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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ARTURO RODRIGUEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

GREEN SET, INC., a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 21STCV30141

*[Assigned for all purposes to the Hon. Carolyn B.
Kuhl, SSC-12]*

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

Date: August 23, 2022
Time: 10:30 a.m.
Dept.: SSC-12

Action filed: August 16, 2021
Trial Date: None set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on August 23, 2022 at 10:30 a.m. in Department SSC-12 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California, 90012, Plaintiff Arturo Rodriguez (“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 defined as follows:

All current and former non-exempt, hourly employees of Defendant Green Set, Inc. who worked in California at any time between August 16, 2017 and the date of preliminary approval, or the date on which the workweeks worked by the Class Members reaches 17,602, whichever is earlier.

3. Preliminary appointment of Plaintiff Arturo Rodriguez as Class Representative;
4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit an enhancement award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Simpluris as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award) which is attached to the Settlement as Exhibit A and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Arturo Rodriguez, and Eric Springer of Simpluris, and the exhibits attached thereto, the pleadings and other

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

3
4 Dated: July 25, 2022

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Elizabeth Nguyen
Attorney for Plaintiff
ARTURO RODRIGUEZ

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which Green Set has agreed to pay Four Hundred Fifty Thousand Dollars and
13 Zero Cents (\$450,000.00) on behalf of the following Settlement Class:

14 All current and former non-exempt, hourly employees of Defendant Green Set, Inc.
15 who worked in California at any time between August 16, 2017 and the date of
16 preliminary approval, or the date on which the workweeks worked by the Class
Members reaches 17,602, whichever is earlier.

17 Significantly, Settlement Class members do not need to file a claim. All Settlement Class members
18 will automatically receive a payment unless they affirmatively opt-out. After deducting administration
19 costs, Plaintiff’s service award, attorneys’ fees and costs, and payment of PAGA penalties to the LWDA,
20 the remaining Net Settlement Amount (“NSA”) of approximately \$248,100.00 will be distributed to all
21 Settlement Class members who do not opt-out of the Settlement. There are approximately 205 Settlement
22 Class members, which means the average payment to each Settlement Class member is currently expected
23 to be approximately **\$1,210.24**, which does not include the \$5,000 PAGA Amount to PAGA Employees.

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

27 _____
28 ¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen as Exhibit 2. The proposed
Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award)
is attached to the Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the Settlement.

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

2 **II. SUMMARY OF THE LITIGATION**

3 **A. THE PARTIES**

4 Green Set rents equipment including, without limitation, plants, props, and holiday decorations to
5 be used for events and/or film and television. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶
6 10. Plaintiff was employed by Green Set as a non-exempt employee from approximately October 10,
7 1997 through on or about January 25, 2010 and again from approximately September 3, 2013 through
8 approximately March 16, 2020. *See* Declaration of Arturo Rodriguez (“Rodriguez Decl.”), ¶ 2. During
his employment, Plaintiff worked as a Maintenance Worker. *Id.*

9 **B. BRIEF PROCEDURAL HISTORY**

10 On August 16, 2021, Plaintiff filed a putative class action complaint against Green Set in Los
11 Angeles County Superior Court. Nguyen Decl., ¶ 10. On April 29, 2022, in connection with the Parties’
12 settlement, Plaintiff submitted a letter to the California Labor & Workforce Development Agency
13 (“LWDA”) and Green Set of his intention of filing a PAGA claim based on the labor code violations as
14 alleged in his complaint. *Id.*, at Exhibit 1. Therefore, on July 25, 2022, after exhausting his administrative
15 remedies, Plaintiff filed a First Amended Class Complaint adding causes of action for: (i) failure to provide
16 accurate, itemized wage statements and (ii) civil penalties under the PAGA. *Id.*

17 **C. CLAIMS ASSERTED**

18 Plaintiff’s primary allegations are that Green Set: (1) failed to pay all overtime wages owed; (2)
19 failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (4) failed
20 to authorize and permit all legally required rest periods; (5) failed to pay all final wages upon separation
21 of employment; (6) failed to provide accurate itemized wage statements; (7) engaged in unlawful business
22 practices; and (8) liable for civil penalties under PAGA.

23 Plaintiff will also serve the instant Motion and proposed Settlement Agreement on the LWDA on
24 the same date he files this Motion and will submit a supplemental declaration showing the submission.
25 Nguyen Decl., ¶ 33.

26 **III. DUNK/KULLAR ANALYSIS**

27 Settlement is the preferred means of dispute resolution, particularly in complex class action
28 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in

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

6 **A. INVESTIGATION AND DISCOVERY**

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

14 **B. ARMS-LENGTH NEGOTIATIONS**

15 On April 18, 2022, after extensive research and analysis, a mediation was held with Jeffrey Krivis,
16 a well-respected wage and hour class action mediator. Nguyen Decl., ¶ 12. During mediation, the parties
17 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and
18 the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in principle on a class-wide
19 resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the
20 Stipulation of Settlement (“Settlement”).

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

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

1 payroll records, and drew on their extensive experience in similar cases to assess the strengths and
2 weaknesses of Plaintiff's case. *See* Nguyen Decl., ¶¶ 10-30. The Settlement was also reached with the
3 assistance of an experienced and respected wage and hour class action mediator. *Id.* This factor strongly
4 supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

5 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF**
6 **CLAIMS**

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

10 Green Set Failed to Pay for All Hours Worked: Plaintiff alleges that he and Settlement Class
11 members were not fully compensated for all of their time worked. Nguyen Decl., ¶ 16. Specifically,
12 Plaintiff alleges Green Set would keep track of his hours and the hours of the other non-exempt
13 employees, and would unlawfully shave their work time and/or round their work time such that they
14 would not be fully paid for all time worked. *Id.* Plaintiff also alleges that this time shaving and/or
15 rounding practice utilized by Green Set was not-even handed over time and would almost exclusively
16 round and shave in Green Set's favor such that the employees were routinely underpaid for their time
17 worked. *Id.* Based on Plaintiff's review of the timekeeping data produced in connection with mediation,
18 Plaintiff contends employees were on average underpaid approximately 30 minutes per week at the
19 overtime rate.. *Id.* Accordingly, Green Set's exposure for its alleged unlawful rounding is \$360,045
(16,002 workweeks x .50 (30 mins per workweek) x \$45.00 (average overtime rate)). *Id.*

20 Green Set contends that it compensated Settlement Class members for all of their time worked.
21 Nguyen Decl., ¶ 17. Green Set also contends that its rounding practices were lawful, and any unpaid time
22 was *de minimis* and therefore non-compensable. *Id.* Green Set also contends that Plaintiff and the other
23 non-exempt employees are subject to a Collective Bargaining Agreement ("CBA") and Green Set paid
24 its employees in compliance with the CBA. Green Set further asserts that Plaintiff would be unable to
25 certify a rounding class given the individualized inquiries that would be required, and also that Green Set
26 rounding mechanism was, according to it, allegedly facially neutral. Further, Green Set contends that
27 Plaintiff's assessment of the claim at the overtime rate is incorrect. In light of these defenses, Plaintiff
28 discounted the maximum exposure by 45% for the risk of non-certification, and an additional 30% to

1 account for Green Set’s defenses on the merits, to arrive at an estimated exposure of \$138,617.33. *Id.*

2 Green Set Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and
3 Settlement Class members were not provided with all legally-compliant first meal periods beginning before
4 the end of the sixth hour of work. Nguyen Decl., ¶ 18. Specifically, due to the work demands imposed by
5 Green Set, Plaintiff alleges that in approximately 19% of the meal-enabling shifts, there was either a late,
6 short, or missed meal period. *Id.* Therefore, Plaintiff calculated Green Set’s maximum exposure on the
7 alleged meal period violations at approximately \$442,375 ((16,002 workweeks x 5 shifts per week x .97
8 (% of shifts over 6.0 hours) x .19 (violation rate) x \$30.00 average hourly rate). *Id.*

9 Green Set counters that it has always provided non-exempt employees with an opportunity to take
10 legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping
11 records were solely the result of employee choice, rather than any policy or practice of Green Set. Nguyen
12 Decl., ¶ 19. Green Set also contends the employees are subject to a CBA, Green Set complied with the
13 terms of the CBA, and points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.
14 4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods
15 are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure”
16 standard). Finally, Green Set contends Plaintiff’s meal period claim is not suited for class certification, a
17 19% violation rates supports its defenses and individual inquiries would be required to assess which
18 employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and
19 the reasons why a particular employee took a non-compliant meal period or missed a meal period during
20 a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of
21 non-certification, and an additional 40% to account for Green Set’s defenses on the merits to arrive at an
22 estimated exposure of \$145,983.75. *Id.*

23 Green Set Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and Settlement
24 Class members were also not authorized and permitted to take all required rest periods due to Green Set’s
25 rest period policies and practices that fail to authorize and permit all rest periods for every four hours
26 worked, *or major fraction thereof*. Nguyen Decl., ¶ 20. Specifically, Plaintiff alleges that Green Set failed
27 to authorize and permit Plaintiff and other non-exempt employees to take second rest period when they
28 worked shifts in excess of 6.0 hours. *Id.* Based on the data, 97% of the shifts worked were in excess of

6.0 hours. *Id.* Accordingly, Plaintiff calculated Green Set’s maximum exposure for rest period violations at \$2,328,291 (16,002 workweeks x 5 shifts per week x .97 (% shifts over 6.0 hours) x \$30.00 average premium). *Id.*

Green Set contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 21. Further, Green Set argues that Plaintiff’s rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional 55% to account for Green Set defenses on the merits to arrive at an estimated exposure of \$523,865.48. *Id.*

Green Set Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that Green Set issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum wages, overtime wages, and meal and rest period premium wages described above. Nguyen Decl., ¶ 22. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid. *Id.* Plaintiff’s data analysis reflected that there were approximately 5,705 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff calculated Green Set’s maximum exposure for wage statement violations at approximately \$563,250 ((\$50.00 x 145 current employees) + (\$100.00 x 5,560 subsequent wage statements)). *Id.*

Green Set argues that meal and rest period claims cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, *review granted*² and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244. Nguyen Decl., ¶ 23. Green Set further argues that its alleged wage statement violations could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. *Id.* As such, Plaintiff

² The California Supreme Court issued its decision in *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, on May 23, 2022, one month after the Parties reached a settlement.

discounted the calculated exposure by 50% for a risk of non-certification and an additional 45% for a risk of being unsuccessful on the merits, to arrive at an estimated total of \$154,893.75. *Id.*

Green Set is Liable for Waiting Time Penalties: Plaintiff alleges that Green Set is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages. Nguyen Decl., ¶ 24. Based on the data provided by Green Set, there were approximately 49 Settlement Class members who have separated their employment with Green Set during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Green Set’s maximum exposure for waiting time penalties at approximately \$352,800 (49 former employees x \$30.00/hour x 30 days x 8 hours/day). *Id.*

Green Set asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 25. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 40% to account for Green Set’s defenses on the merits, to arrive at an estimated exposure of \$116,424.00. *Id.*

Green Set is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Nguyen Decl., ¶ 26. Plaintiff calculated Green Set’s maximum exposure at \$570,500 (5,705 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision).

Green Set argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims will fail. Nguyen Decl., ¶ 27; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Green Set also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Green Set liable for any of Plaintiff’s claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135

(affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 50% for a risk of being unsuccessful on the merits, and an additional 35% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$185,412.50. *Id.*

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$1,265,196.80. Nguyen Decl., ¶ 28. The proposed settlement of \$450,000.00 therefore represents approximately 35.57% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class members, and will still provide an average recovery to Settlement Class members of over \$1,200.00

The proposed settlement reflects approximately 35.57% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

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1 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER**
2 **LITIGATION**

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

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

11 Plaintiff had not yet filed his motion for class certification and as such, the extent to which
12 Plaintiff's proposed classes were certifiable is somewhat speculative. This is especially true in light of
13 the Green Set's contention that a number of the Settlement Class members were subject to the CBA and
14 arbitration agreement that potentially covered the claims at issue this action. Absent settlement, there was
15 a risk that there would not be a certified class at the time of trial.

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

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

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

1 **A. NUMEROSITY IS SATISFIED.**

2 Here, the proposed Settlement Class consists of approximately 205 members, and is therefore
3 sufficiently numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v. Sup.*
4 *Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).
5 Thus, numerosity is satisfied.

6 Further, a class is “ascertainable” where the members “may be readily identified without
7 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*
8 (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is
9 ascertainable through Green Set’s personnel files and employee records maintained in the regular course
10 of business.

11 **B. COMMONALITY IS SATISFIED.**

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

15 Here, Settlement Class members’ claims arise from Green Set’s common, uniform policies and
16 practices that applied to Settlement Class members during the class period. Nguyen Decl., ¶ 15.
17 Specifically, Plaintiff alleged that Green Set’s common and uniform policies and practices resulted in the
18 following violations, involving common questions of law and fact: (1) failure to pay all overtime wages
19 owed; (2) failure to pay all minimum wages owed; (3) failure to provide all legally required meal periods;
20 (4) failure to authorize and permit all legally required rest periods; (5) failure to pay all final wages upon
21 separation of employment; (6) failure to provide accurate, itemized wage statements; (7) engagement in
22 unlawful business practices; and (8) liability for civil penalties under the PAGA. These alleged practices
23 result in common questions as to the affected Settlement Class members. *See e.g., Benton v. Telecom*
24 *Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

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

12 **D. ADEQUACY IS SATISFIED.**

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

16 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he
17 seeks to represent. Rodriguez Decl., ¶ 10. Indeed, Plaintiff's interests are aligned with those of the
18 Settlement Class members, as they all seek monetary relief under the same facts and legal theories.
19 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee*
20 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication
21 that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the
22 proposed class). Further, Class Counsel also have extensive experience in wage and hour class action
23 litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Nguyen Decl., ¶¶ 2-8; Haines
24 Decl., ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-4.

25 **V. SETTLEMENT AGREEMENT**

26 **A. THE BASICS**

27 **1. Class Definition and Release Period**

28 The proposed Settlement Class is defined as "all current and former non-exempt, hourly employees
of Defendant Green Set, Inc. who worked at any time in California between August 16, 2017 and the date
of preliminary approval, or the date on which the workweeks worked by the Class Members reaches

1 17,602, whichever is earlier.” Nguyen Decl., ¶ 14. For purposes of this Settlement Agreement, the “Class
2 Period” shall mean the time period of August 16, 2017 and the date of preliminary approval, or the date
3 on which the workweeks worked by the Class Members reaches 17,602, whichever is earlier. Nguyen
4 Decl., ¶ 14.

5 **2. PAGA Employees and PAGA Period**

6 The proposed PAGA Employees is defined as “all current and former non-exempt, hourly
7 employees of Defendant Green Set, Inc. who worked at any time in California between August 16, 2020
8 and the date of preliminary approval, or the date on which the workweeks worked by the Class Members
9 reaches 17,602, whichever is earlier.” Nguyen Decl., ¶ 14. For purposes of this Settlement Agreement,
10 the “PAGA Period” shall mean the time period of August 16, 2020 and the date of preliminary approval,
11 or the date on which the workweeks worked by the Class Members reaches 17,602, whichever is earlier.
12 Nguyen Decl., ¶ 14.

13 **B. RELEASE OF CLAIMS**

14 **1. Scope of Settlement Class Members’ Release**

15 Settlement Class Members, except those who opt-out, and Plaintiff will release and forever
16 discharge Defendant Green Set, Inc. and all of its past and present officers, owners, directors, shareholders,
17 managers, employees, agents, principals, trustees, beneficiaries, heirs, representatives, accountants,
18 auditors, consultants, attorneys, and each of their respective successors and predecessors in interest,
19 subsidiaries, affiliates, parents, assigns and attorneys, (“Released Parties”), of all claims, demands, rights,
20 liabilities and causes of action that were pled in, or arising out of facts asserted in, the operative First
21 Amended Complaint that arose during the Class Period including with respect to the following claims: (a)
22 failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide
23 meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest
24 periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage
25 statements; (f) failure to pay all wages due upon separation of employment; (g) all claims under California
26 Business & Professions Code § 17200 for unfair business practices that could have been premised on the
27 facts, claims, causes of action or legal theories described above; (h) violation of the following sections of
28 the California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 516,
558, 1174, 1192, 1194, 1194.2, 1198, 1197, 1197.1, 1198; and (i) violation of the California Industrial

Wage Orders that could have been premised on the facts, claims, causes of action or legal theories described above, as well as any potential penalties, interest or attorneys' fees associated with all of such causes of action under California law (collectively, "Released Claims"). Settlement, ¶ 4.A.

2. Scope of PAGA Release

PAGA Employees, regardless of whether they opt-out pursuant to Section 11.D. herein, including Plaintiff, will release and forever discharge all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 against the Released Parties based on the claims asserted in the operative First Amended Complaint (to be filed per Section 3 above) and as alleged in Plaintiff's letter to the Labor & Workforce Development Agency ("LWDA") dated April 29, 2022, arising during or with respect to the PAGA Period, including the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; and (f) failure to pay all wages due upon separation of employment; as well as all attorneys' fees and costs related thereto (collectively, "PAGA Released Claim"). Settlement, ¶ 4.C.

3. Releases Effective Date

Upon the Effective Date³, Plaintiff and Settlement Class Members will be deemed to have fully released and discharged the Released Parties of and from all of the Released Claims during the Class Period. Upon the Effective Date, Plaintiff and PAGA Employees will be deemed to have fully released and discharged the Released Parties of and from all of the PAGA Release during the PAGA Period. Settlement, ¶ 4.D.

C. **MONETARY TERMS OF SETTLEMENT**

1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, Green Set will pay a Gross Settlement Amount ("GSA") of \$450,000.00. Nguyen Decl., ¶ 12, Exh. 2 (Settlement, ¶ 5). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement

³ The "Effective Date" is defined as the latter of: (a) the date upon which the Court enters final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the expiration of any appeal period following the Court's final approval of the Settlement if an objection has been filed and no appeal has been filed or withdrawn; or (c) if any timely appeal(s) is/are filed or other judicial review is commenced, the final resolution of any appeal that has been filed, with the California Court of Appeal or the California Supreme Court rendering a final judgment affirming the Court's final approval of the Settlement without material modification. Settlement, ¶ 5.B.

Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.*

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. Defendant agrees to deposit the Gross Settlement Amount and the employer's (Defendant's) share of payroll taxes with the Settlement Administrator the later of February 15, 2023 or within thirty (30) calendar days of the "Effective Date". *See* Settlement, ¶ 5.B.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$450,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$150,000.00
Minus Court-approved, verified costs (up to \$22,000.00):	\$22,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$4,900.00
Minus PAGA civil penalties to LWDA and PAGA Employees:	\$20,000.00
Net Settlement Amount ("NSA"):	\$248,100.00

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA and the PAGA Employees, the Settlement requires Green Set to pay a Net Settlement Amount ("NSA") of at least \$248,100.00 to all Settlement Class members who do not timely opt out. Nguyen Decl., ¶ 13 and Exh. 2.

3. 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 \$5,000.00 for his services to the Settlement Class. Nguyen Decl., ¶ 31 and Exh. 2 (Settlement, ¶ 8); Rodriguez Decl., ¶¶ 6-10. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing

substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶ 31; Rodriguez Decl., ¶¶ 6-10; Settlement ¶ 4.F.

4. Attorneys' Fees and Costs

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

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is estimated to be \$150,000.00, and up to \$22,000.00 in verified costs reimbursement. *See* Settlement, ¶ 7; Nguyen Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, analyzing Settlement Class members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Nguyen Decl., ¶ 29. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

The request for attorneys' fees is reasonable when viewed as an overall 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.

5. Payroll Taxes

The Settlement provides that Green Set's payroll taxes shall be paid separately from, and in addition to, and the Gross Settlement Amount. Settlement ¶ 5.D. Defendant agrees to deposit it with the Settlement Administrator on the same date the Gross Settlement Amount is due.

6. Payment Formula

The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows:

Workweek Based Amount: 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 workweeks worked during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period. Settlement, ¶ 6.B.i.

Thus, the average Individual Settlement Payment is projected to be approximately **\$1,210.24, which is exclusive of the PAGA Amount.** Nguyen Decl., ¶ 14.

PAGA Amount: In addition, Five Thousand 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 workweeks that he or she worked during the 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 workweeks worked during the PAGA Period, and the denominator of which is the total number of workweeks worked by all PAGA Employees during the PAGA Period. Each PAGA Employee will be issued a check for their share of the PAGA Amount regardless of whether they submit a valid Request for Exclusion from the Settlement. Settlement, ¶ 6.B.ii. Thus, if all 205 Settlement Class Members are also PAGA Employees will receive an additional average payment of **\$24.39**.

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1 7. Tax Allocation

2 For purposes of calculating applicable taxes and withholdings, each Settlement Award (excluding
3 any amounts allocated from the PAGA Amount) shall be allocated as follows: Seventy-Five percent (75%)
4 as penalties and interest; and Twenty-Five percent (25%) as wages. 100% of the PAGA Amount is
5 allocated as penalties. Settlement, ¶ 6.D.

6 8. PAGA Penalty

7 The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor
8 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or
9 \$15,000.00. Settlement ¶ 5.C.5. The total amount allocated to PAGA represents approximately 10.79%
10 of the estimated PAGA exposure discussed above of \$185,412.50. *Id.* In addition, the \$20,000 represents
11 roughly 4.4% of the \$450,000.00 Gross Settlement Amount and is in line with the zero to two percent
12 range for PAGA claims approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118
13 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2
14 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D.
15 Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm’n Cases*,
16 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA
17 claims under which no money was allocated to the PAGA claims).

18 **VI. NOTICE ADMINISTRATION**

19 **A. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR**

20 Simpluris has extensive experience in class action matters, having provided services in class action
21 settlements involving antitrust, securities fraud, property damage, employment discrimination,
22 employment wage and hour, product liability, insurance and consumer issues. Declaration of Eric Springer
23 in support of Plaintiff’s Motion for Preliminary Approval filed concurrently herewith (“Springer Decl.”).

24 Simpluris’ fees and expenses are estimated not to exceed \$4,900.00. *See* Springer Decl., ¶ 14,
25 Exh. B. This request is reasonable in light of the proposed class size of approximately 205 Settlement
26 Class members and the costs and expenses associated with administering the notices and distributing the
27 awards. Additionally, Simpluris will translate the Notice Packet and will mail the Notice Packets to
28 Settlement Class Members in both English and Spanish.

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1 **B. CLASS LIST FROM DEFENDANT**

2 Within twenty (20) calendar days after entry of an order preliminarily approving this Agreement,
3 Defendant will provide the Settlement Administrator with a Class List consisting of each Class Member's:
4 the names, last known addresses, phone numbers, social security numbers, positions held, the dates of
5 employment during the Class Period, the number of workweeks worked by each Settlement Class member
6 while employed during the Class Period, and the number of workweeks worked by each PAGA Employee
7 during the PAGA Period. Settlement, ¶ 11.A.

8 **C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING**

9 Prior to mailing the Class Notice to the Class, the Settlement Administrator will perform a search
10 based on the National Change of Address Database to update and correct the Class Members' addresses,
11 contained in the Class List, for any known or identifiable address changes. Settlement, ¶ 11.B.

12 **D. DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS**

13 Within ten (10) business days after the Settlement Administrator's receipt of the Class List, the
14 Settlement Administrator will format and mail the Class Notice to the Class Members via first-class U.S.
15 mail. Settlement, ¶ 11.B.

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

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

28 **F. COURT'S CURRENT SOCIAL DISTANCING PROCEDURES**

 The Class Notice expressly states the following:

 Any Class Member who elects to appear personally at the Court for any reason related
 to this Lawsuit must comply with the Court's social distancing and mandatory face

covering requirements, as well as any other orders related to COVID-19. All such rules and orders can be located at the Court's website: www.lacourt.org.

For more information on how to appear remotely, please visit the Court's website at <http://www.lacourt.org/division/civil/CI0040.aspx> and <https://www.lacourt.org/lacc/>

G. PROCESSING OF PAYMENTS

Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class Members and PAGA Employees. Settlement, ¶ 6.C.

H. UNDELIVERABLE CLASS NOTICES

The Settlement Administrator will perform a skip-trace search and re-mail all Class Notices that are returned as undelivered on or before the Response Deadline, within three (3) business days of receiving the returned Class Notice. If a new address is obtained after a Class Notice is returned as undeliverable, the Settlement Administrator shall promptly forward the original Notice Packet to the updated address via first-class U.S. mail, indicating the date of such re-mailing. Settlement, ¶ 11.G.

VII. RESPONSES TO NOTICE

A. REQUESTS FOR EXCLUSION

Class Members who wish to exclude themselves from the Settlement must submit to the Settlement Administrator. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. Settlement, ¶ 11.D.i.

B. RE-MAILED NOTICES

If a Class Notice is returned as undeliverable, the Settlement Administrator will continue to attempt to obtain a new address for the Class Member until the Response Deadline expires. Settlement, ¶ 11.G.

C. OBJECTION PROCEDURES

Any Class Member who seeks to object to the Settlement may do so by sending the written objection to the Settlement Administrator (who shall serve all objections as received on Class Counsel

1 and Defendant's counsel). Defendant's counsel and Class Counsel shall file any responses to objections
2 no later than the deadline to file the Motion for Final Approval. To be valid, any written objection should:
3 (1) contain the objecting Settlement Class member's full name and current address, as well as contact
4 information for any attorney representing the objecting Settlement Class Member for purposes of the
5 objection; (2) reasons for all objections; (3) include any and all supporting papers, briefs, written evidence,
6 declarations, and/or other evidence, if any; and (4) be postmarked no later than the Response Deadline.
7 Settlement, ¶ 11.E. Members of the Settlement Class who do not request exclusion may also object to the
8 Settlement by appearing at the Final Approval Hearing irrespective of whether they submitted any written
9 objections. *Id.*

10 **VIII. CY PRES DISTRIBUTION**

11 Any funds payable to Settlement Class Members whose checks are not cashed within 180 days
12 after mailing shall be distributed to the Controller of the State of California to be held pursuant to the
13 Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class
14 Member to whom the check was issued, until such time that they claim their property. Settlement ¶ 6.E.
15 As all settlement funds will be distributed to the Settlement Class members, there will be no residue and
16 it is unnecessary to designate *cy pres* recipients.

17 **IX. CONCLUSION**

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

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

24 Dated: July 25, 2022

25 Respectfully submitted,
26 LIDMAN LAW, APC
27 
28 By: _____
Elizabeth Nguyen
Attorney for Plaintiff
ARTURO RODRIGUEZ