³ *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009) held that an employer may enter into pre-
28 certification settlement agreements with individual putative class members in which the putative class members
receive compensation in exchange for a release of claims for past unpaid wages and penalties.

1 Although mediation was unsuccessful, the Parties continued to work with the mediator and
2 ultimately agreed to a mediator’s proposal on April 30, 2024. Lidman Decl., ¶ 13. The Parties agreed
3 in principle on a class-wide resolution, which takes into account the amount already paid by Defendant
4 as a direct result of this litigation. *Id.* In the months that followed, the parties finalized the terms of
5 settlement and executed the Class Action and PAGA Settlement Agreement (“Settlement”). *Id.*

6 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

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

18 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF** 19 **CLAIMS**

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

23 Defendant Failed to Pay for All Hours Worked: Plaintiff alleges that he and Settlement Class
24 members were not fully compensated for all of their time worked. Lidman Decl., ¶ 17. Specifically,
25 Plaintiff alleges Defendant would keep track of his hours and the hours of the other non-exempt
26 employees and would unlawfully shave their work time and/or round their work time to the quarter
27 hour such that Plaintiff and Settlement Class members would not be fully paid for all time worked. *Id.*
28 Plaintiff also alleges that this time shaving and/or rounding practice utilized by Defendant was not-

1 even handed over time and would round and shave in Defendant's favor such that the employees were
2 routinely underpaid for their time worked. *Id.* Accordingly, Plaintiff's expert analyzed this rounding
3 issue and found that it favored the employer overwhelmingly, and then calculated a total wage
4 underpayment of approximately \$36,690.00. *Id.*

5 Additionally, Plaintiff alleges that Defendant miscalculated his and Settlement Class members'
6 regular rate of pay by excluding "On Call/Incentive" pay and other forms of pay not excludable as a
7 matter of law when calculating an employee's regular rate for working overtime hours. Lidman
8 Decl., ¶ 17. Plaintiff and Settlement Class members were paid an amount less than one and a half
9 times (or two times in the case of double time hours) their regular rate of pay, as Defendant failed to
10 include the various forms of On Call/Incentive Pay when calculating their regular rate of pay. *Id.*
11 As such, Defendant's failure to include these payments in the regular rate has resulted in Plaintiff
12 and the Settlement Class members to be deprived of all overtime wages earned. *Id.* Plaintiff's
13 expert analyzed this regular rate of pay issue and found that Defendant underpaid Plaintiff and the
14 Settlement Class members approximately \$46,499.00. *Id.*

15 Defendant contends that it compensated Settlement Class members for all of their time
16 worked, and any unpaid time was *de minimis* and therefore non-compensable. Lidman Decl., ¶ 18.
17 Defendant further contends that it did not have a rounding policy or practice during the relevant time
18 period and/or that its rounding policy was fair and equitable. *Id.* Further, Defendant contends that
19 any so-called "On Call/Incentive Pay" paid during the relevant time period was discretionary, was not
20 required to be paid, and did not need to be included in the regular rate of pay for overtime
21 purposes. *Id.*; See 29 C.F.R. §§ 778.208, 778.211 (excluding "discretionary" bonuses from the
22 regular rate); see also DLSE Manual § 49.1.2.4(3) (bonuses are discretionary, and therefore
23 excludable, if "both the fact that payment is to be made and the amount of the payment" are
24 discretionary).

25 In light of these defenses, Plaintiff discounted the maximum exposure by 45% for the risk of
26 non-certification, and an additional 35% to account for Defendant's defenses on the merits, to arrive at
27 an estimated exposure of \$32,220.65. *Id.*

1 Defendant Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and
2 Settlement Class members were not provided with all required first meal periods beginning before the
3 end of the fifth hour of work. Lidman Decl., ¶ 19. Specifically, Defendant's policies and procedures
4 failed to provide Plaintiff and Settlement Class Members with a duty-free 30-minute meal period
5 when they worked shifts in excess of 5.0 hours. *Id.* Further, Defendant failed to meet its obligation of
6 recording the start and stop time for meal periods and thus there is a presumption that Plaintiff and
7 Settlement Class members were not relieved of duty and no lawful meal period was provided. *Id.*
8 The meal period claim is based on three violations: (1) missed first meal period on shifts over 5.0
9 hours, (2) automatic deduction of meal period on shifts over 6.0 hours, and (3) missed second meal
10 period on shifts over 10 hours. *Id.* Therefore, Plaintiff calculated Defendant's maximum exposure the
11 alleged meal period violations at approximately \$1,881,031. *Id.*

12 Defendant counters that it has always provided non-exempt employees with an opportunity to
13 take legally compliant meal periods, and any non-compliant meal periods reflected in employee
14 timekeeping records were solely the result of employee choice, rather than any policy or practice of
15 Defendant. Lidman Decl., ¶ 20. Defendant contends Plaintiff's meal period claim is not suited for class
16 certification and individual inquiries would be required to assess which employees took non-compliant
17 meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular
18 employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.*
19 Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and
20 an additional 60% to account for Defendant's defenses on the merits to arrive at an estimated exposure
21 of \$376,206.20. *Id.*

22 Defendant Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and
23 Settlement Class members were also not authorized and permitted to take all required rest periods due
24 to Defendant's rest period policies and practices that fail to authorize and permit all rest periods for every
25 four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 21. Based on the records produced in
26 connection with mediation, there were approximately 67,799 shifts over 3.5 worked during the relevant
27 time period. *Id.* Accordingly, Plaintiff calculated Defendant's maximum exposure for rest period
28 violations at \$2,028,766. *Id.*

1 Defendant contends it has always maintained and enforced lawful rest period policies and
2 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
3 periods in compliance with California law. Lidman Decl., ¶ 22. Defendant argues that Plaintiff's rest
4 period claims are inherently unsuited for class treatment as they require an individualized inquiry into
5 whether each Settlement Class member was in fact authorized and permitted to take a compliant rest
6 period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff
7 discounted the maximum exposure by 60% for the risk of non-certification, and an additional 55% to
8 account for Defendant's defenses on the merits to arrive at an estimated exposure of \$365,177.88. *Id.*

9 Defendant Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that Defendant
10 issued inaccurate wage statements in violation of Labor Code § 226 as a result of its failure to pay all
11 wages due, including alleged unpaid minimum wages, overtime wages, and meal and rest period
12 premium wages described above. Lidman Decl., ¶ 23. Plaintiff's data analysis reflected that there were
13 approximately 2,442 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff
14 calculated Defendant's maximum exposure for wage statement violations at approximately \$166,750.
15 *Id.*

16 Defendant argues that its alleged wage statement violations could not be shown to be "knowing
17 and intentional," and that Plaintiff cannot show that he or any other putative class member "suffer[ed]
18 injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
19 imposition of penalties. Lidman Decl., ¶ 24. As such, Plaintiff discounted the calculated exposure by
20 45% for a risk of non-certification and an additional 50% for a risk of being unsuccessful on the merits
21 to arrive at an estimated total of \$45,856.25. *Id.*

22 Waiting Time Penalties: Plaintiff alleges that Defendant is subject to waiting time penalties as
23 a result of failing to pay all wages and all meal and rest period premium wages. Lidman Decl., ¶ 25.
24 Plaintiff's data analysis reflected that there were approximately 67 former non-exempt employees. *Id.*
25 Therefore, Plaintiff calculated Defendant's maximum exposure for waiting time penalties at
26 approximately \$427,484.00. *Id.*

27 Defendant argues that it has strong defenses to the waiting time claim because there exist good-
28 faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶

26. See also 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 40% to account for Defendants’ defenses on the merits to arrive at an estimated exposure of approximately \$141,069.72. *Id.*

Defendant is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 27. Plaintiff calculated Defendant’s maximum exposure at \$1,985,000. *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision).

Defendant argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 28; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff’s claims. *Id.*; See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum exposure figure by 45% for a risk of being unsuccessful on the merits, and an additional 55% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$491,287.50. *Id.*

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$1,451,818.20. Lidman Decl., ¶ 29. The proposed settlement of \$485,000.00 therefore represents approximately 33.4 percent of the reasonably forecasted recovery for the Settlement Class. *Id.*

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1 The proposed settlement reflects approximately 33.4% of the estimated recovery the Settlement
2 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
3 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
4 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*
5 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
6 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459
7 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm.*
8 *Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed
9 settlement may be acceptable even though it amounts to only a fraction of the potential recovery that
10 might be available to the Settlement Class members at trial"). Preliminary approval is appropriate as
11 the settlement will provide tangible monetary relief to Settlement Class members and will still
12 provide an average recovery to Settlement Class members of nearly \$2,100.00. Lidman Decl., ¶
13 29. Thus, Plaintiff submits that the proposed settlement is within the range of possible approval,
14 such that notice should be provided to the Settlement Class so that they can consider the Settlement.
15 The Court will have the opportunity to again assess the reasonableness of the Settlement after the
16 Settlement Class has had the opportunity to opt-out or object.

17 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER**
18 **LITIGATION**

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

27 //

1 **G. RISK OF MAINTAINING CLASS ACTION STATUS**

2 Plaintiff has not yet filed his motion for class certification and as such, the extent to which
3 Plaintiff's proposed classes were certifiable is somewhat speculative. This is especially true in light of
4 Defendant's contention that a number of the Settlement Class members signed individual releases that
5 include the claims covered in the instant litigation. Absent settlement, there was a risk that there would
6 not be a certified class at the time of trial.

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

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

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

21 **A. NUMEROSITY IS SATISFIED.**

22 Here, the proposed Settlement Class consists of approximately 126 members, and is therefore
23 sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 15; *See, e.g., Bowles v.*
24 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
25 numerous). Thus, numerosity is satisfied.

26 Further, a class is "ascertainable" where the members "may be readily identified without
27 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
28 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement
Class is defined as "all individuals whom Defendant South Coast Beverage Service, LLC and/or its

1 successors classified as non-exempt employees and who worked for Defendant in California at any
2 time” from December 23, 2017 through the date that the court enters an order preliminarily
3 approving the Settlement. Lidman Decl., ¶ 15; Settlement ¶ 1.13.

4 **B. COMMONALITY IS SATISFIED.**

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

8 Here, Settlement Class members’ claims arise from Defendant’s common, uniform policies and
9 practices that applied to Settlement Class members during the class period. Lidman Decl., ¶ 16.
10 Specifically, Plaintiff alleged that Defendant’s common and uniform policies and practices resulted in
11 the following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime
12 wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit
13 all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure
14 to pay all wages owed upon termination; (7) engagement in unlawful business practices; and (8) liability
15 for civil penalties under the PAGA. *Id.* As a result of the common and uniform policies and practices
16 that applied to all Settlement Class members, their claims involve common questions of law and
fact, including but not limited to:

- 17 1. Whether Defendant paid all minimum wages owed;
- 18 2. Whether Defendant paid all overtime wages owed;
- 19 3. Whether Defendant provided all legally compliant meal periods;
- 20 4. Whether Defendant authorized and permitted all legally required rest periods;
- 21 5. Whether Defendant failed to furnish accurate, itemized wage statements;
- 22 6. Whether Defendant failed to pay all wages owed upon termination; and
- 23 7. Whether Defendant’s conduct constituted unlawful and/or unfair business practices.

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

26 **C. TYPICALITY IS SATISFIED.**

27 The typicality requirement is satisfied where class representatives have claims that are typical
28 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d

1 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative
2 class in a consumer class action).

3 Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement
4 Class. First, Plaintiff was employed by Defendant during the Class Period as a non-exempt employee
5 and was subject to Defendant's wage and hour policies at issue in this case. See Loreno Decl., ¶ 2.
6 Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the
7 Settlement Class as a whole. For example, Plaintiff asserts that he was not paid all minimum and
8 overtime wages, was not provided all meal periods, was not authorized and permitted all rest periods,
9 and received inaccurate itemized wage statements, similar to those received by the Settlement Class
10 members. *Id.* Given that Defendant's policies and practices applied to all non-exempt employees,
11 Settlement Class members possess a similar interest and have suffered similar alleged injuries as
12 Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the
13 same conduct, typicality is satisfied.

14 **D. ADEQUACY IS SATISFIED.**

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

17 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he
18 seeks to represent. Loreno Decl., ¶ 10. Indeed, Plaintiff's interests are aligned with those of the
19 Settlement Class members, as they all seek monetary relief under the same facts and legal theories.
20 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. See
21 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no
22 indication that Class Counsel were not qualified and the named plaintiff had no interests
23 antagonistic to those of the proposed class).

24 Further, Class Counsel also have extensive experience in wage and hour class action litigation
25 and have vigorously litigated this case. See Lidman Decl., ¶¶2-8; Moore Decl., ¶¶ 2-4; Haines Decl.,
26 ¶¶ 2-8.

1 **V. SETTLEMENT AGREEMENT**

2 **A. THE BASICS**

3 1. Class Definition

4 The proposed Settlement Class is defined as “all individuals whom Defendant South Coast
5 Beverage Service, LLC and/or its successors classified as non-exempt employees and who worked for
6 Defendant in California at any time during the Class Period.” Settlement, ¶ 1.5.

7 The proposed Aggrieved Employee group is defined as “all individuals whom Defendant South
8 Coast Beverage Service, LLC classified as non-exempt employees and who worked for Defendant in
9 California at any time during the PAGA Period.” Settlement, ¶ 1.4.

10 2. Class and Release Period

11 For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of
12 December 23, 2017 through the date that the court enters an order preliminarily approving the
13 Settlement. Settlement, ¶ 1.13.

14 Additionally, for purposes of this Settlement Agreement, the “PAGA Period” and release under
15 the PAGA shall mean the time period between December 23, 2020 through July 30, 2024. Settlement,
16 ¶ 1.32.

17 **B. RELEASE OF CLAIMS**

18 1. Scope

19 All Participating Class Members, on behalf of themselves and their respective former and
20 present representatives, agents, attorneys, heirs, administrators, successors, assigns, spouses, domestic
21 partners, marital community, children, estates, trusts, beneficiaries, devisees, legatees, executors,
22 trustees, conservators, guardians, and representatives release Defendant and its respective former,
23 current and future parent companies, subsidiaries, affiliates, shareholders, managers, members, agents,
24 principals, heirs, representatives (including, without limitation, any investment bankers, accountants,
25 auditors, consultants, insurers, reinsurers, attorneys and any past, present or future officers, directors
26 and employees) predecessors, successors, and assigns (the “Released Parties”) from all claims that were
27 alleged, or reasonably could have been alleged, based on the facts stated in the First Amended
28 Complaint and/or ascertained in the course of the Action and which occurred during the Class Period.
The claims released include, without limitation: (1) failure to pay minimum wages; (2) failure to pay

overtime wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in lieu thereof; (5) failure to provide accurate, itemized wage statements; (6) failure to pay all wages upon termination of employment; and (7) unfair business practices in violation of Business and Professions Code section 17200, et seq. premised on the above claims; and violation of or liability under California Labor Code under sections 201-204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 516, 558, 1194, 1197, 1198, and the relevant Wage Orders issued by the Industrial Welfare Commission, and any and all related claims for attorneys' fees and costs. Settlement, ¶ 5.2. The Released Claims further include all other claims for wages, penalties, civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, declaratory relief, equitable relief, or additional damages that allegedly may arise out of these claims. *Id.*

Further, All Aggrieved Employees release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, spouses, domestic partners, marital community, children, estates, trusts, beneficiaries, devisees, legatees, executors, , trustees, conservators, guardians, and representatives release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the operative First Amended Complaint and/or the PAGA Notice and/or ascertained in the course of the Action and which occurred during the PAGA Period. Settlement, ¶ 5.3. The claims released include, without limitation: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in lieu thereof; (5) failure to provide accurate, itemized wage statements, (6) failure to pay all wages upon termination of employment, and (7) any and all related claims for attorneys' fees and costs. The Released PAGA Claims further include all other claims for wages, penalties, civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, declaratory relief, equitable relief, or additional damages that allegedly may arise out of these claims. *Id.*

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2. Release Effective Date

The releases described above will be effective on the date when Defendant fully funds the New Settlement Money and funds all employer payroll taxes owed on the Individual Class Payments. Settlement, ¶ 5.

C. MONETARY TERMS OF SETTLEMENT

1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, Defendant will pay a Total Settlement Amount (“TSA”) of \$485,000.00. Lidman Decl., ¶¶ 13, Exh. 1 (Settlement, ¶ 3.1). 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.*

Within thirty (30) days of the Effective Date, Defendant will transmit the “New Settlement Money” (\$376,000.00) to the Settlement Administrator. Settlement, ¶ 4.4.

2. Deductions from Settlement Amount

The monetary terms of the Settlement are summarized below:

Total Settlement Amount (“TSA”):	\$485,000.00
New Settlement Money:	\$376,000.00
Minus Court-approved attorneys’ fees (1/3 of the TSA based on catalyst theory):	\$161,666.67
Minus Court-approved, verified costs (up to \$30,000.00):	\$30,000.00
Minus Court-approved Class Representative Service Award:	\$7,500.00
Minus Settlement Administration Costs:	\$7,500.00
Minus PAGA payment to the LWDA:	\$15,000.00
Net Settlement Amount (“NSA”):	\$154,333.33

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 requires Defendant to pay a Net Settlement Amount (“NSA”) of at least \$154,333.33 to all Settlement Class members who do not timely opt out – ***in addition*** to the \$109,000.00 previously paid by Defendant (“*Pick-Up-Stix* Settlement Amount”). Lidman Decl., ¶ 13, Exh. 1. Thus, when taking

1 into account the *Pick-Up-Stix* Settlement Amount, the average individual payment is \$2,089.95 as a
2 direct result of this litigation (assuming all Settlement Class members worked the same length of time).

3 3. Class Representative Service Award

4 “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate
5 class representatives for work done on behalf of the class [and] to make up for financial or reputational
6 risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
7 1380, 1393-94.

8 Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of
9 seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for his
10 services to the Settlement Class. Lidman Decl., ¶ 32, Exh. 1 (Settlement, ¶ 3.2.1); Lorenzo Decl., ¶¶ 3-
11 8. As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended
12 to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including
13 providing substantial factual information and documents to Class Counsel, attending multiple meetings
14 with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant
15 risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that
16 Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See*
17 Lidman Decl., ¶32; Lorenzo Decl., ¶¶ 3-8; Settlement ¶ 5.1.

18 4. Attorneys’ Fees and Costs

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

26 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the TSA, which
27 is currently estimated to be \$161,666.67, and up to \$30,000.00 in verified costs reimbursement. *See*
28 Settlement, ¶ 3.2.2; Lidman Decl., ¶ 30. Plaintiff submits the requested fee is fair compensation for

1 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
2 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman
3 Decl., ¶ 31. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
4 analyzing Plaintiff's claims, conducting legal research, propounding numerous sets of written
5 discovery, participating in the *Belaire-West* notice process, reviewing approximately hundreds of pages
6 of Defendant's documents and policies, analyzing Settlement Class members' timekeeping data and
7 payroll records, preparing for and attending mediation, negotiating and revising the long-form
8 Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 30. Class Counsel
9 expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice
10 process and fielding questions from Settlement Class members, preparing the final approval papers and
11 attending the Final Approval hearing. *Id.*

12 Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an
13 overall percentage of the settlement in light of the substantial risks, significant work undertaken, the
14 extremely positive results obtained for the class, and the efficiency with which the Parties conducted
15 the litigation. Additionally, *Tipton-Whittingham v. City of Los Angeles*, 34 Cal.4th 604, 608 (2004), the
16 California Supreme Court held, "California law continues to recognize the catalyst theory and does not
17 require 'a judicially recognized change in the legal relationship between the parties' as a prerequisite
18 for obtaining attorney fees under [CCP] section 1021.5." According to the Court, "In order to obtain
19 attorney fees [in such circumstances]..., a plaintiff must establish that (1) the lawsuit was a catalyst
20 motivating the defendants to provide the primary relief sought; (2) that the lawsuit had merit and
21 achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense...; and
22 (3) that the plaintiffs reasonably attempted to settle the litigation." *Id.* Plaintiff satisfies these
23 requirements.

24 Here, after Plaintiff filed his Complaint, Defendant began offering individual settlements to all
25 current employees, together with a document that explicitly mentioned this litigation, implicitly
26 acknowledging that this lawsuit was the catalyst for the payments. Lidman Decl., ¶ 13. The document
27 included a release of claims, which also made explicit reference to this lawsuit. *Id.* In total, Defendant
28 paid \$109,000.00 as release consideration after this lawsuit was initiated, over and above the monetary
relief to be paid under the Settlement. *Id.* In sum, the filing of this lawsuit was the catalyst that activated

1 Defendant to provide substantial monetary benefit to its employees. Therefore, it is appropriate to
2 anchor Plaintiff's counsel's fee award on the *total* benefit that was achieved on behalf of Settlement
3 Class members.

4 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
5 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
6 include a lodestar analysis.

7 5. Payroll Taxes

8 The Settlement provides that Defendant's payroll taxes shall be paid separately from, and in
9 addition to, the Total Settlement Amount. Settlement ¶ 3.1. Defendant shall be solely responsible for
10 paying all employer-side taxes owed on the additional New Settlement Money amount paid. Settlement
11 ¶ 4.4.

12 6. Payment Formula

13 According to Defendant, there are approximately 126 total Settlement Class members. Lidman
14 Decl., ¶ 15; Settlement, ¶ 4.1. The Net Settlement Amount shall be allocated to Settlement Class
15 members who worked during the Class Period, as follows:

- 16 A. Each Class Member's Individual Class Settlement Payment shall be apportioned based on
17 his or her highest hourly wage rate during the Class Period and the number of workweeks
18 he or she worked during the Class Period. Settlement, ¶ 1.24.
- 19 B. Each Participating Class Member's total weeks worked during the Class Period shall be
20 multiplied by said Participating Class Member's highest hourly rate earned during the Class
21 Period to come up with a total number of points for each Participating Class Member.
22 Settlement, ¶ 3.2.4.1. The total number of points for all Participating Class Members shall
23 then be divided into the Net Settlement Amount to calculate the monetary value of each
24 point. *Id.* The monetary value of each point shall then be multiplied by each Participating
25 Class member's total number of points to determine the correct amount to be payable to each
26 Participating Class Member. *Id.*

27 //

1 C. If a Participating Class Member previously received a payment from Defendant as part of a
2 direct settlement campaign which was a direct result of the filing of the Action, in exchange
3 for signing a release agreement, the Participating Class Member's Individual Settlement
4 Payment shall be reduced by the amount already paid to the Participating Class Member by
5 Defendant but those Participating Class Members whose Individual Settlement Payment,
6 reduced by any prior settlement payments obtained in exchange for signing a release
7 agreement, is less than \$100.00 shall be entitled to receive a minimum payment of One
8 Hundred Dollars and Zero Cents (\$100.00). Settlement, ¶ 3.2.4.2.

9 The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California
10 Labor Code section 2699(i). Settlement ¶ 3.2.7. The LWDA will receive 75% of the amount
11 attributable to PAGA penalties – or \$15,000.00. *Id.* This \$20,000.00 represents roughly 4.1% of the
12 \$485,000.00 Total Settlement Amount and is above the zero to two percent range for PAGA claims
13 approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009
14 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000);
15 *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009)
16 (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm'n Cases*, 186 Cal. App.
17 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under
18 which no money was allocated to the PAGA claims).

19 As for the Individual PAGA Payments, the Settlement Administrator will calculate each
20 Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of
21 PAGA Penalties, \$5,000.00, by the total number of PAGA Period Pay Periods worked by all Aggrieved
22 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
23 PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes
24 owed on their Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

25 7. Tax Allocation

26 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
27 allocated as follows:

28 Of the Wage Settlement Fund:

- 1 a. Seventy-Five Percent (75%) of each Participating Class Member's Individual Class
2 Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage
3 Portions are subject to tax withholding and will be reported on an IRS W-2 Form.
4 Settlement, ¶ 3.2.5.
- 5 b. Twenty-Five Percent (25%) of each Participating Class Member's Individual Class
6 Payment will be allocated to settlement of claims for interest and penalties (the "Non-
7 Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will
8 be reported on IRS 1099 Forms. *Id.*

9 **VI. NOTICE ADMINISTRATION**

10 **A. SETTLEMENT ADMINISTRATOR**

11 Phoenix Class Action Administration Solutions' ("Phoenix") fees and expenses are estimated
12 not to exceed \$7,500.00. See Declaration of Jodey Lawrence in support of Plaintiff's Motion for
13 Preliminary Approval filed concurrently herewith ("Lawrence Decl."), ¶ 16. This request is reasonable
14 in light of the proposed class size of approximately 126 Settlement Class members and the costs and
15 expenses associated with administering the notices and distributing the awards. Additionally, Phoenix
16 will translate the Notice and mail the Notice in both English and Spanish to Settlement Class members.

17 **B. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR**

18 Phoenix has extensive experience administering class action matters. Lawrence Decl., ¶ 5.
19 Phoenix has administered complex wage and hour, labor and employment, consumer/ product liability,
20 TCPA, FLSA, FACTA, ERISA and PAGA class action matters, through final approval and distribution.
21 Phoenix has developed a system of quality assurance measures, to ensure the highest quality service is
22 provided in our cases and to class members. *Id.*

23 **C. CLASS LIST FROM DEFENDANT**

24 Within 30 calendar days after entry of an order preliminarily approving this Agreement,
25 Defendant will provide the Settlement Administrator with each Settlement Class Member's name, last
26 known mailing address, Social Security number, number of Class Period Workweeks worked, number
27 of PAGA Pay Periods worked, and the amount paid the any Class member as part of a prior direct
28 individual settlement. Settlement, ¶¶ 1.9, 4.2.

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1 **D. CLASS LIST UPDATED PRIOR TO INITIAL MAILING**

2 Upon receipt of the Class Information, the Settlement Administrator will perform a search based
3 on the National Change of Address Database to update and correct any known or identifiable address
4 changes. Settlement, ¶ 7.4.2.

5 **E. DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS**

6 Within 14 calendar days from receipt of the class list, the Settlement Administrator shall mail a
7 Notice to each Settlement Class member at his or her last known address or at the updated address found
8 through the NCOA search. Settlement, ¶ 7.4.2.

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

10 The content of the proposed Notice satisfies California Rule of Court 3.766(d) because it
11 advises Settlement Class members of the nature of the claims, basic contentions and denials of the
12 parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement
13 and the procedures by which to do so, explains the recovery formula and expected recovery amount
14 for each Settlement Class member, provides them the opportunity to contest their total workweeks
15 included in the notice, and advises them that they will be bound by the terms of the Settlement if they
16 do not opt-out. See Lidman Decl., Exh. 1 (Settlement, Exh. A). The proposed Notice will also notify
17 Settlement Class members of the final approval hearing date and provides Settlement Class members
18 the contact information for Class Counsel and advises Settlement Class members that they may enter
19 an appearance through counsel if they wish to. This manner of giving notice satisfies California Rule
20 of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

21 **G. PROCESSING OF PAYMENTS**

22 Within 14 calendar days following Defendant's deposit of the settlement payment, the
23 Settlement Administrator will mail Individual Settlement Payments, less applicable taxes and
24 withholdings, to participating Settlement Class members. Settlement, ¶ 4.5.

25 **H. UNDELIVERABLE NOTICE PACKETS**

26 Any Notices returned to the Settlement Administrator as non-delivered on or before the
27 Response Deadline shall be re-mailed to the forwarding address affixed thereto. Settlement, ¶ 7.4.3. If
28 no forwarding address is provided, the Settlement Administrator shall make reasonable efforts,
including utilizing a "skip trace," to obtain an updated mailing address. *Id.*

1 **I. NOTICE OF ANY CHANGE OF LOCATION OR DATE OF HEARING AND**
2 **FINAL JUDGMENT**

3 Any changes to date, time, or location of the Final Approval Hearing will be posted on the
4 Settlement Administrator's website. Settlement, ¶ 7.9. Notice of the Court's final judgment will also
5 be posted on the Settlement Administrator's website. *Id.*

6 **VII. RESPONSES TO NOTICE**

7 **A. REQUESTS FOR EXCLUSION**

8 The Request for Exclusion 1) must contain the name, address, and telephone number of the
9 Settlement Class Member requesting exclusion, (2) the last four digits of the Social Security number or
10 date of birth of the Settlement Class Member requesting exclusion; (3) must be signed by the Settlement
11 Class Member requesting exclusion; and (4) a statement requesting exclusion. Settlement, ¶ 1.42.

12 The Parties agree there is no statutory or other right for any Settlement Class member to opt out
13 or otherwise exclude himself or herself from the PAGA portion of the Settlement. Settlement, ¶ 7.5.3.
14 A Settlement Class member who submits a valid and timely Request for Exclusion shall still receive his
15 or her proportionate share of the PAGA Amount. *Id.*

16 **B. RE-MAILED NOTICES**

17 Settlement Class members to whom Notices are re-mailed after having been returned as
18 undeliverable to the Settlement Administrator shall have 14 calendar days beyond the Response
19 Deadline to submit a Request for Exclusion, Objection, or dispute. Settlement, ¶ 1.43. Notices that are
20 re-mailed shall inform the recipient of this adjusted deadline. *Id.*

21 **C. OBJECTION PROCEDURES**

22 Participating Class Members may object to the class action components of the Settlement.
23 Settlement, ¶ 7.7.1. Written objections must be sent to the Administrator by fax, email, or mail.
24 Settlement, ¶ 7.7.2. Participating Class Members who object may also appear in Court (or hire an
25 attorney to appear in Court) to present their objections at the Final Approval Hearing. *Id.*

26 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

27 The Settlement provides that Settlement Class members have 180 days from the date the
28 Settlement Administrator mails the checks to cash his or her check. Settlement, ¶ 4.5.1. Any funds
remaining after 180 days shall be transmitted by the Settlement Administrator to the California State

1 Controller's Office under the unclaimed property laws in the names and corresponding amounts
2 associated with each Participating Class Member. Settlement ¶ 4.5.3. As all settlement funds will be
3 distributed to the Settlement Class members, there will be no residue and it is unnecessary to designate
4 *cy pres* recipients.

5 **IX. CONCLUSION**

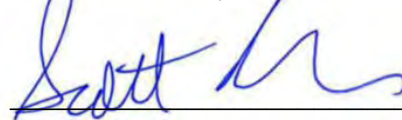
6 This Court should set a hearing for final approval of the Settlement on a date appropriately
7 scheduled to follow the deadline by which Settlement Class members must file objections to the
8 Settlement or opt-out. See California Rule of Court 3.769.

9 Therefore, for the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
10 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed
11 Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

12
13 Dated: November 6, 2024

Respectfully submitted,
LIDMAN LAW, APC

14
15 By:



Scott M. Lidman
Attorney for Plaintiff
IVAN LORENO