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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JEFFERSON LOPEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MISSION POOLS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 30-2022-01283102-CU-OE-CXC

*[Assigned for all purposes to the Hon. William D.
Claster, Dept. CX101]*

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

Date: November 17, 2023
Time: 9:00 a.m.
Dept.: CX101
Reservation Number: 74105569

Action Filed: December 5, 2022
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 November 17, 2023 at 9:00 a.m. before Department CX101 of the above-entitled Court, located at
4 751 West Santa Ana Boulevard, Santa Ana, California, 92701, Plaintiff Jefferson Lopez ("Plaintiff"),
5 individually and on behalf of a class of similarly situated individuals, will and hereby does move this
6 Court for:

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

10 All current and former non-exempt, hourly employees of Defendant Mission
11 Pools of Escondido, Inc. who worked at any time in California between
12 September 28, 2018 and the date the Court enters an order granting preliminary
approval.

- 13 3. Preliminary appointment of Plaintiff Jefferson Lopez as Class Representative;
14 4. 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 5. 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 6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement
21 Administrator for mailing notices; and
22 7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final
23 Court Approval ("Class Notice") and is attached to the Settlement as Exhibit A and an order
24 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 Jefferson
28 Lopez, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits

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

3
4 Dated: September 18, 2023

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Milan Moore
Attorney for Plaintiff
Jefferson Lopez

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jefferson Lopez (“Plaintiff”) brought this class and representative action against
4 Defendants Mission Pools, Inc. and Mission Pools of Escondido, Inc. (hereinafter collectively “Mission
5 Pools” or “Defendants”) alleging various wage and hour and related violations. Plaintiff’s primary
6 claims are that Mission Pools: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime
7 wages owed; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed
8 to reimburse necessary business expenses; (6) failed to provide accurate, itemized wage statements; (7)
9 failed to timely pay all wages upon termination; (8) engaged in unlawful business practices; and (9) is
10 liable for civil penalties under the Private Attorneys General Act (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which Mission Pools has agreed to pay Four Hundred Five Thousand Dollars
13 and Zero Cents (\$405,000.00) on behalf of the following Settlement Class:

14 All current and former non-exempt, hourly employees of Defendant Mission
15 Pools of Escondido, Inc. who worked at any time in California between
16 September 28, 2018 and the date the Court enters an order granting preliminary
approval.

17 Significantly, Settlement Class Members do not need to file a claim to benefit from the
18 Settlement because all Settlement Class Members will automatically receive a payment unless they
19 affirmatively opt-out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees
20 and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount (“NSA”) of
21 approximately \$212,550 will be distributed to all Settlement Class Members who do not opt-out of the
22 Settlement. There were approximately 227 Settlement Class Members as of the date of mediation, and
23 not including the \$7,500 for 136 Aggrieved Employees, the average payment to participating Settlement
24 Class Members is estimated to be approximately \$936.34, with the lowest individual payment being
25 \$10.00 for a Settlement Class Member that worked one (1) workweek to the highest individual payment
26 being for \$ 2,682.27 for a Settlement Class Member that worked the entire Class Period and the Court

27 _____
28 ¹ The Settlement is attached to the Declaration of Milan Moore as Exhibit 2. The proposed Class Notice
is attached to the Settlement as Exhibit A.

1 granting preliminary approval on November 17, 2023.

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

6 **II. SUMMARY OF THE LITIGATION**

7 **A. THE PARTIES**

8 Mission Pools designs and installs swimming pools and spas. Plaintiff, a former employee, was
9 employed by Mission Pools as an hourly, non-exempt General Laborer from approximately October 28,
10 2020 through approximately April 29, 2022. *See* Declaration of Jefferson Lopez (“Lopez Decl.”), ¶ 2.

11 **B. BRIEF PROCEDURAL HISTORY**

12 On September 28, 2022, Plaintiff filed the instant putative class action complaint. *See*
13 Declaration of Milan Moore (“Moore Decl.”), ¶ 7. On September 29, 2022, Plaintiff submitted a letter
14 to the California Labor & Workforce Development Agency (“LWDA”) and Mission Pools regarding
15 his intention of filing a PAGA claim based on the labor code violations alleged in his complaint. *Id.*
16 On December 5, 2022, after exhausting his administrative remedies, Plaintiff filed a First Amended
17 Class and Representative Action Complaint adding a cause of action for civil penalties under the PAGA.
18 *Id.* On April 13, 2023, Plaintiff submitted a supplemental letter to the LWDA and Mission Pools of
19 Escondido, Inc. regarding his intention of filing a PAGA claim based on the labor code violations
20 alleged in his complaint. *Id.* On July 12, 2023, Plaintiff filed an Amendment to Complaint identifying
21 Mission Pools of Escondido, Inc. as DOE 1. *Id.* Mission Pools, Inc. is the parent company and does
22 not employ any individuals in California. The actual employing entity is Mission Pools of Escondido,
23 Inc. *Id.*

24 Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the
25 LWDA on the same date he files this Motion and will submit a supplemental proof of service showing
26 the submission. Moore Decl., ¶ 33.

27 **III. DUNK/KULLAR ANALYSIS**

28 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

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

5 **A. INVESTIGATION AND DISCOVERY**

6 In advance of mediation, Mission Pools produced a 20% sampling timekeeping and payroll data
7 for the putative class, as well as its wage and hour policies and other relevant documents and information
8 relevant to the claims alleged. Moore Decl., ¶ 8. After the detailed review of the documents and data
9 produced by Mission Pools, Class Counsel drew on their extensive experience in similar cases to assess
10 the strengths and weaknesses of Plaintiff’s case. This discovery allowed the parties to assess the merits
11 and value of Plaintiff’s claims and Mission Pools defenses. *Id.*

12 **B. ARMS-LENGTH NEGOTIATIONS**

13 On June 1, 2022, a mediation was held with Jill Sperber, Esq., a well-respected wage and hour
14 class action mediator. Moore Decl., ¶ 9. During mediation, the parties vigorously debated their
15 opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the
16 claims and defenses. Ultimately, the Parties agreed on a class-wide resolution. *Id.*

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

18 “Parties represented by competent counsel are better positioned than courts to produce a
19 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
20 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
21 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
22 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
23 Moore Decl., ¶¶ 2-8; Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8; Nguyen Decl. ¶¶ 2-8. Class Counsel
24 conducted an in-depth review of Mission Pools’ policies and timekeeping and payroll records, and drew
25 on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case.
26 *See* Moore Decl., ¶¶ 6-27. The Settlement was also reached with the assistance of a mediator. *Id.* This
27 factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at
28 130.

1 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF**
2 **CLAIMS**

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

6 Mission Pools Failed to Pay for All Wages Owed: Plaintiff alleges that he and the Class
7 Members were not fully compensated for all of their time worked because Mission Pools would
8 unlawfully shave their work time and/or round their work time such that they would not be fully paid
9 for all time worked. Moore Decl., ¶ 13. This time-shaving and/or rounding practice utilized by
10 Defendants was not even-handed over time and would almost exclusively round and shave in
11 Defendants' favor such that employees were routinely unpaid for his time worked. *Id.* As such,
12 Plaintiff alleges Defendants failed to pay Plaintiff all required minimum and overtime wages, and then
13 calculated a total wage underpayment of approximately \$4,407.00 (10,619 pay periods x .03 per
14 workweek x \$20.75 average hourly rate). *Id.*

15 Mission Pools contends that it compensated Class Members for all of their time worked. Moore
16 Decl., ¶ 14. Mission Pools also contends that its rounding practices were lawful, and any unpaid time,
17 if any, was *de minimis* and therefore non-compensable. *Id.* Mission Pools further asserts that Plaintiff
18 would be unable to certify a rounding class given the individualized inquiries that would be required,
19 and also that Mission Pools' rounding policy/mechanism was, according to it, neutral on its face and in
20 its application. *Id.* In light of these defenses, Plaintiff discounted the maximum exposure by 30% for
21 the risk of non-certification, and an additional 30% to account for Mission Pools' defenses on the
22 merits, to arrive at an estimated exposure of \$2,159.43. *Id.*

23 Mission Pools Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and
24 the Class Members were not provided all required meal periods due to Defendants' meal period
25 policies/practices which fail to provide uninterrupted, duty-free 30-minute meal periods prior to the start
26 of the fifth hour of work. Moore Decl., ¶ 15. Specifically, Plaintiff alleges that due to the work demands
27 imposed by Defendants, Defendants provided late or otherwise unlawful meal periods to Plaintiff and
28 their non-exempt employees because they would begin their shift around 6:30 a.m. but could not take a

1 meal period until typically around 12:30 p.m. or later. *Id.* Moreover, Plaintiff alleges that there were
2 shifts where Defendants failed to provide a meal period altogether. Further, based on the timekeeping
3 data produced by Mission Pools in connection with mediation, it appears Mission Pools did not require
4 Plaintiff and the other non-exempt employees to clock in and out for meal periods. Therefore, despite
5 Defendants' failure to keep any records of meal periods, at least during a portion of the relevant Class
6 Period, Plaintiff alleges that Defendants unlawfully and automatically deducted thirty minutes from
7 Plaintiff's work time each shift for a purported meal period regardless of whether or not a meal period
8 was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length. *Id.*
9 Accordingly, based on the review of the time keeping records, Plaintiff calculated Mission Pools'
10 maximum exposure for the alleged meal period violations at approximately \$2,059,935.00 ((80,127
11 shifts with auto-deduct x \$20.75) + (19,147 shifts with recorded non-compliant meal periods x \$20.75)).
12 *Id.*

13 Mission Pools counters that it has always maintained a lawful meal period policy and provided
14 non-exempt employees with an opportunity to take legally compliant meal periods, and any non-
15 compliant meal periods reflected in employee timekeeping records were solely the result of employee
16 choice, rather than any policy or practice of Mission Pools. Moore Decl., ¶ 16. Mission Pools points
17 out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required
18 to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they
19 have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Mission
20 Pools contends Plaintiff's meal period claim is not suited for class certification, given that a number of
21 Class Members signed arbitration agreement and since individual inquiries would be required to assess
22 which employees took non-compliant meal periods, how many meal periods were non-compliant or
23 missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
24 period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 40%
25 for the risk of non-certification, and an additional 45% to account for Mission Pools defenses on the
26 merits to arrive at an estimated exposure of \$679,778.55. *Id.*

27 Mission Pools Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and
28 Settlement Class Members were also not authorized and permitted to take all required rest periods due

1 to Mission Pools rest period policies and practices. Moore Decl., ¶ 17. Specifically, Plaintiff alleges that
2 Mission Pools rest period policies and practices did not authorize and permit Plaintiff and the other non-
3 exempt employees a net ten-minute rest period for every four hours worked, or major fraction thereof.
4 Moreover, Plaintiff alleges on those occasions when Plaintiff was not authorized and permitted to take
5 all legally compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff
6 with the required rest period premium for each workday in which he experienced a rest period violation
7 as mandated by Labor Code § 226.7. Thus, Plaintiff alleges that he and other non-exempt employees
8 experienced at least one rest period violation on every shift worked in excess of 6.0 hours. *Id.* Therefore,
9 Plaintiff calculated Mission Pools maximum exposure for the alleged rest period violations at
10 approximately \$2,131,544.00 (102,725 shifts x \$20.75 average hourly rate). *Id.*

11 Mission Pools contends it has always maintained and enforced lawful rest period policies and
12 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
13 periods in compliance with California law. Moore Decl., ¶ 18. Mission Pools also argues that Plaintiff's
14 rest period claim is inherently unsuited for class treatment as a number of Class Members signed
15 arbitration agreements and it requires an individualized inquiry into whether each Settlement Class
16 Member was in fact authorized and permitted to take a compliant rest period, which would devolve into
17 an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure
18 by 60% for the risk of non-certification, and an additional 60% to account for Mission Pools' defenses
19 on the merits to arrive at an estimated exposure of \$341,047.04. *Id.*

20 Mission Pools Failed to Reimburse Necessary Business Expenses: Plaintiff alleges throughout
21 Plaintiff's employment with Defendants, Defendants failed to reimburse Plaintiff for expenses he
22 incurred in direct consequence of the discharge of his duties including, without limitation, costs incurred
23 for using his personal cellular phone. Moore Decl., ¶ 19. Despite the necessity of incurring expenses in
24 the discharge of his duties, Plaintiff alleges he was never reimbursed for all necessary expenditures he
25 incurred as a direct consequence of the discharge of his duties. *Id.* Specifically, Plaintiff contends that
26 this conduct violated Labor Code section 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228
27 Cal.App.4th 1137. *Id.* Therefore, Plaintiff calculated Mission Pools maximum exposure for
28

unreimbursed business expenses at approximately \$132,731.00 ((21,237 workweeks x \$6.25/workweek)). *Id.*

Mission Pools contends it has an expense reimbursement policy in effect during the relevant time period and that any expenses incurred in direct consequence of the discharge of job duties would have been reimbursed. Mission Pools contends that the use of cellular phones was not required by Plaintiff or the class members to perform their job duties and that to the extent they used their cellular phones, they did so purely because it was their personal preference, not because it was necessary to perform their job duties. Mission Pools further contends it provided company issued cellular phones to crew leads. Mission Pools therefore argues that this claim is not suitable for class treatment because it would require individualized determinations as to whether employees used their phone, whether the use was in direct discharge of their job duties, and the reasoning behind using a personal cellular phone. Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and an additional 65% to account for Mission Pools' defenses on the merits to arrive at an estimated exposure of \$18,582.34. Moore Decl., ¶ 20.

Mission Pools Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that Mission Pools issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum wages and overtime wages, and meal and rest period premium wages described above. Moore Decl., ¶ 21. Therefore, Plaintiff calculated Mission Pools maximum exposure for wage statement violations at approximately \$359,550.00 ((\$50.00 x 81 current employees) + (\$100.00 x 3,555 subsequent wage statements)). *Id.*

Mission Pools 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. Moore Decl., ¶ 22. As such, the calculated exposure is discounted by 45% for a risk of non-certification and an additional 55% for a risk of being unsuccessful on the merits, to arrive at an estimated total of \$88,988.63. *Id.*

Mission Pools is Liable for Waiting Time Penalties: Plaintiff alleges that Mission Pools is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all

1 wages upon separation. Moore Decl., ¶ 23. Specifically, Plaintiff alleges Defendants failed to pay all
2 wages owed to Plaintiff upon his termination of employment with Defendants. *Id.* There are
3 approximately 131 Settlement Class Members who have separated their employment with Mission Pools
4 during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff
5 calculated Mission Pools' maximum exposure for waiting time penalties at approximately is
6 \$652,380.00 (\$20.75 x 8 x 30 days x 131 former employees). *Id.*

7 Mission Pools asserts it has strong defenses to the waiting time claim because there exist good-
8 faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Moore Decl., ¶
9 24. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude
10 imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding
11 that "good faith dispute" over whether employee was exempt precluded imposition of waiting time
12 penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
13 30% for the risk of non-certification, and an additional 40% to account for Mission Pools defenses on
14 the merits, to arrive at an estimated exposure of \$273,999.00. *Id.*

15 Mission Pools is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the
16 PAGA as a result of the foregoing alleged Labor Code violations. Moore Decl., ¶ 25. Plaintiff calculated
17 Mission Pools' maximum exposure at \$363,600.00 ((3,636 pay periods x \$100 initial violation rate)).
18 *Id.*; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation
19 rate applies until employer is notified that it is violating a Labor Code provision).

20 Mission Pools argues that Plaintiff's PAGA claim will fail for the same reasons that his
21 underlying claims will fail. Moore Decl., ¶ 26; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
22 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also
23 fail."). Mission Pools also maintains that, given its good faith defenses, this Court would exercise its
24 discretion to substantially reduce any PAGA penalties if it were to find Mission Pools liable for any of
25 Plaintiff's claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
26 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.
27 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
28 \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 40%

1 for a risk of being unsuccessful on the merits, and an additional 45% to account for the possibility of
2 this Court reducing penalties, to arrive at an estimated exposure of \$119,988.00. *Id.*

3 **E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

4 Using these estimated figures for each of the claims described above, Plaintiff predicted the
5 realistic total recovery for the Settlement Class would be approximately \$1,524,543.59. Moore Decl.,
6 ¶ 27. The proposed settlement of \$405,000.00 therefore represents approximately 39% of the
7 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the
8 settlement will provide tangible monetary relief to Settlement Class Members, and will still provide an
9 average recovery to Settlement Class Members of over \$900.00. *Id.*

10 The proposed settlement reflects approximately 39% of the estimated recovery the Settlement
11 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
12 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
13 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Dunleavy v. Nadler*
14 (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
15 recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus,
16 Plaintiff submits that the proposed settlement is within the range of approval, such that notice should
17 be provided to the Settlement Class so that they can consider the Settlement. The Court will have the
18 opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has
19 expired.

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

22 Although the parties engaged in informal discovery throughout this action, the parties still had
23 significant discovery to complete in formal litigation had the matter not settled. Moore Decl., ¶ 31.
24 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
25 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.*
26 Even if the classes were certified, the parties would incur considerably more attorneys' fees and costs
27 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those
28 risks and the accompanying expense. Thus, this factor supports preliminary approval.

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

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

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

11 **A. NUMEROSITY IS SATISFIED.**

12 Here, the proposed Settlement Class consists of at least 227 members, and is therefore
13 sufficiently numerous as to make joinder impracticable. *See* Moore Decl., ¶ 11; *See, e.g., Bowles v.*
14 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
15 numerous). Thus, numerosity is satisfied.

16 Further, the class is "ascertainable" because it is defined as "all current and former non-exempt,
17 hourly employees of Defendant Mission Pools of Escondido, Inc. who worked at any time in California
18 between September 28, 2018 and the date the Court enters an order granting preliminary approval" and
19 such members can be identified from Defendant's personnel/business records. Moore Decl., ¶ 11.

20 **B. COMMONALITY IS SATISFIED.**

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

24 Here, Plaintiff alleges Settlement Class Members' claims arise from Mission Pools' common,
25 uniform policies and practices that applied to Settlement Class Members during the class period. Moore
26 Decl., ¶ 12. Specifically, Plaintiff alleged that Mission Pools' common and uniform policies and
27 practices resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to
28 pay all overtime wages owed; (3) failure to provide meal periods; (4) failure to authorize and permit
rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate,

1 itemized wage statements; (7) failure to timely pay all wages upon termination; (8) engagement in
2 unlawful business practices; and (9) liability for civil penalties under the Private Attorneys General Act
3 (“PAGA”). *Id.* As a result of the common and uniform policies and practices that applied to all
4 Settlement Class Members, their claims involve common questions of law and fact as to whether in
5 fact Mission Pools committed these alleged violations.

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

8 **C. TYPICALITY IS SATISFIED.**

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

18 **D. ADEQUACY IS SATISFIED.**

19 The adequacy requirement examines conflicts of interest between named parties and the
20 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
21 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
22 Settlement Class he seeks to represent. *Lopez Decl.*, ¶ 12. Indeed, Plaintiff’s interests are aligned with
23 those of the Settlement Class Members, as they all seek monetary relief under the same facts and legal
24 theories. Additionally, Class Counsel does not have any conflict of interest with the Settlement Class.
25 *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51.

26 Further, Class Counsel also have extensive experience in wage and hour class action litigation
27 and have vigorously litigated this case. *See Moore Decl.*, ¶¶ 2-5; Declaration of Scott M. Lidman
28 (“Lidman Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Declaration of
Elizabeth Nguyen (“Nguyen Decl.”), ¶¶ 2-8.

1 **V. SETTLEMENT AGREEMENT**

2 **A. THE BASICS**

3 1. Class Definition and Release Period

4 The proposed Settlement Class is defined as “All current and former non-exempt, hourly
5 employees of Defendant Mission Pools of Escondido, Inc. who worked at any time in California
6 between September 28, 2018 and the date the Court enters an order granting preliminary approval.”
7 Moore Decl., ¶ 11. For purposes of this Settlement Agreement, the “Class Period” shall mean the time
8 period between September 28, 2018 and the date the Court enters an order granting preliminary
9 approval.” *Id.*

10 2. Aggrieved Employees and PAGA Period

11 The proposed Aggrieved Employees are defined as “All current and former non-exempt, hourly
12 employees of Defendant Mission Pools of Escondido, Inc. who worked at any time in California
13 between September 28, 2021 and the date the Court enters an order granting preliminary approval.”
14 Moore Decl., ¶ 11. For purposes of this Settlement Agreement, the “PAGA Period” shall mean the time
15 period between September 28, 2018 and the date the Court enters an order granting preliminary
16 approval.” *Id.*

17 **B. RELEASE OF CLAIMS**

18 1. Scope of Participating Class Members’ Release

19 Settlement Class Members and Plaintiff will release any and all claims, demands, rights,
20 liabilities and causes of action against Mission Pools, and all of its past and present officers, directors,
21 shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors,
22 consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents
23 and attorneys, that were pled in the Complaints in the Action or arose from the same operative facts
24 and/or allegations as those set forth in the Complaints in the Action, that arose during the Class Periods
25 defined above with respect to the following claims: (a) failure to pay all wages owed, including
26 minimum wages owed and overtime wages owed; (b) failure to provide meal periods, or premium pay
27 for non-compliant meal periods; (c) failure to authorize and permit rest periods, or premium pay for
28 non-compliant rest periods; (d) failure to reimburse necessary business expenditures; (e) failure to issue
accurate, itemized wage statements; (f) failure to timely pay wages during employment and upon

1 separation of employment; and (g) all claims for unfair business practices that could have been premised
2 on the facts, claims, causes of action or legal theories described above (collectively, “Released Class
3 Claims”). The time period for the release of the Released Class Claims against the Released Parties
4 shall be the same time period as the Class Period.

5 **2. Scope of Aggrieved Employees’ Release**

6 PAGA Employees, including Plaintiff, will release and forever discharge all claims, demands,
7 rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act
8 of 2004 against Mission Pools, and all of its past and present officers, directors, shareholders, managers,
9 employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its
10 respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, arising
11 from the same set of operative facts and/or allegations asserted in the Complaints and/or alleged in the
12 letter to the Labor & Workforce Development Agency (“LWDA”) dated September 29, 2022, including
13 the following: (a) failure to pay all wages owed, including minimum wages owed and overtime wages
14 owed; (b) failure to provide meal periods, or premium pay for non-compliant meal periods; (c) failure
15 to authorize and permit rest periods, or premium pay for non-compliant rest periods; (d) failure to
16 reimburse necessary business expenditures; (e) failure to issue accurate, itemized wage statements; (f)
17 failure to timely pay wages during employment and upon separation of employment that occurred
18 during the PAGA Period (collectively, “PAGA Released Claim”). The time period for the release of
19 the PAGA Release against the Released Parties shall be the same time period as the PAGA Period.

20 **3. Releases Effective Date**

21 The releases identified herein shall become effective on the date on which Defendant fully funds
22 the Gross Settlement Amount and the employer’s share of payroll taxes (“Effective Date of the
23 Releases”). Upon the Effective Date of the Releases, all Settlement Class Members shall be deemed to
24 have, and by operation of Judgment shall have, released, waived and relinquished the Released Class
25 Claims. Settlement, ¶ 3.D.

26 **C. MONETARY TERMS OF SETTLEMENT**

27 **1. Gross Settlement Amount and Timing of Payment**

28 If the Court approves this Settlement, Mission Pools will pay a Gross Settlement Amount

(“GSA”) of \$405,000.00.² Moore Decl., ¶¶ 9, (Settlement, ¶ 4). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.*

Defendant shall deposit the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause) and employer’s share of payroll taxes on the portion allocated as wages with a mutually-selected third party administrator within (30) days of the Effective Date. *See* Settlement, ¶ 4.B.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$405,000.00
Minus Court-approved attorneys’ fees (update to 1/3 of GSA):	\$135,000.00
Minus Court-approved, verified costs (up to \$25,000.00):	\$20,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$9,950.00
Minus PAGA payment to the LWDA:	\$22,500.00
Net Settlement Amount (“NSA”):	\$212,550.00
 Settlement Class Members	 227
Average Individual Payment: NSA/Settlement Class	\$936.34

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the

² Defendant represents that there are an estimated 21,237 workweeks worked by Settlement Class Members during the Class Period. If the actual 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 23,361 or more workweeks worked by the Settlement Class Members), Defendant shall have the option to select between whether: (a) the Gross Settlement Amount will be increased proportionately for workweeks worked above the 10% (e.g., if there was an 11% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%); or (b) elect to end the Class Period, PAGA Period, and release periods on the date the actual workweeks is closest to and does not exceed 23,361 total workweeks. Defendant will notify Plaintiff’s counsel of its election by no later than 7 days of being notified by the Settlement Administrator that the Escalator Clause is triggered. Settlement, ¶ 4.F.

1 Settlement results in a Net Settlement Amount (“NSA”) of at least \$212,550.00 to be paid out to all
2 Settlement Class Members who do not timely opt out. Moore Decl., ¶ 10, Exh. 2.

3 Therefore, this calculation of $\$212,550/227 = \936.34 , assumes the Court approves the
4 requested attorneys’ fees, maximum attorneys’ costs, enhancement award, settlement administration
5 costs, and payment to the LWDA. *Id.* This calculation also assumes that all 227 putative class members
6 participate in the settlement and do not submit timely requests for exclusions. *Id.*

7 3. Class Representative Service Payment

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

11 Plaintiff will separately apply for a service payment at the time of seeking final approval in the
12 amount of \$5,000.00. Moore Decl., ¶ 30, Exh. 2 (Settlement, ¶ 7, 11.B); Lopez Decl., ¶¶ 3-13. As will
13 be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to recognize
14 the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial
15 factual information and documents to Class Counsel, attending multiple meetings with Class Counsel
16 to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff
17 undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed
18 to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Moore Decl., ¶30;
19 Lopez Decl., ¶¶ 3-13; Settlement ¶ 7.

20 The Class Representative Service Payment awarded by the Court shall be paid by the
21 Settlement Administrator to Plaintiff from the Gross Settlement Amount within 17 days after
22 Defendant funds the Gross Settlement Amount. Settlement, ¶¶ 5.C. & 7.

23 4. Attorneys’ Fees and Costs

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

1 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
2 is currently estimated to be \$135,000, and up to \$20,000.00 in verified costs reimbursement. *See*
3 Settlement, ¶ 6; Moore Decl., ¶ 28. Plaintiff submits the requested fee is fair compensation for
4 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
5 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Moore
6 Decl., ¶ 29. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
7 analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records,
8 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
9 Motion, and otherwise litigating the case. Moore Decl., ¶ 28. Class Counsel expect to expend additional
10 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding
11 questions from Settlement Class Members, preparing the final approval papers and attending the Final
12 Approval hearing. *Id.*

13 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
14 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
15 include a lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the
16 Settlement Administrator to Class Counsel from the Gross Settlement Amount 17 days after Defendant
17 funds the Gross Settlement Amount. Settlement, ¶ 5.C.

18 5. Payroll Taxes

19 D. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in
20 addition to, the Gross Settlement Amount within 30 days of the Effective Date. Settlement ¶ 4.D. The
21 employer-side taxes shall be deposited when the payment is made by Defendant.

22 6. Payment Formula

23 There were approximately 227 total Settlement Class Members as of the date of mediation.
24 Moore Decl., ¶ 11. Each participating Settlement Class member shall receive a proportionate settlement
25 share based upon the number of workweeks worked during the Class Period, the numerator of which is
26 the Settlement Class member's total workweeks worked during the Class Period, and the denominator
27 of which is the total workweeks worked by all Settlement Class Members who worked during the Class
28 Period. Settlement, ¶ 5.B.i. Thus, the average Individual Class Payment is **\$936.34**, with the lowest
individual payment being \$10.00 for a Settlement Class Member that worked one (1) workweek to the

1 highest individual payment being for \$2,682.27 for a Settlement Class Member that worked the entire
2 Class Period and the Court granting preliminary approval on November 17, 2023. Moore Decl., ¶ 11.

3 Additionally, there were approximately 136 Aggrieved Employees. Moore Decl., ¶ 11. Seven
4 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount has been
5 designated as the “PAGA Amount” as described above. Each PAGA Employee shall receive a portion
6 of the PAGA Amount proportionate to the number of pay periods that he or she worked during the
7 PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the
8 numerator of which is the PAGA Employee’s number of pay periods worked during the PAGA Period,
9 and the denominator of which is the total number of pay periods worked by all PAGA Employees.
10 Settlement, ¶ 5.B.b. Thus, the average Individual PAGA Payment is projected to be approximately
11 **\$55.15**. Moore Decl., ¶ 11.

12 7. Tax Allocation

13 For purposes of calculating applicable taxes and withholdings, 33% of each Participating Class
14 Member’s Individual Class Payment will be allocated to settlement of wage claims (the “Wage
15 Portion”). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form.
16 The 67% of each Participating Class Member’s Individual Class Payment will be allocated to settlement
17 of claims for interest and penalties (the “Non-Wage Portion”). The Non-Wage Portions are not subject
18 to wage withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 5. D.

19 8. PAGA Penalty

20 The parties have agreed to a PAGA award of \$30,000.00 and in accordance with California
21 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
22 – or \$22,500.00. Settlement ¶ 4.C.5. This \$30,000.00 represents roughly 7.4% of the \$405,000.00
23 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved
24 by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
25 at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom*
26 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
27 claims and PAGA claims under which no money was allocated to the PAGA claims).
28

1 **VI. NOTICE ADMINISTRATION**

2 **A. SETTLEMENT ADMINISTRATOR**

3 Phoenix Class Action Administration Solutions (“Phoenix”) costs are estimated not to exceed
4 \$9,950.00. *See* Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary
5 Approval filed concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the
6 proposed class size of approximately 227 Settlement Class Members and the costs and expenses
7 associated with administering the notices and distributing the awards. Additionally, Phoenix will
8 translate the Class Notice and mail the Class Notice in both English and Spanish to Settlement Class
9 Members.

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

16 **B. CLASS LIST FROM DEFENDANT**

17 No later than 10 business days after entry of an order preliminarily approving the Settlement,
18 Defendant will simultaneously deliver the Class Data to the Administrator. The Class Data shall be
19 provided to the Settlement Administrator in an electronic format satisfactory to the Settlement
20 Administrator. Settlement, ¶ 10.A.

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

22 Within ten (10) business days from receipt of this information, the Settlement Administrator
23 shall (i) run the names of all Settlement Class Members through the National Change of Address
24 (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the
25 address of any Settlement Class member for whom an updated address was found through the NCOA
26 search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail
27 a Notice Packet to each Settlement Class member at his or her last known address or at the updated
28 address found through the NCOA search, and retain proof of mailing. Settlement, ¶ 10.B.

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

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

13 **E. PROCESSING OF PAYMENTS**

14 Within 17 days after Defendant funds the Gross Settlement Amount, the Administrator will mail
15 checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment,
16 the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
17 Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
18 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
19 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
20 Settlement, ¶ 5.C.

21 Before mailing any checks, the Settlement Administrator must update the recipients' mailing
22 addresses using the National Change of Address Database. Settlement, ¶ 10.B.

23 **F. UNDELIVERABLE SETTLEMENT NOTICES**

24 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by
25 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address
26 provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall
27 conduct a Class Member Address Search, and re-mail the Class Notice to the most current address
28 obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice
to Class Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 10.B.

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

6 **VII. RESPONSES TO SETTLEMENT NOTICE**

7 **A. REQUESTS FOR EXCLUSION**

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

15 **B. RE-MAILED NOTICES**

16 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay
17 Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days
18 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The
19 Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
20 Settlement, ¶ 10.G.

21 **C. OBJECTION PROCEDURES**

22 Only Participating Class Members may object to the class action components of the Settlement
23 and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested
24 for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class
25 Representative Service Payment. Settlement, ¶ 10.D.

26 Participating Class Members may send written objections to the Administrator, by fax, email,
27 or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to
28 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class

1 Member who elects to send a written objection to the Administrator must do so not later than 60 days
2 after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members
3 whose Class Notice was re-mailed). Settlement, ¶ 10.D.

4 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

5 The Settlement Class who receives a Settlement Award must cash the check(s) within 180 days
6 from the date the Settlement Administrator mails it/them. Settlement ¶ 5.D.

7 For any Class Member whose Individual Class Payment check or Individual PAGA Payment
8 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds
9 represented by such checks to the California Controller's Unclaimed Property Fund in the name of the
10 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
11 Civil Procedure Section 384, subd. (b). Settlement ¶ 5.E.

12 **IX. CONCLUSION**

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

16 Dated: September 18, 2023

Respectfully submitted,
LIDMAN LAW, APC

17
18
19 By:



Milan Moore
Attorney for Plaintiff
Jefferson Lopez