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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BIDKAR SEQUEIRA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MOBILE CLEAR SHIELD, LLC, a California
limited liability company; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 22STCV31788

Related to Lead Case No.: 22STCV31784

*[Assigned for all purposes to the Hon. David S.
Cunningham III, Dept. SSC-11]*

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

Date: May 22, 2024
Time: 10:00 a.m.
Dept.: SSC-11

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 May
3 22, 2024 at 10:00 a.m. in Department SSC-11 of the above-entitled Court, located at 312 North Spring
4 Street, Los Angeles, California, 90012, Plaintiffs Bidkar Sequeira and Juan Salas (“Plaintiffs”),
5 individually and on behalf of a class of similarly situated individuals, will and hereby do 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 individuals whom Defendant Mobile Clear Shield, LLC classified as non-
11 exempt employees and who worked for Defendant in California at any time from
12 September 28, 2018 and ending on October 12, 2023.

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

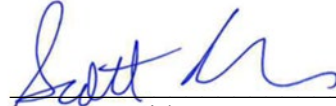
27 This Motion is based on this notice of motion, the memorandum of points and authorities, the
28 declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Bidkar Sequeira, Plaintiff Juan

1 Salas and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits attached
2 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
3 evidence or argument presented at the time of hearing.

4
5 Dated: February 20, 2024

Respectfully submitted,
LIDMAN LAW, APC

6
7 By:



8 Scott M. Lidman
9 Attorney for Plaintiffs
BIDKAR SEQUEIRA and JUAN SALAS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Bidkar Sequeira and Juan Salas (“Plaintiffs”) brought this class and representative action
4 against Defendant Mobile Clear Shield, LLC (hereinafter “Mobile Clear Shield” or “Defendant”) alleging
5 various wage and hour and related violations. Plaintiffs’ primary claims/allegations are that Mobile Clear
6 Shield: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed
7 to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest
8 periods; (5) unlawfully deducted from wages; (6) failed to provide accurate, itemized wage statements;
9 (7) failed to reimburse necessary business expenses; (8) failed to timely pay all wages upon termination;
10 (9) engaged in unlawful business practices; and (10) is liable for civil penalties under the Labor Code
11 Private Attorneys General Act of 2004 (“PAGA”).

12 Plaintiffs now respectfully request that this Court preliminarily approve this non-reversionary,
13 class action settlement,¹ in which Mobile Clear Shield has agreed to pay \$325,000.00 on behalf of the
14 following Settlement Class:

15 All individuals whom Defendant Mobile Clear Shield, LLC classified as non-
16 exempt employees and who worked for Defendant in California at any time from
September 28, 2018 and ending on October 12, 2023.

17 Significantly, Class Members do not need to file a claim to benefit from the Settlement because
18 all Class Members will automatically receive a payment unless they affirmatively opt-out. After deducting
19 administration costs, Plaintiffs’ service awards, attorneys’ fees and costs, and the PAGA Payment to the
20 LWDA, the remaining Net Settlement Amount (“NSA”) of approximately \$158,916.67 will be distributed
21 to all Class Members who do not opt-out of the Settlement. There were approximately 145 Class
22 Members through date of mediation (June 15, 2023), and not including the \$5,000 in civil penalties to be
23 distributed to approximately 37 Aggrieved Employees, the average payment to participating Class
24 Members is estimated to be approximately \$1,095.98.

25 This proposed Settlement is well-within the range of possible approval in light of the significant
26 legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation, and the tangible

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

monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

Mobile Clear Shield is a company that engages in automobile paint protection, including, installation of scratch protectors on vehicles. Plaintiff Sequiera, a current non-exempt employee, has been employed with Mobile Clear Shield since approximately 2019 as an Installer. *See* Declaration of Bidkar Sequeira (“Sequeira Decl.”), ¶ 2. Plaintiff Salas worked as an hourly, non-exempt employee for Defendant from approximately February 2020 through approximately July 2021. *See* Declaration of Juan Salas (“Salas Decl.”), ¶ 2.

B. BRIEF PROCEDURAL HISTORY

On September 28, 2022, Plaintiff Sequiera filed the instant putative class action complaint. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On September 28, 2022, Plaintiff Sequeira submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and Mobile Clear Shield of his intention of filing a PAGA claim based on the labor code violations alleged in his complaint. *Id.*, **Exhibit 1**. On February 15, 2024, pursuant to a stipulation between the Parties and with approval by the Court, Plaintiff Sequiera filed a Second Amended Class and Representative Action Complaint adding causes of action under Labor Code § 203 for failure to pay all wages upon termination of employment and for civil penalties under the PAGA and adding Plaintiff Salas as a named Plaintiff.

Further, Plaintiffs will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date they file this Motion and will submit a supplemental declaration showing the submission. Lidman Decl., ¶ 36.

III. DUNK/KULLAR ANALYSIS

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

1 **A. INVESTIGATION AND DISCOVERY**

2 In advance of mediation, Mobile Clear Shield produced timekeeping and payroll data for the
3 putative class, as well as its wage and hour policies and other relevant documents and information relevant
4 to the claims alleged. Lidman Decl., ¶ 11.

5 Plaintiffs contend that the records produced were representative of the entire Settlement Class and
6 is statistically significant and reliable for purposes of evaluating a potential settlement. *See e.g., Tyson*
7 *Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016). Indeed, from the time and payroll data, Plaintiffs
8 were able to analyze meal period violations and also analyze rounding issues. Further, if all Settlement
9 Class members brought lawsuits for unpaid wages and/or meal period violations, they would rely on
10 timekeeping records similar to the ones in the mediation production which also supports a finding that it
11 is statistically reliable. *Id.*

12 Mobile Clear Shield also provided a class list for Plaintiffs to calculate the necessary metrics,
13 including without limitation, class size, total number of workweeks and pay periods for the relevant time
14 periods. The key data points coupled with the representative data sampling, enabled Plaintiffs to
15 extrapolate to the entire class and aided in Plaintiffs’ creation of a class-wide exposure model for all the
16 claims at issue, including unpaid wages and penalties potentially owed for alleged minimum and overtime
17 wages, and meal and rest and unpaid wages violations. *Id.*

18 After the detailed review of the documents and data produced by Mobile Clear Shield, Class
19 Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of
20 Plaintiffs’ case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiffs’ claims
21 and Mobile Clear Shield’s defenses.

22 **B. ARMS-LENGTH NEGOTIATIONS**

23 On July 14, 2023, a mediation was held with Steve Pearl, Esq., a well-respected wage and hour
24 class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their
25 opposing legal positions, the likelihood of certification of Plaintiffs’ claims, and the legal basis for the
26 claims and defenses. Ultimately, through acceptance of a mediator’s proposal, the Parties agreed on a
27 class-wide resolution. *Id.*

28 //

 //

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

2 “Parties represented by competent counsel are better positioned than courts to produce a settlement
3 that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities*
4 *Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent, experienced
5 counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and
6 who have been appointed as class counsel in numerous cases alleging similar claims. *See* Lidman Decl.,
7 ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth review of Mobile Clear Shield’s
8 policies and timekeeping and payroll records, and drew on their extensive experience in similar cases to
9 assess the strengths and weaknesses of Plaintiffs’ case. *See* Lidman Decl., ¶¶ 10-28. The Settlement was
10 also reached with the assistance of a mediator. *Id.* This factor strongly supports preliminary approval of
11 the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

12 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF**
13 **CLAIMS**

14 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the
15 face of disputed claims. Plaintiffs’ analysis of the maximum and realistic expected recoveries for each of
16 the theories of liability pled is set forth below:

17 Mobile Clear Shield Failed to Pay for All Hours Worked: Plaintiffs allege that they and the Class
18 Members were not fully compensated for all of their time worked because Mobile Clear Shield would
19 unlawfully shave their work time and/or round their work time such that they would not be fully paid for
20 all time worked. Lidman Decl., ¶ 16. Plaintiffs also allege that this time shaving and/or rounding practice
21 utilized by Mobile Clear Shield was not-even handed over time and would almost exclusively round and
22 shave in Mobile Clear Shield’s favor such that the employees were routinely underpaid for their time
23 worked and it appeared on average to be an underpayment of approximately 5 minutes per shift. *Id.*
24 Additionally, Plaintiffs allege that during a portion of the relevant time period, Mobile Clear Shield paid
25 them and the other Class Members on a piece-rate only basis. *Id.* Further, Plaintiffs allege that Mobile
26 Clear Shield failed to include bonuses in the regular rate for purposes of overtime, resulting in an
27 underpayment of overtime wages. As a result of the piece-rate pay, Plaintiffs alleges that they and other
28 Class Members were underpaid 1 hour of pay for tasks including, attending administrative meetings,

1 cleaning and maintaining tools, and waiting for customers. *Id.* Accordingly, Plaintiffs calculated a total
2 wage underpayment of approximately \$47,484 (2,350 workweeks (start of class period through October
3 12, 2020) x 1 hour of NPT/week x \$12.00 average minimum wage² = \$28,200) + (3,193 workweeks x
4 .42 per workweek x \$14.38 (average minimum wage)³ = \$19,284). *Id.*

5 Mobile Clear Shield contends that it compensated Class Members for all of their time worked,
6 and also that many class members were actually overpaid by its rounding practices rather than underpaid.
7 Lidman Decl., ¶ 17. Mobile Clear Shield provided documents in support of its contention that Class
8 Members were paid on an hourly basis with an additional piece-rate bonus such that all time was indeed
9 compensated during the entire relevant time period. Further, Mobile Clear Shield also contends that its
10 rounding practices were lawful, and any unpaid time, if any, was *de minimis* and therefore non-
11 compensable. *Id.* Moreover, Mobile Clear Shield contends that it properly calculated and paid Class
12 Members all overtime wages owed. Mobile Clear Shield further asserts that, given that a number of the
13 Class Members signed arbitration agreements, Plaintiffs would be unable to certify given the
14 individualized inquiries that would be required, and also that Mobile Clear Shield's rounding
15 policy/mechanism was, according to it, neutral on its face and in its application. *Id.* In light of these
16 defenses, Plaintiffs discounted the maximum exposure by 40% for the risk of non-certification, and an
17 additional 30% to account for Mobile Clear Shield's defenses on the merits, to arrive at an estimated
18 exposure of \$19,943.28. *Id.*

19 Mobile Clear Shield Failed to Provide All Legally Required Meal Periods: Plaintiffs allege that
20 they and the Class Members were not provided with all legally-compliant first meal periods beginning
21 before the end of the fifth hour of work. Lidman Decl., ¶ 18. Specifically, Plaintiffs allege that due to the
22 work demands imposed by Mobile Clear Shield, their meal period was often late, short, or missed in
23 violation of California law. *Id.* Additionally, Plaintiffs allege Mobile Clear Shield failed to record the
24 start and stop times of meal periods from approximately September 28, 2018 – approximately October 12,
25 2020. *Id.* Based on Plaintiffs' review of the timekeeping records produced in connection with mediation
26

27 ² Minimum wage in in 2018 it was \$11.00, in 2019 it was \$12.00, and in 2020 it was \$13.00. Therefore, the average minimum
28 wage is \$12.00.

³ Minimum wage in 2020 it was \$13.00, in 2021 it was \$14.00, in 2022 it was \$15.00, and in 2023 it is \$15.50. Therefore, the
average minimum wage is \$13.01.

1 with recorded meal periods, Plaintiffs contend the records are unreliable as the meal period is the exact
2 same time and exact same length every day. *Id.* As such, Plaintiffs calculated Mobile Clear Shield's
3 maximum exposure the meal period claim at: \$433,440 ((2,350 workweeks with automatic deductions x 5
4 shifts /week x \$16.00 average hourly rate= \$188,000) + (3,193 workweeks with "recorded" meal periods
5 x 5 shifts /week x \$16.00 average hourly rate= \$255,440)). *Id.*

6 Mobile Clear Shield counters that it has always maintained a lawful meal period policy and
7 provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-
8 compliant meal periods reflected in employee timekeeping records were solely the result of employee
9 choice, rather than any policy or practice of Mobile Clear Shield. Lidman Decl., ¶ 19. Mobile Clear Shield
10 points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only
11 required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that
12 they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally,
13 Mobile Clear Shield contends Plaintiffs' meal period claim is not suited for class certification, given that
14 a number of the Class Members signed arbitration agreements, and given that since individual inquiries
15 would be required to assess which employees took non-compliant meal periods, how many meal periods
16 were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal
17 period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiffs discounted the
18 maximum exposure by 30% for the risk of non-certification, and an additional 45% to account for Mobile
19 Clear Shield's defenses on the merits to arrive at an estimated exposure of \$166,874.40. *Id.*

20 Mobile Clear Shield Failed to Authorize and Permit All Rest Periods: Plaintiffs allege that they
21 and Class Members were also not authorized and permitted to take all required rest periods due to Mobile
22 Clear Shield's rest period policies and practices. Lidman Decl., ¶ 20. Specifically, Plaintiffs allege that
23 due to work demands, non-exempt employees were not authorized and permitted to take duty-free net 10
24 minute rest periods. Additionally, Plaintiffs allege that for the portion of time that they were paid on a
25 piece-rate basis, they did not receive paid rest breaks. Thus, Plaintiffs allege that they and other non-exempt
26 employees experienced at least one rest period violation on every shift worked in excess of 3.5 hours. *Id.*
27 Thus, Plaintiffs calculated Mobile Clear Shield's exposure at \$443,440 ((2,350 workweeks x 5 shifts
28 exceeding 3.5 hours/week x \$16.00 average hourly rate = \$188,000) + (3,193 workweeks x 5 shifts

1 exceeding 3.5 hours/week x \$16.00 average hourly rate= \$255,440)). *Id.*

2 Mobile Clear Shield contends it has always maintained and enforced lawful rest period policies
3 and practices, and that Class Members were authorized and permitted to take all off-duty rest periods in
4 compliance with California law. Lidman Decl., ¶ 21. Mobile Clear Shield also contends that Class
5 Members were paid hourly and not paid on a piece-rate basis only and thus, did receive paid rest periods.
6 Mobile Clear Shield also argues that Plaintiffs' rest period claim is inherently unsuited for class treatment
7 as it requires an individualized inquiry into whether each Class Member was in fact authorized and
8 permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials.
9 *Id.* Accordingly, Plaintiffs discounted the maximum exposure by 45% for the risk of non-certification,
10 and an additional 40% to account for Mobile Clear Shield's defenses on the merits to arrive at an estimated
11 exposure of \$146,335.20. *Id.*

12 Mobile Clear Shield Failed to Reimbursed Business Expenses: Plaintiffs allege that Mobile Clear
13 Shield failed to reimburse them and Class Members for necessary business expenditures, including the use
14 of their personal vehicle for work purposes, as required under Labor Code section 2802. Lidman Decl., ¶
15 22. Accordingly, Plaintiffs estimate employees should have been reimbursed approximately 50
16 miles/month for reasonable mileage expenses. As such, Plaintiffs calculated Mobile Clear Shield's
17 maximum exposure for this claim at approximately \$161,662 (5,543 workweeks x 50 miles/week x \$.5833
18 average mileage reimbursement rate⁴). *Id.*

19 Mobile Clear Shield contends that any purportedly necessary expenses incurred by employees were
20 minimal. Lidman Decl., ¶ 23. Mobile Clear Shield also argues that this claim is not suitable for class
21 treatment, it maintained a lawful expense reimbursement policy, and individualized determinations would
22 be required as to how often each employee used their personal vehicle and how many miles driven. *Id.*
23 Accordingly, Plaintiffs discounted the maximum exposure by 35% for the risk of non-certification, and an
24 additional 40% to account for Mobile Clear Shield's defenses on the merits and financial condition, to
25 arrive at an estimated exposure of \$63,048.18. *Id.*

26 Mobile Clear Shield Issued Inaccurate Itemized Wage Statements: Plaintiffs further allege that
27

28 ⁴ In 2018 it was 54.5 cents, 2019 it was 58 cents, in 2020 it was 57.5, in 2021 it was 56 cents, in 2022 it was 58.5, and in 2023
it is 65.5. Thus, the average is 58.33 cents.

1 Mobile Clear Shield issued inaccurate wage statements in violation of Labor Code § 226 as a result of the
2 alleged unpaid minimum wages and overtime wages, and meal and rest period premium wages described
3 above. Lidman Decl., ¶ 24. Additionally, Plaintiffs contend that the wage statements issued by Mobile
4 Shield independently violated Labor Code sections 226 and 226.2 in that they fail to show: (i) total hours
5 worked during the pay period; (ii) the number of piece-rate units earned and any applicable piece rate; (iii)
6 the total hours of compensable rest periods, the rate of compensation, and the gross wages paid for those
7 periods during the pay period; (iv) list of deductions; and (v) the total hours of other nonproductive time,
8 the rate of compensation, and the gross wages paid for that time during the pay period. *Id.* Plaintiffs’ data
9 analysis reflected that there were approximately 2,784 wage statements issued during the relevant time
10 period. *Id.* Therefore, Plaintiffs calculated Mobile Clear Shield’s exposure at \$276,550 (\$50.00 x 37
11 current employees + \$100 x 2,747 subsequent wage statements). *Id.*

12 Mobile Clear Shield argues that its alleged wage statement violations could not be shown to be
13 “knowing and intentional,” and that Plaintiffs cannot show that they or any other employee “suffer[ed]
14 injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
15 imposition of penalties. Lidman Decl., ¶ 25. As such, and given that a number of the Class Members
16 signed arbitration agreements, Plaintiffs discounted the calculated exposure by 30% for a risk of non-
17 certification and an additional 35% for a risk of being unsuccessful on the merits, to arrive at an estimated
18 total of \$125,830.25. *Id.*

19 Mobile Clear Shield is Liable for Waiting Time Penalties: Plaintiffs allege that Mobile Clear Shield
20 is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay
21 all wages upon separation. Lidman Decl., ¶ 26. There are approximately 108 Class Members who have
22 separated their employment with Mobile Clear Shield during the relevant time period who could be entitled
23 to waiting time penalties. *Id.* Therefore, Plaintiffs calculated Mobile Clear Shield’s maximum exposure
24 for waiting time penalties at approximately \$414,720 (8 hours/day x \$16/hour x 30 days x 108 formers).
25 *Id.*

26 Mobile Clear Shield asserts it has strong defenses to the waiting time claim because there exist
27 good-faith disputes as to Plaintiffs’ underlying claims, precluding imposition of penalties. Lidman Decl.,
28 ¶ 27. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude

1 imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that
2 “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties
3 over contested wages owed). Accordingly, and given that a number of the Class Members signed
4 arbitration agreements, Plaintiffs discounted the maximum exposure by 40% for the risk of non-
5 certification, and an additional 35% to account for Mobile Clear Shield’s defenses on the merits, to arrive
6 at an estimated exposure of \$161,740.80. *Id.*

7 Mobile Clear Shield is Liable for PAGA Civil Penalties: Plaintiffs also seek civil penalties under
8 the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 28. Plaintiffs
9 calculated Mobile Clear Shield’s maximum exposure at \$278,400 (2,784 pay periods x \$100 initial
10 violation rate). *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial”
11 violation rate applies until employer is notified that it is violating a Labor Code provision).

12 Mobile Clear Shield argues that Plaintiffs’ PAGA claim will fail for the same reasons that their
13 underlying claims will fail. Lidman Decl., ¶ 29; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
14 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
15 fail.”). Mobile Clear Shield also maintains that, given its good faith defenses, this Court would exercise
16 its discretion to substantially reduce any PAGA penalties if it were to find Mobile Clear Shield liable for
17 any of Plaintiffs’ claims. See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012)
18 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.
19 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
20 \$2.8 million to \$500,000). *Id.* Therefore, Plaintiffs discounted the maximum exposure figure by 30% for
21 a risk of being unsuccessful on the merits, and an additional 30% to account for the possibility of this Court
22 reducing penalties, to arrive at an estimated exposure of \$136,416.00. *Id.*

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

24 Using these estimated figures for each of the claims described above, Plaintiffs predicted the
25 realistic total recovery for the Settlement Class would be approximately \$820,188.11. Lidman Decl., ¶
26 30. The proposed settlement of \$325,000.00 therefore represents approximately 40% of the reasonably
27 forecasted recovery for the Class. *Id.* Preliminary approval is appropriate as the settlement will provide
28 tangible monetary relief to Class Members, and will still provide an average recovery to Class Members

1 of over \$1,000.00.

2 The proposed settlement reflects approximately 40% of the estimated recovery the Settlement
3 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
4 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
5 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Dunleavy v. Nadler*
6 (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
7 recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus,
8 Plaintiffs submit that the proposed settlement is within the range of approval, such that notice should be
9 provided to the Settlement Class so that they can consider the Settlement. The Court will have the
10 opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has
11 expired.

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

14 Although the parties engaged in informal discovery throughout this action, the parties still had
15 significant discovery to complete in formal litigation had the matter not settled. *Lidman Decl.*, ¶ 34.
16 Moreover, Plaintiffs still had to file for class certification, and faced the prospect of appeals in the wake
17 of a disputed class certification ruling for Plaintiffs and/or an adverse summary judgment ruling. *Id.* This
18 is especially true given the existence of a purported arbitration agreement. Even if the classes were
19 certified, the parties would incur considerably more attorneys' fees and costs through a possible
20 decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the
21 accompanying expense. Thus, this factor supports preliminary approval.

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

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

26 As further explained below, the Settlement Class satisfies the criteria for certification of a
27 settlement class under California law because: (1) the Settlement Class is so numerous that joinder would
28 be impractical; (2) common questions of law/fact predominate over individual questions such that class
certification is the most efficient way to maintain this litigation; (3) Plaintiffs' claims are typical of the

claims of absent Settlement Class Members; and (4) Plaintiffs and their counsel will fairly and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

A. NUMEROSITY IS SATISFIED.

Here, the proposed Class consists of at least 145 members, and is therefore sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is satisfied.

Further, the class is "ascertainable" because it is defined as "all individuals whom Defendant Mobile Clear Shield, LLC classified as non-exempt employees and who worked for Defendant in California at any time from September 28, 2018 and ending on October 12, 2023" and such members can be identified from Defendant's personnel/business records. Lidman Decl., ¶ 14.

B. COMMONALITY IS SATISFIED.

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

Here, Plaintiffs allege Class Members' claims arise from Mobile Clear Shield's common, uniform policies and practices that applied to Class Members during the class period. Lidman Decl., ¶ 15. Specifically, Plaintiffs alleged that Mobile Clear Shield's common and uniform policies and practices resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) unlawful deduction from wages; (6) failure to provide accurate, itemized wage statements; (7) failure to reimburse necessary business expenses; (8) failure to pay all final wages upon separation of employment; (9) engagement in unlawful business practices; and (10) liability for civil penalties under the PAGA. As a result of the common and uniform policies and practices that applied to all Class Members, their claims involve common questions of law and fact as to whether in fact Mobile Clear Shield committed these alleged violations.

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

1 **C. TYPICALITY IS SATISFIED.**

2 The typicality requirement is satisfied where class representatives have claims that are typical of
3 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
4 1347. Here, Plaintiffs’ claims are typical of those held by the members of the proposed Class. Plaintiffs
5 were employed by Mobile Clear Shield during the Class Period as non-exempt employees and were
6 subject to Mobile Clear Shield’s wage and hour policies at issue in this case. *See* Sequeira Decl., ¶ 2;
7 Salas Decl., ¶ 2. Further, Plaintiffs were allegedly injured by the same challenged policies that allegedly
8 injured the Class as a whole. *Id.* Given that Mobile Clear Shield’s policies and practices applied to all
9 non-exempt employees, Class Members possess a similar interest and have suffered similar alleged
10 injuries as Plaintiffs. Accordingly, typicality is satisfied.

11 **D. ADEQUACY IS SATISFIED.**

12 The adequacy requirement examines conflicts of interest between named parties and the class(es)
13 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
14 Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiffs and the Class
15 they seek to represent. Sequeira Decl., ¶ 11; Salas Decl., ¶ 11. Indeed, Plaintiffs’ interests are aligned
16 with those of the Class Members, as they all seek monetary relief under the same facts and legal theories.
17 Additionally, Class Counsel does not have any conflict of interest with the Class. *See McGhee v. Bank of*
America (1976) 60 Cal.App.3d 442, 450-51.

18 Further, Class Counsel also have extensive experience in wage and hour class action litigation and
19 have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Paul K. Haines (“Haines
20 Decl.”), ¶¶ 2-8; Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4.

21 **V. SETTLEMENT AGREEMENT**

22 **A. THE BASICS**

23 1. Class Definition and Release Period

24 The proposed Settlement Class is defined as “individuals whom Defendant Mobile Clear Shield,
25 LLC classified as non-exempt employees and who worked for Defendant in California at any time from
26 September 28, 2018 and ending on October 12, 2023.” Lidman Decl., ¶ 14. For purposes of this
27 Settlement Agreement, the “Class Period” shall mean the time period of September 28, 2018 through
28 granting of preliminary approval of Class Action Settlement or October 12, 2023.” *Id.*

1 2. Aggrieved Employees and PAGA Period

2 The proposed Aggrieved Employees are defined as “individuals whom Defendant Mobile Clear
3 Shield, LLC classified as non-exempt employees and who worked for Defendant in California at any time
4 from September 28, 2021 and ending on October 12, 2023.” Lidman Decl., ¶ 14. For purposes of this
5 Settlement Agreement, the “PAGA Period” shall mean the time period of September 28, 2021 through
6 granting of preliminary approval of Class Action Settlement or October 12, 2023.” *Id.*

7 **B. RELEASE OF CLAIMS**

8 1. Scope of Participating Class Members’ Release

9 All Participating Class Members, on behalf of themselves and their respective former and present
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties
11 from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the
12 Operative Complaint and ascertained in the course of the Action and which occurred during the Class
13 Period including, (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide
14 meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium
15 wages in lieu thereof; (5) unlawful deductions from wages; (6) failure to provide accurate, itemized wage
16 statements; (7) failure to timely pay all wages upon separation of employment; (8) failure to reimburse
17 necessary business expenses; and (9) unfair business practices in violation of Business and Professions Code
18 section 17200, *et seq.* premised on the above claims; and violation of or liability under California Labor Code
19 under sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 516, 558, 1194, 1197, 1198, 2802
20 and the relevant Wage Orders issued by the Industrial Welfare Commission, and any and all related claims for
21 attorneys’ fees and costs. Except as set forth in Section 5.3 of this Agreement, Participating Class Members
22 do not release any other claims, including claims for vested benefits, wrongful termination, violation of
23 the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’
24 compensation, or claims based on facts occurring outside the Class Period. Settlement, ¶ 5.2.

25 2. Scope of Aggrieved Employees’ Release

26 All Aggrieved Employees are deemed to release, on behalf of themselves and their respective
27 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
28 Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice

including the (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in lieu thereof; (5) unlawful deductions from wages; (6) failure to provide accurate, itemized wage statements; (7) failure to timely pay all wages upon separation of employment, (8) failure to reimburse necessary business expenses under Labor Code section 2802, and the relevant Wage Orders issued by the Industrial Welfare Commission, and any and all related claims for attorneys' fees and costs. Settlement, ¶ 5.3.

3. Releases Effective Date

The releases described above are effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel. Settlement, ¶ 5.

C. MONETARY TERMS OF SETTLEMENT

1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, Mobile Clear Shield will pay a Gross Settlement Amount ("GSA") of \$325,000.00.⁵ Lidman Decl., ¶¶ 12, Exh. 2 (Settlement, ¶ 3.1) and ¶ 13. 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 fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than sixty (60) days after the Effective Date. *See* Settlement, ¶ 4.3.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$325,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$108,333.33

⁵ Based on its records, Defendant estimates that there are approximately 145 Class Members who worked a total of 5,655 Workweeks during the Class period. If the number of workweeks during the Class Period increases by more than 10% above 5,655 (*i.e.*, if there are 6,221 or more workweeks during the Class Period), Defendants agree to increase the Gross Settlement Amount on a proportional percentage basis (*i.e.*, if there was a 11% increase in the number workweeks during the Class Period, Defendants would agree to increase the Gross Settlement Amount by 11%). Settlement, ¶ 8.

Minus Court-approved, verified costs (up to \$20,000.00):	\$20,000.00
Minus Court-approved Class Representative Service Awards:	\$15,000.00
Minus Settlement Administration Costs:	\$7,750.00
Minus PAGA payment to the LWDA:	\$15,000.00
Net Settlement Amount (“NSA”):	\$158,916.67

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Awards to Plaintiffs, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement results in a Net Settlement Amount (“NSA”) of at least \$158,916.67 to be paid out to all Settlement Class Members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 2.

3. Class Representatives Service Payments

Plaintiffs will separately apply for a service payment at the time of seeking final approval in the amount of \$7,500.00 each. Lidman Decl., ¶ 33, Exh. 2 (Settlement, ¶ 3.2.1.); Sequeira Decl., ¶¶ 3-12; Salas Decl., ¶ 3-12. As will be fully briefed at the time of final approval, Plaintiffs' requested service awards are intended to recognize the time and effort Plaintiffs 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 Plaintiffs undertook by agreeing to serve as the named plaintiffs in this case, and the fact that Plaintiffs have agreed to a general release of all claims subject to a waiver of Civil Code §

1 1542. *See* Lidman Decl., ¶33; Sequeira Decl., ¶¶ 3-12; Salas Decl., ¶¶ 3-12; Settlement ¶ 3.2.1.

2 The Class Representative Service Payments awarded by the Court shall be paid by the Settlement
3 Administrator to Plaintiffs from the Gross Settlement Amount within 14 days after Defendant funds the
4 Gross Settlement Amount. Settlement, ¶ 4.4.

5 4. Attorneys' Fees and Costs

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

10 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
11 is currently estimated to be \$108,333.33, and up to \$20,000.00 in verified costs reimbursement. *See*
12 Settlement, ¶ 3.2.2.; Lidman Decl., ¶ 31. Plaintiffs submit the requested fee is fair compensation for
13 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
14 *Id.* Further, Plaintiffs have provided written approval of the split of attorneys' fees in this action. Lidman
15 Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
16 analyzing Plaintiffs' claims, conducting legal research, analyzing timekeeping data and payroll records,
17 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
18 Motion, and otherwise litigating the case. Lidman Decl., ¶ 31. Class Counsel expect to expend additional
19 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions
20 from Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

21 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
22 and verified litigation costs at the time of seeking final approval of the Settlement, which will include a
23 lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the Settlement
24 Administrator to Class Counsel from the Gross Settlement Amount 14 days after Defendant funds the
25 Gross Settlement Amount. Settlement, ¶ 4.4.

26 5. Payroll Taxes

27 The Settlement provides that Mobile Clear Shield's payroll taxes shall be paid separately from,
28 and in addition to, and the Class Settlement Amount. Settlement ¶ 4.3. The employer-side taxes shall be
deposited when it funds the Gross Settlement Amount. *Id.*

1 6. Payment Formula

2 There were approximately 145 total Class Members as of the date of mediation. Lidman Decl., ¶
3 14. An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
4 number of Workweeks worked by all Participating Class Members during the Class Period and (b)
5 multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4. Thus, the
6 average Individual Class Payment is **\$1,095.9**.

7 Additionally, there were approximately 37 Aggrieved Employees. Lidman Decl., ¶ 14. The
8 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved
9 Employees' 25% share of PAGA Penalties \$5,000.00 by the total number of PAGA Period Pay Periods
10 worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each
11 Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and
12 liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

13 Thus, the average Individual PAGA Payment is projected to be approximately **\$135.14**. *Id.*

14 7. Tax Allocation

15 Twenty Percent (20%) of each Participating Class Member's Individual Class Payment will be
16 allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
17 withholding and will be reported on an IRS W-2 Form. Eighty Percent (80%) of each Participating Class
18 Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the
19 "Non-Wage Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings and will be
20 reported on IRS 1099 Forms. Settlement, ¶ 3.2.5.

21 8. PAGA Penalty

22 The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor
23 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or
24 \$15,000.00. Settlement ¶ 3.2.7. This \$15,000.00 represents roughly 4.62% of the \$325,000.00 Gross
25 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.
26 *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D.
27 Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom Comm'n Cases*,
28 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA
claims under which no money was allocated to the PAGA claims).

1 **VI. NOTICE ADMINISTRATION**

2 **A. SETTLEMENT ADMINISTRATOR**

3 Phoenix Class Action Administration Solutions (“Phoenix”) costs are estimated not to exceed
4 \$7,750.00. *See* Declaration of Jodey Lawrence in support of Plaintiffs’ Motion for Preliminary Approval
5 filed concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the proposed class
6 size of approximately 145 Settlement Class Members and the costs and expenses associated with
7 administering the notices and distributing the awards. Additionally, Phoenix will translate the Class
8 Notice and mail the Class Notice in both English and Spanish to Settlement Class Members.

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

16 **B. CLASS LIST FROM DEFENDANT**

17 No later than 20 calendar days after entry of an order preliminarily approving the Settlement,
18 Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft
19 Excel spreadsheet. Settlement, ¶ 4.2.

20 To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in
21 confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict
22 access to the Class Data to Administrator employees who need access to the Class Data to effect and
23 perform under this Agreement. *Id.*

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

25 Before mailing Class Notices, the Administrator shall update Class Member addresses using the
26 National Change of Address database. Settlement, ¶ 7.4.2. Using best efforts to perform as soon as
27 possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to
28 all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
the Class Notice with Spanish translation. *Id.*

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

13 **E. PROCESSING OF PAYMENTS**

14 Within 14 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 Representatives Service Payments. 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, ¶ 4.4.

21 Before mailing any checks, the Settlement Administrator must update the recipients' mailing
22 addresses using the National Change of Address Database. Settlement, ¶ 4.4.1.

23 **F. UNDELIVERABLE SETTLEMENT NOTICES**

24 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the
25 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 conduct
27 a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The
28 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, ¶ 7.4.3.

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 send
3 checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class
4 Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned
5 undelivered). Settlement, ¶ 4.4.1.

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 Request
14 for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. Settlement, ¶
15 7.5.1.

16 **B. RE-MAILED NOTICES**

17 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay
18 Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise
19 provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will
20 inform the Class Member of the extended deadline with the re-mailed Class Notice. Settlement, ¶ 7.4.4.

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 for
24 the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative
25 Service Payment. Settlement, ¶ 7.7.1.

26 Participating Class Members may send written objections to the Administrator, by fax, email, or
27 mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear
28 in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who
elects to send a written objection to the Administrator must do so not later than 60 days after the

1 Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class
2 Notice was re-mailed). Settlement, ¶ 7.7.2.

3 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

4 The face of each check shall prominently state the date (not less than 180 days after the date of
5 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void
6 date. Settlement ¶ 4.4.1.

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 represented
9 by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member
10 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure
11 Section 384, subd. (b). Settlement ¶ 4.4.3.

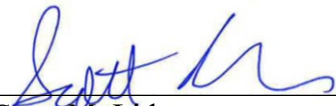
12 **IX. CONCLUSION**

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

16
17 Dated: February 20, 2024

Respectfully submitted,
LIDMAN LAW, APC

18
19 By:



Scott M. Lidman
Attorney for Plaintiffs
BIDKAR SEQUEIRA and JUAN SALAS