

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ALFREDO SALAZAR MEZA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

OPEN DOOR PACKAGING, LLC, a California
limited liability company; OPEN DOOR
SOLUTIONS LLC, a California limited liability
company; and DOES 1 through 100,

Defendants.

Case No.: CIVSB2200570

*[Assigned for all purposes to Hon. Joseph T.
Ortiz; Dept. S-17]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 12, 2023
Time: 1:30 p.m.
Dept.: S-17

Complaint Filed: January 4, 2022
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 12, 2023, at 1:30 p.m. in Department S-17 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Alfredo Salazar Meza (“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, provisional certification of the following Settlement Class as defined as follows:

All current and former non-exempt, hourly-paid employees of Defendant Open Door Packaging, LLC dba Open Door Solutions, LLC who worked in California at any time from January 4, 2018 and ending on January 9, 2023 (the “Class Period”).
3. Preliminary appointment of Plaintiff Alfredo Salazar Meza as Class Representative;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely 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 Class Representative Service Payment to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices;
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement; and
8. An order granting Plaintiff’s unopposed request to file a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the Private Attorneys’ General Act (“PAGA”).

1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the supporting declarations of Paul K. Haines, Sean M. Blakely, Plaintiff Alfredo
3 Salazar Meza, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits
4 attached thereto, the pleadings, and other papers filed in this Action, and on any further oral or
5 documentary evidence or argument presented at the time of the hearing.

6
7 Respectfully submitted,

8 Dated: May 16, 2023

HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alfredo Salazar Meza (hereinafter “Plaintiff”) brought this class and
4 representative action for various wage and hour violations on behalf of current and former non-
5 exempt, hourly-paid employees of Defendant Open Door Packaging, LLC dba Open Door
6 Solutions, LLC (“Open Door”) who worked for Open Door in California between January 4, 2018
7 through January 9, 2023 (the “Class Period”). Plaintiff’s primary allegations are that Open Door
8 failed to pay all minimum and overtime wages due to its allegedly unlawful timekeeping
9 policies/practices and failed to provide legally compliant meal periods. As a result of these alleged
10 violations, Plaintiff also brought derivative claims for Open Door’s alleged failure to pay all final
11 wages owed, failure to issue accurate and compliant wage statements, and for civil penalties under
12 the Private Attorneys’ General Act (“PAGA”).¹

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,² in which Open Door has agreed to pay Two
15 Hundred Thirty Thousand Dollars and Zero Cents (\$230,000.00) to the following Settlement
16 Class:

17 All current and former non-exempt, hourly-paid employees of Defendant
18 Open Door Packaging, LLC dba Open Door Solutions, LLC who worked
19 in California from January 4, 2018 through January 9, 2023 (the “Class
Period”).

20 If the Settlement is approved, Open Door will pay a non-reversionary Gross Settlement
21 Amount (“GSA”) of \$230,000.00. After deducting administration costs, Plaintiff’s requested
22 Class Representative Service Payment, the amount designated as PAGA civil penalties, and

23
24 ¹ On January 4, 2022, Plaintiff submitted a PAGA letter to the Labor & Workforce Development
25 Agency (“LWDA”). As part of this Motion, Plaintiff seeks leave to file a First Amended Class
26 and Representative Action Complaint (“FAC”) to add a cause of action for civil penalties under
the PAGA. The FAC is attached to the Declaration of Sean M. Blakely as **Exhibit C**.

27 ² The Stipulation of Settlement of Class Action and PAGA Claims (“Settlement”) is attached to
28 the Declaration of Sean M. Blakely as **Exhibit A**. The proposed Class Notice and Notice of
Estimated Settlement Payment are attached to the Settlement as **Exhibits 1** and **2**, respectively.
All defined terms in this motion have the same definition as that in the Settlement.

requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately \$105,833.33 will be distributed to all Settlement Class members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement, as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 43 Settlement Class members, and the average payment to participating Settlement Class members is projected to be approximately **\$2,461.24**.

The proposed Settlement is 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 Plaintiff and the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Open Door provides warehouse and fulfillment services for the hair care and beauty industry in Chino, California. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Open Door employed Plaintiff as a non-exempt driver and "warehouse" employee from approximately May 2019 to approximately January 21, 2021. *See* Declaration of Alfredo Salazar Meza In Support of Approval of Class Action Settlement ("Meza Decl."), ¶ 2.

On January 4, 2022, Plaintiff filed his Class Action Complaint in San Bernardino County Superior Court, alleging that Open Door: (i) failed to pay all minimum wages; (ii) failed to pay all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to issue accurate, itemized wage statements; (v) failed to pay all final wages due upon separation of employment; and (vi) engaged in unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. On January 4, 2022, Plaintiff sent his PAGA notice letter to the Labor and Workforce Development Agency ("LWDA"). *Id.*, Exhibit B. As part of the Settlement

1 and through this Motion, Plaintiff respectfully requests that the Court approve the filing of a First
2 Amended Class and Representative Action Complaint (“FAC”) to add a cause of action for civil
3 penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq. Id.*
4 Plaintiff requests that the Court approve the filing of the FAC as of the date of preliminary
5 approval.

6 **B. PLAINTIFF’S CLAIMS AND OPEN DOOR’S DEFENSES**

7 **1. Unpaid Wages Due to Open Door’s Unlawful Rounding**
8 **Policies/Practices**

9 Plaintiff alleges that Open Door utilized a timekeeping policy/practice that systematically
10 underpaid wages through a process of unlawful rounding. Blakely Decl., ¶ 14. Plaintiff alleges
11 that Open Door required Plaintiff and Settlement Class members to clock in and out using a
12 system that records hours to the minute; however, Open Door thereafter rounded the hours worked
13 to employees’ detriment, which resulted in a systematic underpayment of wages. *Id.*

14 Open Door counters that it utilizes a neutral time-rounding mechanism that results, over
15 time, in employees being paid for all hours worked. Blakely Decl., ¶ 14; *see also, See’s Candy*
16 *Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer
17 “applies a consistent rounding policy that, on average, favors neither overpayment nor
18 underpayment.”); *AHMC Healthcare, Inc. v. Sup. Ct.*, 24 Cal.App.5th 1014, 1027-28 (2018)
19 (finding rounding policy lawful where the policy was “neutral on its face” and resulted in
20 employees being overpaid). Open Door also argues that any unpaid time could have only
21 amounted to a few minutes per day, at most, and was thus *de minimis*. Blakely Decl., ¶ 14. While
22 Plaintiff points to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where the California
23 Supreme Court held California’s labor laws generally do not recognize a *de minimis* defense;
24 Open Door argues that *Troester* should be limited to its facts. (“[W]e decide only whether the *de*
25 *minimis* rule is applicable to the facts of this case as described by the Ninth Circuit.” *Troester*, 5
26 Cal.5th at 829.). Finally, Open Door asserts that Plaintiff would be unable to certify this claim
27 since its rounding policy is facially neutral and some employees were *overpaid* due to rounding,
28 and individualized inquiries would be necessary as to whether employees were, in fact, underpaid

1 or overpaid for each workday in question (including whether they were actually working when
2 they were clocked in), resulting in an unmanageable series of mini-trials. Blakely Decl., ¶ 14.

3 **2. Meal Period Claims**

4 Plaintiff alleges Open Door failed to provide legally compliant first meal periods such that
5 first meal periods were regularly short and often commenced after the completion of the fifth hour
6 of work, and that this is reflected in employee timekeeping records that show many such non-
7 compliant meal periods. Blakely Decl., ¶ 15. Plaintiff further alleges that Settlement Class
8 members were not provided with second meal periods when they worked shifts in excess of 10.0
9 hours in a workday. *Id.*

10 Open Door counters it has maintained compliant written meal period policies throughout
11 the Class Period and has always provided compliant meal periods in line with those policies.
12 Blakely Decl., ¶ 15. Open Door further contends that it always *provides* employees the
13 opportunity to take meal periods and is not required to *ensure* they are taken. *Id.*; *see Brinker*
14 *Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus, Open
15 Door argues that any missed or short second meal periods resulted from lawful employee choice
16 rather than any policy and/or practice of Open Door. Blakely Decl., ¶ 15. Open Door also asserts
17 that many employees choose to waive their second meal periods on shifts over 10.0 hours and
18 under 12.0 hours, as they may do under Labor Code § 512(a), so they do not need to stay at work
19 for an extra unpaid 30 minutes. *Id.* Finally, Open Door maintains Plaintiff’s meal period claim is
20 not suited for class certification since individual inquiries would be needed to assess which
21 employees if any, took non-compliant or missed meal periods, how many meal periods were non-
22 compliant or missed, the reasons why a particular employee did not take a meal period on a
23 particular shift, and whether they waived the meal period. *Id.*

24 **3. Waiting Time Penalties**

25 As a result of the unpaid wages and unpaid meal period premium wages described above,
26 Plaintiff alleges that Open Door failed to comply with its final pay obligations set forth in Labor
27 Code §§ 201-203. Blakely Decl., ¶ 16. Open Door argues that it possesses strong, good faith
28 defenses to Plaintiff’s underlying claims, thus precluding recovery of waiting time penalties,

1 which are only available for the “willful” failure to pay wages. *Id.*; see *also* 8 Cal. Code Regs. §
2 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time
3 penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an
4 employer presents a defense, based in law or fact which, if successful, would preclude any
5 recovery on the part of the employee.”). Open Door further asserts that Plaintiff’s waiting time
6 penalty exposure was grossly inflated as not every former employee experienced the alleged
7 Labor Code violations. Blakely Decl., ¶ 16.

8 **4. Wage Statement Claims**

9 As a further result of the unpaid wages and unpaid meal period premium wages described
10 above, Plaintiff alleges that Open Door is liable for wage statement penalties. Blakely Decl., ¶
11 17. Open Door argues any alleged wage statement violations were not “knowing and intentional,”
12 and Plaintiff cannot show he or other employees “suffer[ed] injury” due to the alleged wage
13 statement violations, as required by Labor Code § 226(e) for the imposition of penalties. *Id.*
14 Further, Open Door contends its wage statements always accurately reflected hours worked and
15 amounts paid as well as all other required information, precluding liability for wage statement
16 penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018)
17 (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they
18 correctly reflected the hours worked and the pay received...The purpose of section 226 is to
19 *document the paid wages* to ensure the employee is fully informed regarding the calculation of
20 those wages.”) (Italics in original). Blakely Decl., ¶ 17.

21 **5. PAGA Civil Penalties**

22 As a result of the foregoing Labor Code violations, Plaintiff alleges that Open Door is
23 liable for civil penalties under the PAGA. Blakely Decl., ¶ 18. Since Plaintiff’s PAGA claim is
24 derivative of Plaintiff’s underlying wage claims, Open Door asserts the PAGA claim would fail
25 with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because
26 the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Open Door
27 further maintains that, given its good faith defenses, this Court would exercise its discretion to
28 substantially reduce any PAGA penalties if it were to find Open Door liable for any of Plaintiff’s

claims. Blakely Decl., ¶ 18; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, the Parties engaged in extensive informal discovery. Open Door produced timekeeping and payroll data for a sampling of Settlement Class members during the relevant Class Period, as well as its employee handbooks and written wage and hour policies in effect during the Class Period. Blakely Decl., ¶ 10. Open Door also provided relevant data points such as the total number of workweeks in the Class Period and the total number of Settlement Class members employed by Open Door in California during the Class Period. *Id.* Plaintiff conducted a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Open Door to create a detailed exposure analysis for all claims at issue. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Open Door’s potential defenses. *Id.*

On October 11, 2022, the Parties participated in a full-day mediation with Phillip Cha, Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. 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. *Id.* At the conclusion of the mediation, Mr. Cha issued a mediator’s proposal for a class-wide settlement, which was ultimately accepted by both sides. *Id.* During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Open Door will pay a Gross Settlement

Amount (“GSA”) of \$230,000.00. *See* Settlement, ¶ D(57)(a). Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Settlement Payment. *Id.*, at ¶ D(59). Each Settlement Class member will automatically receive an Individual Settlement Payment unless they affirmatively opt out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$230,000.00
• Minus Court-approved attorneys’ fees:	\$76,666.66
• Minus Court-approved verified costs (up to):	\$10,000.00
• Minus Court-approved Service Payment:	\$10,000.00
• Minus amount set aside as PAGA penalties:	\$20,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$7,500.00</u>
Net Settlement Amount (“NSA”):	\$105,833.34
• PLUS 25% “PAGA Payment” to Settlement Class:	\$5,000.00
Total Amount Paid to Settlement Class members:	\$110,833.34

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative Service Payment to Plaintiff, the amount designated as PAGA civil penalties, and settlement administration costs, the Settlement requires Open Door to pay a Net Settlement Amount (“NSA”) of at least \$105,833.34 to all Settlement Class members who do not timely opt-out. *See* Settlement, ¶ D(57)(b). The NSA shall be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period. Settlement, ¶ D(57)(c). Additionally, Five Thousand Dollars (\$5,000.00) of the Gross Settlement Amount has been designated as the “PAGA Payment” and shall be distributed to Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from the class action settlement) who were employed during the PAGA Period (i.e., January 4, 2021 through January 9, 2023) proportionally based on the number of Pay Periods worked during that time period. Settlement, ¶ D(57)(d).

According to Open Door, there are approximately 43 Settlement Class members. Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Payment from the NSA is projected to be approximately \$2,461.24. *Id.* There are approximately 21 Aggrieved Employees during the PAGA Period. *Id.* Therefore, each Aggrieved Employee will receive an average of approximately

1 \$238.10 from the PAGA Payment. *Id.* Settlement Class members will have sixty (60) calendar
2 days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby
3 providing ample time to review the Class Notice without unduly delaying the Settlement. *See*
4 Settlement, ¶¶ A(25), G(80)(a-g). Those Settlement Class members who do not opt-out of the
5 Settlement will be bound by its terms and will release all claims against Open Door included
6 within the Settlement. *See Id.*, at ¶ G(80)(b).

7 **2. Attorneys' Fees and Costs, Service Payment, and PAGA Payment**

8 Plaintiff will apply for Class Representative Service Payment at the time of seeking final
9 approval of the proposed class action settlement in the amount of \$10,000.00 for his service to
10 the Settlement Class. *See* Settlement, ¶ D(57)(f); Blakely Decl., ¶ 22. "[I]ncentive awards are
11 fairly typical in class action cases . . . and are intended to compensate class representatives for
12 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
13 bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
14 (2010). As will be fully briefed at the time of final approval, Plaintiff's requested Service Payment
15 is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class,
16 including providing substantial factual information and documents to Class Counsel, discussing
17 the claims and theories at issue in the litigation, actively participating in the prosecution of his
18 claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named
19 plaintiff in this case, and the fact that Plaintiff agreed to a general release of all claims subject to
20 a waiver of Civil Code § 1542. *See* Settlement, ¶¶ D(57)(f), A(43); Blakely Decl., ¶ 22; *see also*
21 Meza Decl.

22 Class Counsel will also apply for an attorneys' fees award of one-third of the Gross
23 Settlement Amount, which is currently estimated to be \$76,666.66, and up to \$10,000.00 in
24 verified costs reimbursement. *See* Settlement, ¶ D(57)(g); Blakely Decl., ¶ 21. Plaintiff submits
25 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
26 consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred substantial
27 attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal
28 research, conducting extensive informal discovery, analyzing Settlement Class members'

1 timekeeping and payroll records, creating a comprehensive damages model, preparing for and
2 attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing
3 this Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend additional
4 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding
5 questions from Settlement Class members, preparing the final approval papers, and attending the
6 Final Approval hearing. *Id.*

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

15 Class Counsel submit their request for attorneys' fees is reasonable when viewed as an
16 overall percentage of the Settlement and in light of the substantial risks and significant work
17 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
18 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
19 and verified costs upon seeking final approval.

20 Additionally, the parties have agreed to designate \$20,000.00 of the Gross Settlement
21 Amount as PAGA civil penalties, of which \$15,000.00 (75%) will be paid to the LWDA, with
22 the remaining \$5,000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA
23 requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ D(57)(i).
24 Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,*
25 *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.
26 Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
27 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
28 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund

1 settlement).

2 **IV. ARGUMENT**

3 **A. PRELIMINARY APPROVAL IS WARRANTED**

4 California Rule of Court 3.769 conditions settlement of a class action on court approval,
5 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
6 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
7 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
8 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
9 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
10 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
11 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
12 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
13 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
14 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
15 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
16 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

17 **1. Standard for Preliminary Approval**

18 To make a fairness determination, the Court should consider several factors, including:
19 “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further
20 litigation, the risk of maintaining class action status through trial, the amount offered in
21 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
22 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
23 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
24 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
25 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
26 reasonable in light of the overall balance of factors in this case.

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

28 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff

acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above in section II.B., *supra*, Open Door presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification and ultimately trial, success was far from certain.

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

Although the parties engaged in significant informal discovery prior to mediation, the parties still had significant formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 20. This would have required the expenditure of substantial time and resources by both parties that would have very likely spanned several years. *Id.* Even if Plaintiff was to certify the classes, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

c. Risk of Maintaining Class Action Status

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Open Door with individual class members by way of *Pick-up-Stix* type settlement agreements³), and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

1 **d. Amount Offered in Settlement Given Realistic Value of Claims**

2 The Settlement provides a positive recovery for the Settlement Class in the face of
3 disputed claims. Plaintiff conducted a detailed analysis of underpaid wages due to Open Door's
4 alleged unlawful timekeeping policies/practices, potential meal period premium payments owing,
5 wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the
6 results of Plaintiff's exposure analysis are discussed below:

7 **Unpaid Wages Due to Rounding: \$12,504**

8 Plaintiff alleges that Open Door utilized a timekeeping practice that systematically
9 underpaid wages through a process of unlawful rounding. Blakely Decl., ¶ 14. Based on Plaintiff's
10 analysis of Open Door's time and payroll records, Plaintiff contends Open Door's rounding
11 practices resulted in approximately 1,057 hours of unpaid wages. *Id.* Therefore, Plaintiff estimates
12 Open Door's maximum exposure for this claim at approximately \$27,482 (1,057 hours * \$13.00
13 weighted average min. wage * 2 [liquidated damages per Labor Code § 1194.2]). *Id.*

14 However, as noted above, Open Door argues that its timekeeping system is even-handed
15 and facially neutral and compensated employees for all hours worked. Blakely Decl., ¶ 14. Open
16 Door further argues that just because an employee is clocked in does not mean they are working.
17 *Id.* Open Door also asserts that Plaintiff would be unable to certify this claim given the
18 individualized inquiry as to whether employees were, in fact, underpaid or potentially overpaid
19 for each workday in question. *Id.* Based on these defenses, Plaintiff discounted the estimated
20 maximum amount by 30% for the risk of non-certification and by an additional 35% to account
21 for the risk of losing on the merits or failure to recover the maximum amount sought to arrive at
22 an estimated exposure of approximately \$12,504. Blakely Decl., ¶ 14.

23 **First Meal Period Violations: \$106,100**

24 Plaintiff alleges that Open Door failed to provide timely 30-minute meal periods before
25 the conclusion of the fifth hour of work. Blakely Decl., ¶ 15. Based on Plaintiff's review and
26 extrapolation of the timekeeping data produced by Open Door, 12,741 shifts during the Class
27 Period reflected a late, short, and/or missed first meal period. *Id.* In addition, based on data
28 provided by Open Door, Settlement Class members' average hourly rate of pay during the Class

1 Period was \$19.71 per hour. *Id.* Therefore, assuming each late, short, and/or missed meal period
2 reflected in the timekeeping records would result in a violation, Plaintiff calculated Open Door’s
3 maximum exposure on this claim at approximately \$251,125 (12,741 non-compliant first meal
4 periods * \$19.71 average meal period premium). *Id.*

5 However, as noted above, Open Door contends that it provided compliant meal periods to
6 Settlement Class members throughout the Class Period. Blakely Decl., ¶ 15. Open Door also
7 asserts that under *Brinker* it is only required to “provide” the opportunity to take meal periods,
8 not “ensure” meal periods are taken, and that, as described above, it has always done so, and any
9 non-complaint first meal periods in the timekeeping records were the result of employee choice.
10 *Id.*; see also *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard and holding
11 employers only have to “provide” employees the opportunity to take meal periods). Finally, Open
12 Door maintains that the first meal period claim is not suited for class certification, since individual
13 inquiries would be needed to assess which employees took non-compliant meal periods or missed
14 meal periods, how many meal periods were non-compliant or missed, and the reasons why a
15 particular employee did not take a compliant meal period on a particular shift. Blakely Decl., ¶
16 15. In light of these defenses and arguments, Plaintiff discounted Open Door’s maximum
17 exposure by 35% for the risk of non-certification, and an additional 35% to account for Open
18 Door’s defenses on the merits, to arrive at an estimated total of approximately \$106,100. *Id.*

19 **Second Meal Period Violations: \$36,499**

20 Plaintiff’s analysis and extrapolation of the timekeeping data revealed that approximately
21 4,383 total shifts were over 10.0 hours and did not reflect a legally compliant second meal period.
22 Blakely Decl., ¶ 15. Plaintiff therefore calculates Open Door’s exposure for second meal period
23 violations at approximately \$86,389 (4,383 non-compliant second meal periods * \$19.71 average
24 premium). *Id.*

25 However, Plaintiff’s theory of liability carried significant risks of both non-certification
26 and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Open Door’s
27 argument that it has maintained compliant written meal period policies throughout the Class
28 Period, and that Settlement Class members voluntarily waived their second meal period on shifts

1 in excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶ 15. In
2 light of these risks, Plaintiff discounted the maximum amount that the class could potentially
3 recover by 35% for the risk of non-certification and an additional 35% for the risk of losing on
4 the merits, or having exposure reduced due to Open Door’s waiver arguments, to arrive at
5 estimated exposure of \$36,499. *Id.*

6 Waiting Time Penalties: \$57,895

7 Open Door’s records reflected approximately 34 former Settlement Class members who
8 are eligible for waiting time penalties. Blakely Decl., ¶ 16. Based on an hourly rate of \$19.71,
9 Plaintiff estimated the average waiting time penalty per former employee to be \$4,730 (\$19.71 *
10 8 hours per day * 30 days). *Id.* Therefore, Plaintiff calculated Open Door’s maximum exposure
11 for potential waiting time penalties to be approximately \$160,820 (34 former employees * \$4,730
12 average penalty). *Id.*

13 Open Door presented several defenses to this claim, most notably their assertion that
14 because they possessed good-faith defenses to the underlying claims, any failure to pay wages
15 was not “willful” as a matter of law. Blakely Decl., ¶ 16. Open Door further asserts that Plaintiff’s
16 waiting time penalty exposure was grossly inflated as not every former employee experienced the
17 alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of
18 Plaintiff’s underlying wage claims, Plaintiff would need to overcome Open Door’s defenses, both
19 as to class certification and on the merits, as to his underlying claims. *Id.* To account for Open
20 Door’s defenses, Plaintiff discounted the maximum exposure by 40% for the risk of non-
21 certification and an additional 40% for the risk of losing on the merits and/or not receiving the
22 maximum penalties sought, to arrive at an estimated exposure of approximately \$57,895. *Id.*

23 Wage Statement Penalties: \$24,390

24 Plaintiff alleges that Open Door is liable for wage statement penalties as a result of the
25 unpaid wages and unpaid meal period premiums. Blakely Decl., ¶ 17. Those penalties are
26 calculated as \$50 for each “initial” violation and \$100 for each “subsequent” violation, with a
27 maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiff’s analysis reflected that
28 there were approximately 21 unique employees and approximately 688 pay periods worked

1 during the liability period applicable to Plaintiff's wage statement claim. *Id.* Plaintiff, therefore,
2 calculated Open Door's potential wage statement exposure at approximately \$67,750 ([21
3 "initial" violations * \$50] + [667 "subsequent" violations * \$100]). *Id.*; *see also* Labor Code §
4 226(e).

5 In light of Open Door's arguments that no violations occurred, that employees suffered
6 no "injury," that any alleged violations were not "knowing and intentional," that the wage
7 statements always accurately reflected hours worked and amounts paid to employees, as well as
8 risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the
9 maximum exposure by 40% for risk of non-certification, and by an additional 40% for risk of
10 being unsuccessful on the merits, for an estimated realistic exposure of approximately \$24,390.
11 Blakely Decl., ¶ 17.

12 **PAGA Penalties: \$20,812**

13 Plaintiff estimated a maximum total PAGA exposure of approximately \$68,800 (688 pay
14 periods * \$100 "initial" penalty). Blakely Decl., ¶ 18; *Amaral v. Cintas Corp. No. 2*, 163
15 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified
16 that it is violating a Labor Code provision). However, these penalties derive from the underlying
17 wage and hour violations discussed above, which Open Door disputes vigorously. Blakely Decl.,
18 ¶ 18; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013)
19 (explaining that a PAGA claim's success was determined by the merits of its underlying claims).
20 Open Door also asserts that the Court would drastically reduce any award of PAGA penalties as
21 "confiscatory." Blakely Decl., ¶ 18; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203
22 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien*
23 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing
24 PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum
25 figure by 45% for the risk of losing on the merits and/or not recovering a PAGA penalty for every
26 pay period, and an additional 45% to account for the possibility of this Court reducing penalties
27 to arrive at an estimated exposure of approximately \$20,812. Blakely Decl., ¶ 18.

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

1 that the potential recovery for the Settlement Class would be approximately \$258,200. Blakely
2 Decl., ¶ 19. The proposed Settlement of \$230,000 represents approximately 89% of the
3 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate
4 since the Settlement will provide significant monetary relief to the Settlement Class, which is
5 consistent with what Plaintiff’s counsel believes could have been recovered had the case
6 proceeded through trial.

7 **e. The Experience and Views of Counsel**

8 “Parties represented by competent counsel are better positioned than courts to produce a
9 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
10 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
11 by competent, experienced counsel who possess extensive experience prosecuting and defending
12 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
13 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6. *see also* Declaration of Paul K. Haines (“Haines
14 Decl.”), ¶¶ 2-8; Class Counsel conducted an in-depth review of Open Door’s timekeeping and
15 payroll records and drew on their extensive experience in similar cases to assess the strengths and
16 weaknesses of Plaintiff’s case. *See* Blakely Decl., ¶¶ 14-19. The Settlement was also reached with
17 the assistance of an experienced and respected wage-and-hour class action mediator. *Id.* This
18 factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168
19 Cal.App.4th at 130.

20 **2. The Preliminary Approval Standard Is Met**

21 At this stage, the Court can grant preliminary approval of the Settlement and direct that
22 notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2)
23 appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no
24 obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on
25 Class Actions § 11:24-25 (4th Ed. 2013).

26 **a. The Settlement Is Within the Range of Possible Approval**

27 The proposed Settlement reflects approximately 89% of the estimated recovery the
28 Settlement Class could reasonably expect in light of the significant litigation risks and will

1 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
2 percentage of the liability exposure recovered in this case far exceeds percentages routinely
3 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
4 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
5 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
6 representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV,*
7 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
8 be acceptable even though it amounts to only a fraction of the potential recovery that might be
9 available to the Settlement Class members at trial”). Further, the average Individual Settlement
10 Payment of approximately \$2,461.24 greatly exceeds average payments achieved in other wage
11 and hour class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within
12 the range of possible approval, such that notice should be provided to the Settlement Class
13 members so that they can consider the Settlement. The Court will have the opportunity to again
14 assess the reasonableness of the Settlement after the Settlement Class members have had the
15 opportunity to opt-out or object.

18 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
19 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
20 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
21 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
22 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
23 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
24 of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange
25 County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus*
26 *Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net
27 recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-
28 *DAD* (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average
recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-
SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) (“Class Members will receive an
average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted
compelling defenses to liability; Plaintiff also notes several similar actions where the gross
recoveries per class member were less than \$90...[T]he Court finds that the results achieved are
good”); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC,
2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 **b. The Settlement Resulted from Serious, Informed Negotiations**

2 The Settlement resulted from an exchange of substantial information, arm's-length
3 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
4 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
5 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
6 discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive timekeeping
7 and payroll data, and conducted a detailed statistical analysis of the data to arrive at his estimated
8 class-wide damages figures. *See Blakely Decl.*, ¶¶ 14-19. Thus, this factor supports preliminary
9 approval.

10 **c. The Settlement Is Devoid of Obvious Deficiencies**

11 Preliminary approval of the Settlement is also warranted because there are no obvious
12 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
13 members. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment,
14 and Plaintiff's Class Representative Service Payment, are all reasonable and appropriate based
15 on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor
16 supports preliminary approval.

17 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

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

25 **1. The Proposed Class Is Ascertainable and Numerous**

26 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.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is

1 defined as all current and former non-exempt, hourly-paid employees employed by Open Door
2 in California during the Class Period. Therefore, Settlement Class members can be identified from
3 Open Door's personnel and employment records. Open Door represents that the Settlement Class
4 consists of approximately 43 current and former non-exempt employees. *See* Blakely Decl., ¶ 13.
5 It would therefore be impracticable to bring all Settlement Class members before the Court or for
6 each Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class
7 satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class
8 representing 10 beneficiaries of a trust sufficiently numerous).

9 **2. Common Issues of Law and Fact Predominate**

10 The focus in a certification dispute is not on the merits but rather on what types of
11 questions, "common or individual," are likely to arise in the Action. *See Sav-On Drug Store, Inc.*
12 *v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated on,
13 among other issues, Open Door's timekeeping policies/practices and meal period
14 policies/practices. These types of claims are commonly held to be proper for class certification.
15 *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013)
16 (certifying meal and rest period claims).

17 **3. The Claims of the Named Plaintiff Are Typical**

18 The typicality requirement is satisfied where class representatives have claims that are
19 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
20 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
21 same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical
22 of those held by the Settlement Class members. First, Open Door employed Plaintiff as a non-
23 exempt employee during the Class Period, and Plaintiff was subject to Open Door's wage and
24 hour policies at issue in this case. *See* Meza Decl., ¶ 2. Second, Plaintiff was injured by the same
25 challenged policies/practices that allegedly injured the Settlement Class as a whole. For example,
26 Plaintiff asserts that he was deprived of all wages and contends that he was deprived of all legally
27 compliant meal periods. Plaintiff further asserts that he did not receive accurate and compliant
28 wage statements and did not receive all wages at the time of separation of employment. *See*

generally, Meza Decl. Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class, and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See Haines Decl.*, ¶¶ 2-8; *Blakely Decl.*, ¶¶ 2-6.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

This Court should order distribution to the Settlement Class of the proposed Class Notice by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address information provided by Open Door. *See Settlement*, ¶ G(75). This manner of giving notice is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached exhibits. Settlement Class members’ addresses will be ascertainable through Open Door’s personnel and payroll records, which Open Door will provide to Phoenix within fourteen (14) business days of preliminary approval of the Settlement. *See Settlement*, ¶ G(74). Within ten (10) business days of receipt of the Settlement Class members’ addresses, Phoenix will mail the Class Notice to all Settlement Class members. *See Settlement*, ¶ G(75). To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any Settlement Class member’s current

mailing address. *Id.*, at ¶ G(76).

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1, 2 to Exh. A. The proposed Class Notice will also notify Settlement Class members of the final approval hearing date and provides the Settlement Class contact information for Class Counsel and advises Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: May 16, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff