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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

LUIS MANUEL JARA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

REID PRODUCTS, INC., a California
corporation; and DOES 1 through 100,
inclusive.

Defendants.

Case No. CIVSB2204688

*[Assigned for all purposes to the
Hon. Gilbert Ochoa, Dept. S-24]*

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

Date: November 29, 2023
Time: 8:30 a.m.
Dept.: S-24

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 November 29, 2023 at 8:30 a.m. in Department S-24 of the above-entitled Court, located at 247 West
4 Third Street, San Bernardino, California 92415, Plaintiff Luis Manuel Jara (“Plaintiff”), individually
5 and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former non-exempt, hourly employees of Defendant Reid
10 Products, Inc. who worked at any time in California during the Class Period.

- 11 3. For purposes of the Settlement, the “Class Period” shall mean the time period between March
12 14, 2018 and June 7, 2023.
13 4. Preliminary appointment of Plaintiff Luis Manuel Jara as Class Representative;
14 5. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
15 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
16 6. The scheduling of a hearing to consider whether the Settlement should be finally approved
17 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
18 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
19 costs to Class Counsel;
20 7. Appointment of Phoenix Settlement Administrators (“Phoenix”) as the third-party
21 Settlement Administrator for mailing notices; and
22 8. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
23 Class Action and Proposed Settlement and Notice of Individual Settlement Award) and an
24 order that it be disseminated to the proposed Settlement Class Members as provided in the
25 Settlement Agreement.

26 This Motion is based on this notice of motion, the memorandum of points and authorities, the
27 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Luis
28 Manuel Jara, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached

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

3
4 Dated: October 19, 2023

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:


Elizabeth Nguyen
Attorneys for Plaintiff
LUIS MANUEL JARA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,¹ in which Defendant have agreed to pay \$475,000.00 to the following Settlement Class:

All current and former non-exempt, hourly employees of Defendant Reid Products, Inc. who worked at any time in California during the Class Period.

For purposes of the Settlement, the “Class Period” shall mean the time period between March 14, 2018 and June 7, 2023.

Settlement Class members do not need to file a claim and will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees and costs, and PAGA civil penalties, the remaining Net Settlement Amount (“NSA”) of approximately \$258,166.67 will be distributed to all Settlement Class members who do not opt-out. With approximately 150 Settlement Class members, the average payment to each Settlement Class member is currently expected to be approximately **\$1,721.11**, which does not include the \$5,000.00 PAGA Amount to the approximate 70 PAGA Employees.

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

¹ The Stipulation of Class Action and PAGA Settlement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen as Exhibit 1. The proposed Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award) is attached to the Settlement as Exhibit B. All defined terms in this motion have the same definitions as used in the Settlement.

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

II. SUMMARY OF THE LITIGATION

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

1. The Parties

Reid Products manufactures fasteners and machine parts for the aerospace, medical, and racing industries. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. Plaintiff, a former non-exempt employee, worked for Reid Products from approximately February 2019 through approximately August 31, 2021 as a Stamper in the Hot Header Department. *See* Declaration of Luis Manuel Jara (“Jara Decl.”), ¶ 2.

2. Procedural History

On March 14, 2022, Plaintiff filed a putative class action complaint against Defendant in San Bernardino County Superior Court. Nguyen Decl., ¶ 10. On March 11, 2022, Plaintiff submitted a letter to the California Labor Workforce Development Agency (“LWDA”) and Reid Products regarding Defendant’s alleged Labor Code violations and his intent to bring a claim for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). *See* Settlement, Exh. A. On August 5, 2022, Plaintiff filed a First Amended Class and Representative Action Complaint. Nguyen Decl., ¶ 10. Plaintiff’s operative complaint alleges that Reid Products: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages upon separation of employment; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the PAGA. *Id.*

3. Discovery

After agreeing to participate in early mediation, Reid Products informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for a 20% sampling of the putative class. Nguyen Decl., ¶ 11. Additionally, Reid Products produced information and data points needed for a fruitful mediation, including without limitation, the number of employees, workweeks at issue, pay periods at issue, meal and rest period policies and procedures, and payroll policies. After a review and analysis of the documents and information produced by Reid Products, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery allowed the parties to assess

1 the merits and value of Plaintiff’s claims and Reid Products’ defenses thereto, if a settlement could not be
2 reached.

3 **4. Arms-Length Negotiations**

4 On June 7, 2023, a mediation was held with Katherine J. Edwards, Esq., a well-respected mediator.
5 Nguyen Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the
6 likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.*
7 Ultimately, the Parties agreed on a class-wide resolution. In the weeks that followed, the parties finalized
8 the terms of settlement and executed the Stipulation of Class Action and PAGA Settlement (“Settlement”).
9 *Id.*

10 **III. ARGUMENT**

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

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

18 As explained below, the Settlement Class satisfies the criteria for certification of a settlement class
19 under 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 certification
21 is the most efficient and desirable way to maintain this litigation; (3) Plaintiff’s claims are typical of the
22 claims of absent Settlement Class Members; and (4) Plaintiff and his counsel will fairly and adequately
23 represent Settlement Class Members’ interest. *See* Cal. Civ. Proc. § 382.

24 **1. Numerosity is Satisfied.**

25 Here, there are approximately 150 Settlement Class Members. Therefore, numerosity is satisfied.
26 *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing
27 10 beneficiaries of a trust sufficiently numerous).

28 Further, a class is “ascertainable” where the members “may be readily identified without
unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*
(2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined

1 as “All current and former non-exempt, hourly employees of Defendant Reid Products, Inc. who worked
2 at any time in California during the Class Period.” For purposes of this Settlement Agreement, the “Class
3 Period” shall mean the time period between March 14, 2018 and June 7, 2023. Nguyen Decl., ¶ 14.

4 In addition, PAGA Employees is defined as: “All current and former non-exempt, hourly
5 employees of Defendant Reid Products Inc. who worked at any time in California during the PAGA
6 Period.” For purposes of this Settlement Agreement, the “PAGA Period” shall mean the time period
7 between March 14, 2021 and June 7, 2023. *Id.*

8 **2. Commonality is Satisfied.**

9 The focus in a certification dispute is not the merits, but rather on what types of questions,
10 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court*
11 *(Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members’ claims arise from Reid Products’s
12 common, uniform policies and practices that applied to Plaintiff and Settlement Class Members during
13 the class period. Nguyen Decl., ¶ 15. As a result of the common and uniform policies and practices that
14 applied to all Settlement Class Members, their claims involve common questions of law and fact,
15 including but not limited to:

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

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

25 **3. Typicality is Satisfied.**

26 The typicality requirement is satisfied where class representatives have claims that are typical of
27 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
28 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
in a consumer class action).

1 Here, Plaintiff's claims are typical of those held by the Settlement Class. First, Plaintiff was
2 employed by Reid Products during the Class Period as a non-exempt employee and was subject to
3 Defendant's wage and hour policies at issue in this case. *See* Jara Decl., ¶ 2. Second, Plaintiff was injured
4 by the same challenged policies that injured the Settlement Class as a whole. For example, Plaintiff
5 asserts that he, like the Settlement Class, was not paid all legally required minimum wages and overtime
6 wages, was not provided with all required meal periods, was not authorized and permitted to take all
7 required rest periods, did not receive meal and rest period premium wages when he was not provided
8 compliant meal or rest periods, was not provided with accurate, itemized wage statements, and was not
9 paid all of his wages owed upon separation of employment. *Id.* Given that Defendant's policies and
10 practices applied to all non-exempt employees, Settlement Class Members possess a similar interest and
11 have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of
12 the Settlement Class all arise from the same conduct, typicality is satisfied.

13 **4. Adequacy is Satisfied.**

14 The adequacy requirement examines conflicts of interest between named parties and the class(es)
15 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
16 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. *See* Jara Decl., ¶ 11. 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. *Id.*
20 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee*
21 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication
22 that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the
23 proposed class).

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

28 **B. THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

Settlement is the preferred means of dispute resolution, particularly in complex class action

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

1. The Preliminary Approval Standard is Met

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

a. The Strength of Plaintiff’s Case

Although Plaintiff maintains that his claims are meritorious, he acknowledges there were substantial risks and uncertainty in proceeding with litigation. As described below, Reid Products presented multiple defenses to Plaintiff’s claims, both on the merits and class certification. Thus, while Plaintiff was prepared to litigate these claims through certification and trial, success was not certain.

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

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

c. Risk of Maintaining Class Action Status

Plaintiff had not yet filed his motion for class certification and as such, the extent to which

Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial.

d. Overview of the Settlement Agreement

If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of \$475,000.00.² Nguyen Decl., ¶ 13, Exh. 1 (Settlement, ¶ 5). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* (Settlement, ¶ 5). Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$475,000.00
Minus Court-approved attorneys' fees (1/3 of GSA):	\$158,333.33
Minus Court-approved, verified costs (up to):	\$20,000.00
Minus Court-approved Class Representative Service Award (up to):	\$10,000.00
Minus Settlement Administration Costs:	\$8,500.00
Minus PAGA civil penalties:	\$20,000.00
Net Settlement Amount ("NSA"):	\$258,166.67

The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount and the required employer-side taxes with the Settlement Administrator within thirty (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. Nguyen Decl., ¶ 13, Exh. 1 Settlement ¶ 4.B.

² Defendant represents that there are an estimated 12,107 workweeks worked by Settlement Class members during the Class Period. If the number of workweeks worked by Settlement Class members during the Class Period is more than 10% greater than this figure (i.e., if there are 13,318 or more workweeks worked by the Settlement Class Members), Defendant agrees to increase Gross Settlement Amount on a proportional basis (i.e., if there was an 11% increase in the number of workweeks worked by the Settlement Class members during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 11%). *See* Settlement ¶ 4.E.

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties, the Settlement requires Defendant to pay a Net Settlement Amount ("NSA") of at least **\$258,166.67** to all Settlement Class Members who do not timely opt out. This amount does not include the \$5,000.00 PAGA Amount to be paid to the PAGA Employees. Nguyen Decl., ¶ 13, Exh. 2 (Settlement ¶ 5.A).

The Individual Settlement Awards shall be determined as follows:

- i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of weeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked as a non-exempt employees during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period. See Settlement, ¶ 6.B.i.
- ii. PAGA Amount: Five Thousand Five Hundred Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099. See Settlement, ¶ 6.C.

According to Defendant, there are approximately 150 total Settlement Class Members (who worked a total of approximately 12,107 workweeks during the relevant time period). Nguyen Decl., ¶ 14. Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is projected to be approximately **\$1,721.11, exclusive of any PAGA civil penalties, which is approximately \$21.32 per workweek** (\$258,166.67/12,107). *Id.*

Additionally, there are approximately 70 PAGA Employees (who worked a total of approximately 4,636 pay periods during the relevant time period). *Id.* Thus, the average individual portion of PAGA Amount is approximately **\$71.43, which is approximately 1.08 per pay period** (\$5,000/4,636 pay periods).

Settlement Class Members will have sixty (60) calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. See Settlement, ¶ 10.D. Those Settlement Class Members who do not

1 opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included
2 within the Settlement, for the period between March 14, 2018 and June 7, 2023. *See* Settlement, ¶ 3.
3 Settlement Class Members who opt-out of Settlement will still receive a portion of the PAGA Amount if
4 they are a PAGA Employee during the PAGA Period.

5 As this is a non-reversionary Settlement, 100% of the NSA shall be consumed in that if a
6 Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-out
7 shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did not
8 opt-out. *See* Settlement, ¶ 4.C.

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

10 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
11 of a mediator. After the detailed review of the information, data and other documents and policies
12 produced by Reid Products, Class Counsel drew on their extensive experience in similar cases to assess
13 the strengths and weaknesses of Plaintiff's case. Nguyen Decl., ¶ 11. This discovery allowed the parties
14 to assess the merits and value of Plaintiff's claims and Reid Products' defenses thereto, if a settlement
15 could not be reached. *Id.*

16 On June 7, 2023, the parties participated in mediation with Katherine J. Edwards, Esq. Nguyen
17 Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the
18 likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses.
19 Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In the weeks that followed, the
20 parties finalized the terms of settlement and executed the Settlement. Nguyen Decl., ¶ 12, Exhibit 1.

21 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of:
22 factual investigation and data analysis; the exchange of substantial information and class data, including
23 timekeeping and payroll records; wage and hour policies and practices; arm's length negotiations by
24 counsel; and mediation before an experienced wage and hour class action mediator. *See* Nguyen Decl.,
25 ¶¶ 11-12; *See Kullar, supra*, 168 Cal.App.4th at 130. Thus, these factors support preliminary approval.

26 Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential
27 treatment to the class representative or segments of the class, and is within the range of possible approval,
28 as discussed in detail below. The Settlement will provide monetary relief to Settlement Class Members.
The amounts proposed for Class Counsel's attorneys' fees and costs, and service award are all reasonable

1 and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies,
2 this factor supports preliminary approval.

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

4 Unlawful Rounding/Off-the-Clock: Plaintiff alleges that Defendant failed to compensate its non-
5 exempt employees for all time worked. Nguyen Decl., ¶ 16. Specifically, Plaintiff alleges that Defendant
6 would keep track of Plaintiff's time worked and would unlawfully round/shave time worked such that
7 Plaintiff would not be fully paid for all time worked. *Id.* This time-shaving and/or rounding practice
8 utilized by Defendant was not even-handed over time and would almost exclusively round and shave in
9 Defendant's favor such that Plaintiff was routinely underpaid for all his time worked. *Id.* Additionally,
10 from approximately March 23, 2020 through November 10, 2021, Defendant required Plaintiff and other
11 non-exempt employees to be subjected to temperature checks due to the COVID-19 pandemic. *Id.*
12 Despite being under Defendant's direction and control, Defendant failed to compensate its non-exempt
13 employees for such time. As a result, Defendant failed to pay Plaintiff and other non-exempt employees
14 for all minimum and overtime wages owed. *Id.* Accordingly, based on 4 minutes of unpaid time each
15 shift beginning from approximately March 23, 2020 through November 10, 2021 for COVID-19
16 screenings and based on Plaintiff's expert calculated unpaid wages due to rounding at approximately
17 \$93,322, Plaintiff estimates Defendant's exposure at a total of \$121,494 ((3,385 workweeks x .33 per
18 workweek x \$25.22 (average overtime rate) = \$28,172) + \$93,322). *Id.*

19 Reid Products contends that it compensated Settlement Class members for all of their time
20 worked, that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-
21 compensable. Nguyen Decl., ¶ 17. Reid Products contends it began paying to the minute started in June
22 2022. Reid Products further asserts that Plaintiff would be unable to certify a rounding class given the
23 individualized inquiries that would be required, and also that Reid Products rounding mechanism was,
24 according to it, allegedly facially neutral. Reid Products contends the COVID-19 screenings occurred
25 after the employees clocked in and were therefore paid for this time, which was *de minimis*. Further, Reid
26 Products contends that Plaintiff's assessment of the claim at the overtime rate is inflated and incorrect.
27 In light of these defenses, Plaintiff discounted the maximum exposure by 35% for the risk of non-
28 certification, and an additional 40% to account for Defendant's defenses on the merits to arrive at an
estimated exposure of approximately \$47,382.66.

1 Meal Period Violations: Plaintiff alleges that he and Settlement Class Members were not provided
2 with all legally-required meal periods in compliance with California law due to Defendant's unlawful meal
3 period policies/practices. Nguyen Decl., ¶ 18. Due to work demands, Plaintiff was often prevented from
4 taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30
5 minutes in length. Additionally, Reid Products required its employees to remain on the work premises for
6 meal periods during the COVID-19 pandemic. *Id.* Also, there was a 100% violation rate for second meal
7 periods on shifts over 10.0 hours. Therefore, based on a review of the time punch data and payroll records,
8 Plaintiff calculated Defendant's maximum exposure for the alleged meal period violations for (1) late first
9 meal break; (2) missed first meal break; (3) short first meal break; and (4) missed second meal break on
10 shifts over 10 hours is \$833,771. *Id.*

11 Reid Products counters that it has always provided non-exempt employees with an opportunity to
12 take legally compliant meal periods, and any non-compliant meal periods reflected in employee
13 timekeeping records were solely the result of employee choice, rather than any policy or practice of Reid
14 Products. Nguyen Decl., ¶ 19. Reid Products also points out that under *Brinker Restaurant Corp. v.*
15 *Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal
16 periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th
17 at 1038 (rejecting "ensure" standard). Reid Products also contends that because its production stops during
18 meal periods, it does not have to keep track of meal periods. Reid Products contends there are no second
19 meal period violations because the employee signed valid second meal period waivers. Finally, Reid
20 Products contends Plaintiff's meal period claim is not suited for class certification and individual inquiries
21 would be required to assess which employees took non-compliant meal periods, how many meal periods
22 were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal
23 period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the
24 maximum exposure by 50% for the risk of non-certification, and an additional 55% to account for Reid
25 Products' defenses on the merits to arrive at an estimated exposure of \$187,598.48. *Id.*

26 Rest Period Violations: Plaintiff alleges that he and other Settlement Class Members were not
27 authorized and permitted to take all required rest periods due to Reid Products' rest period
28 policies/practices which fail to authorize and permit all rest periods for every four hours worked, *or major*

1 *fraction thereof.* Nguyen Decl., ¶ 20. Specifically, Plaintiff worked shifts in excess of 10.0 hours, but
2 was not authorized or permitted to take a ten-minute paid rest period. *Id.* Additionally, Plaintiff contends
3 he and other Settlement Class Members were required to remain on the work premises during the
4 COVID-19 pandemic. Based on the timekeeping records, there were approximately 18,768 shifts worked
5 during this time period over 3.5 hours and 9,666 shifts worked in excess of 10.0 hours during the relevant
6 time period. Thus, Plaintiff calculated Reid Products' exposure on unique rest period violations at
7 \$490,373. *Id.*

8 Reid Products contends it has always maintained and enforced lawful rest period policies and
9 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
10 periods in compliance with California law. Nguyen Decl., ¶ 21. Reid Products argues that Plaintiff's
11 rest period claims are inherently unsuited for class treatment as it requires an individualized inquiry into
12 whether each Settlement Class member was in fact authorized and permitted to take a compliant rest
13 period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff
14 discounted the maximum exposure by 55% for the risk of non-certification, and an additional 45% to
15 account for Defendant's defenses on the merits to arrive at an estimated exposure of \$121,367.32. *Id.*

16 Wage Statement Violations: Plaintiff further alleges that Reid Products issued inaccurate wage
17 statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest
18 period premium wages described above. Nguyen Decl., ¶ 22. Specifically, Plaintiff contends that this
19 conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members
20 did not include all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff
21 calculated Reid Products' maximum exposure for wage statement violations based on the 4,636 wage
22 statements issued during the relevant time period and applying \$50/\$100 at approximately \$280,000. *Id.*

23 Reid Products argued that meal and rest period claims could not support a claim for wage statement
24 penalties. Nguyen Decl., ¶ 23. Reid Products further argues that its alleged wage statement violations
25 could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other
26 employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code
27 § 226(e) for imposition of penalties. *Id.* As such, Plaintiff discounted the calculated exposure by 35% for
28 a risk of non-certification and an additional 40% for a risk of being unsuccessful on the merits to arrive at

1 an estimated total of \$109,200. *Id.*

2 Waiting Time Penalties: Plaintiff alleges that Reid Products is also liable for waiting time penalties
3 under Labor Code section 203 as a result of its failure to pay all wages upon separation of employment.
4 Nguyen Decl., ¶ 24. Based on the data provided by Reid Products, there were approximately 100
5 Settlement Class Members who have separated their employment with Defendant during the relevant time
6 period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Reid Products’
7 maximum exposure for waiting time penalties at approximately \$443,899. *Id.*

8 Reid Products asserts it has strong defenses to the waiting time claim because there exist good-
9 faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 25.
10 *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition
11 of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith
12 dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested
13 wages owed). Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-
14 certification, and an additional 45% to account for Reid Products’ defenses on the merits to arrive at an
15 estimated exposure of approximately \$134,279.45. *Id.*

16 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
17 foregoing alleged Labor Code violations. Nguyen Decl., ¶ 26. Plaintiff calculated Reid Products’ exposure
18 at the initial rate of \$100 for a total of \$463,600. *Id.*; *see Amaral v. Cintas Corp. No. 2* (2008) 163
19 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until employer is notified that it is violating
20 a Labor Code provision).

21 Reid Products argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying
22 claims will fail. Nguyen Decl., ¶ 27; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
23 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Reid
24 Products also maintains that, given its good faith defenses, this Court would exercise its discretion to
25 substantially reduce any PAGA penalties if it were to find Reid Products liable for any of Plaintiff’s claims.
26 *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
27 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-
28 01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).

1 *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 45% for a risk of being unsuccessful
2 on the merits, and an additional 40% to account for the possibility of this Court reducing penalties, to arrive
3 at an estimated exposure of approximately \$152,988.00. *Id.*

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

5 Using these estimated figures for each of the claims described above, Plaintiff predicted the
6 realistic total recovery for the Settlement Class would be approximately \$752,815.90. Nguyen Decl., ¶ 28.
7 The proposed settlement of \$475,000.00 therefore represents approximately 63% of the reasonably
8 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
9 will provide tangible monetary relief to Settlement Class Members, and will still provide an average
10 recovery to Settlement Class Members of over \$1,700.00.

11 The proposed settlement reflects approximately 63% of the estimated recovery the Settlement
12 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
13 monetary compensation for disputed claims. Indeed, the percentage of the liability exposure recovered
14 in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*
15 (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing
16 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
17 settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV,*
18 *Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be
19 acceptable even though it amounts to only a fraction of the potential recovery that might be available to
20 the Settlement Class members at trial”). Thus, Plaintiff submits the settlement is within the range of
21 possible approval, such that notice should be provided to the Settlement Class so that they can consider
22 the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement
23 after the Settlement Class has had the opportunity to opt-out or object.

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

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

1 Nguyen Decl., ¶¶ 2-8; Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
2 review of Defendant’s policies and timekeeping and payroll records and drew on their extensive
3 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Nguyen Decl.,
4 ¶¶ 10-27. The Settlement was also reached with the assistance of an experienced and respected wage and
5 hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See*
6 *Kullar, supra*, 168 Cal.App.4th at 130.

7 **i. Attorneys’ Fees and Costs**

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

15 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
16 is currently estimated to be \$158,333.33, and up to \$20,000 in verified costs reimbursement. *See*
17 Settlement, ¶ 6; Nguyen Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for
18 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
19 *Id.* Further, Plaintiff has provided written approval of the split of attorneys’ fees in this action. Nguyen
20 Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
21 analyzing Plaintiff’s claims, conducting legal research, reviewing Defendant’s documents and policies,
22 analyzing Settlement Class Members’ timekeeping data and payroll records, preparing for and attending
23 mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise
24 litigating the case. Nguyen Decl., ¶ 31. Class Counsel expect to expend additional attorney time in
25 attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement
26 Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

27 Class Counsel submits that the request for attorneys’ fees is reasonable when viewed as an overall
28 percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely
positive results obtained for the class, and the efficiency with which the Parties conducted the litigation.

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

j. Administration Costs

Phoenix Settlement Administrator's fees and expenses are estimated not to exceed \$8,500.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This includes sending the Notice in English and Spanish. This request is reasonable in light of the proposed class size of approximately 150 Settlement Class Members and the costs and expenses associated with administering the notices in English and Spanish and distributing the awards.

k. Class Representative Service Award

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for his services to the Settlement Class. Nguyen Decl., ¶ 31; Settlement, ¶ 4.3.C; Martinez Decl., ¶¶ 3-12. Additionally, Plaintiff has agreed to voluntarily separate his employment. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, participating in the mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶ 31; Jara Decl., ¶¶ 3-11; Settlement ¶ 3.E. Additionally, the Parties have agreed to specifically designate \$5,000 of the requested Class Representative Service Award (in an amount not to exceed \$10,000) as consideration for Plaintiff's agreement to separate his employment. Settlement, ¶ 8.

l. PAGA Civil Penalties

The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or

1 \$15,000.00. Settlement ¶ 4.C.5. This \$20,000.00 represents roughly 4.2% of the \$475,000.00 Gross
2 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.
3 *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D.
4 Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or
5 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr.
6 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
7 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
8 claims and PAGA claims under which no money was allocated to the PAGA claims).

9 **m. Payroll Taxes**

10 The Settlement provides that the employer’s share of payroll taxes shall be paid separately from,
11 and in addition to, the Gross Settlement Amount. Settlement ¶ 5.D.

12 **n. Uncashed Funds**

13 The Settlement provides that Settlement Class Members with 180 days from the date the
14 Settlement Administrator mails the checks and any funds remaining after 180 days be transferred to the
15 California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name
16 of the Settlement Class member. Settlement ¶ 6.F. As all settlement funds will be distributed to the
17 Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

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

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

24 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE**
25 **TO SETTLEMENT CLASS MEMBERS**

26 Before the final approval hearing, the Court requires adequate notice of the settlement be given
27 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
28 Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and
Notice of Individual Settlement Award) by first-class regular U.S. Mail, postage prepaid, using last
known mailing address information provided by Defendant. *See* Settlement, ¶ 11, Exh. B. The Notice
Packet will be mailed in both English only due to the nature of Defendant’s workforce.

1 This manner of giving notice is the “best notice practicable” under the circumstances because it
2 provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen*
3 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be
4 administered by Phoenix, an experienced class action settlement administrator. *See generally* Lawrence
5 Decl. and attached exhibits. Class Data will be ascertainable through Defendant’s personnel and payroll
6 records, which Defendant will provide to Phoenix within 20 calendar days of preliminary approval of the
7 Settlement. *See* Settlement ¶ 11.A. Within 10 business days of receipt of the Settlement Class Members’
8 addresses, Phoenix will run the names of all Settlement Class Members through the United States Postal
9 Service Notice of Change of Address database (which provides updated addresses for any individual who
10 has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address),
11 calculate the estimated Settlement Award for each Settlement Class member, and mail the notices to
12 Settlement Class Members. *See* Settlement ¶ 11.B. To the extent that any notices are returned, Phoenix
13 will perform a “skip trace” to track any Class Member’s current mailing address. *See* Settlement ¶ 11.C.

14 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it
15 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the parties,
16 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
17 procedures by which to do so, explains the recovery formula and expected recovery amount for each
18 Settlement Class member, provides them the opportunity to contest their total workweeks included in the
19 notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out.
20 *See* Nguyen Decl., Exh. 1 (Settlement, Exh. B). The proposed Notice Packet will also notify Settlement
21 Class Members of the final approval hearing date and provides Settlement Class Members the contact
22 information for Class Counsel, and advises Settlement Class Members that they may enter an appearance
23 through counsel if they wish to.

24 Additionally, as stated in the proposed Notice Packet, any changes to the Final Approval hearing
25 date, time, or location will be posted on the Settlement Administrator’s website. *Id.* Furthermore, the
26 Settlement Administrator will post the notice of final judgment on its website. *Id.* This manner of giving
27 notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of
28 reaching Settlement Class Members.

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

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

5 **IV. CONCLUSION**

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

9 Dated: October 19, 2023

Respectfully submitted,
LIDMAN LAW, APC

10 By:

11 
Elizabeth Nguyen
Attorneys for Plaintiff
LUIS MANUEL JARA