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

REFUGIO GARCIA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HUNTINGTON LIBRARY ART
COLLECTIONS AND BOTANICAL
GARDENS, a Charitable Trust, HENRY E.
HUNTINGTON LIBRARY AND ART
GALLERY, corporate form unknown; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 22STCV30738

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

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

Date: November 9, 2023
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
3 November 9, 2023 at 10:00 a.m. in Department SSC-11 of the above-entitled Court, located at 312
4 North Spring Street, Los Angeles, California, 90012, Plaintiff Refugio Garcia (“Plaintiff”), individually
5 and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former hourly-paid, non-exempt employees who worked for
10 Defendant Henry E. Huntington Library and Art Gallery in California at any time
11 from September 20, 2018 through granting of preliminary approval of Class
Action Settlement or September 20, 2023, whichever occurs sooner.

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

25 This Motion is based on this notice of motion, the memorandum of points and authorities, the
26 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Refugio
27 Garcia, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits
28

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: August 15, 2023

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Scott M. Lidman
Attorney for Plaintiff
REFUGIO GARCIA

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Refugio Garcia (“Plaintiff”) brought this class and representative action against
4 Defendant Henry E. Huntington Library and Art Gallery (hereinafter “The Huntington” or “Defendant”)
5 alleging various wage and hour and related violations. Plaintiff’s primary claims/allegations are that The
6 Huntington: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3)
7 failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required
8 rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to reimburse necessary
9 business expenses; (7) failed to timely pay all wages upon termination; (8) engaged in unlawful business
10 practices; and (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004
11 (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
13 class action settlement,¹ in which The Huntington has agreed to pay \$1,221,495.00 on behalf of the
14 following Settlement Class:

15 All current and former hourly-paid, non-exempt employees who worked for
16 Defendant Henry E. Huntington Library and Art Gallery in California at any time
17 from September 20, 2018 through granting of preliminary approval of Class Action
18 Settlement or September 20, 2023, whichever occurs sooner.

19 Significantly, Class Members do not need to file a claim to benefit from the Settlement because
20 all Class Members will automatically receive a payment unless they affirmatively opt-out. After deducting
21 administration costs, Plaintiff’s service award, attorneys’ fees and costs, and the PAGA Payment to the
22 LWDA, the remaining Net Settlement Amount (“NSA”) of approximately \$725,830.00 will be distributed
23 to all Class Members who do not opt-out of the Settlement. There were approximately 748 Class
24 Members through date of mediation (June 15, 2023), and not including the \$12,500 in civil penalties to
25 be distributed to approximately 524 Aggrieved Employees, the average payment to participating Class
26 Members is estimated to be approximately **\$970.36**.

27 This proposed Settlement is well-within the range of possible approval in light of the significant
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.

1 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
2 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff
3 respectfully requests that the Court grant preliminary approval of the Settlement.

4 **II. SUMMARY OF THE LITIGATION**

5 **A. THE PARTIES**

6 The Huntington is a collections-based educational and research institution established by Henry
7 E. Huntington and Arabella Huntington in San Marino, California. Plaintiff, a former non-exempt
8 employee, was employed by Defendant beginning in approximately 1981 until around January 2023 when
9 he resigned his employment. *See* Declaration of Refugio Garcia (“Garcia Decl.”), ¶ 2.

10 **B. BRIEF PROCEDURAL HISTORY**

11 On September 20, 2022, Plaintiff filed the instant putative class action complaint. *See* Declaration
12 of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On September 20, 2022, Plaintiff submitted a letter to the
13 California Labor & Workforce Development Agency (“LWDA”) and The Huntington of his intention of
14 filing a PAGA claim based on the Labor Code violations alleged in his complaint. *Id.*, **Exhibit 1**. On
15 November 28, 2022, after exhausting his administrative remedies, Plaintiff filed a First Amended Class
16 and Representative Action Complaint adding a cause of action for civil penalties under the PAGA. *Id.*
17 On July 6, 2023, pursuant to a stipulation between the Parties and with approval by the Court, Plaintiff
18 filed a Second Amended Class and Representative Action Complaint adding a cause of action under Labor
19 Code section 203 for failure to pay all wages upon termination of employment.

20 Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA
21 on the same date he files this Motion and will submit a supplemental declaration showing the submission.
22 Lidman Decl., ¶ 36.

23 **III. DUNK/KULLAR ANALYSIS**

24 Settlement is the preferred means of dispute resolution, particularly in complex class action
25 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
26 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
27 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
28 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, The Huntington produced timekeeping and payroll data for all putative
3 class members during the class period through March 31, 2023, as well as its wage and hour policies and
4 other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 11.

5 The time punch data produced by The Huntington included actual time punches and rounded paid
6 hours, which allowed Plaintiff to conduct a rounding analysis. Moreover, from the time and payroll data,
7 Plaintiff was able to analyze meal period violations. Further, if all Settlement Class members brought
8 lawsuits for unpaid wages and/or meal period violations, they would rely on timekeeping records similar
9 to the ones produced by The Huntington.

10 The information provided by The Huntington also allowed Plaintiff to calculate the necessary
11 metrics, including without limitation, class size, total number of workweeks and pay periods for the
12 relevant time periods. The key data points coupled with the timekeeping and payroll records, enabled
13 Plaintiff to create a class-wide exposure model for all the claims at issue, including unpaid wages and
14 penalties potentially owed for alleged minimum and overtime wages, and meal and rest and unpaid wages
15 violations. *Id.*

16 After the detailed review of the documents and data produced by The Huntington, Class Counsel
17 drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's
18 case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and The
19 Huntington's defenses.

20 **B. ARMS-LENGTH NEGOTIATIONS**

21 On June 15, 2023, a mediation was held with Mark S. Rudy, Esq., a well-respected wage and hour
22 class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their
23 opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the
24 claims and defenses. Ultimately, through acceptance of a mediator's proposal, the Parties agreed on a
25 class-wide resolution. *Id.*

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

27 "Parties represented by competent counsel are better positioned than courts to produce a settlement
28 that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities*
Litigation (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced

1 counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and
2 who have been appointed as class counsel in numerous cases alleging similar claims. *See* Lidman Decl.,
3 ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth review of The
4 Huntington's policies and timekeeping and payroll records, and drew on their extensive experience in
5 similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Lidman Decl., ¶¶ 10-28. The
6 Settlement was also reached with the assistance of a mediator. *Id.* This factor strongly supports
7 preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

12 Claim That The Huntington Failed to Pay for All Hours Worked: Plaintiff alleges that he and the
13 Class Members were not fully compensated for all of their time worked because The Huntington would
14 unlawfully shave their work time and/or round their work time such that they would not be fully paid for
15 all time worked. Lidman Decl., ¶ 16. Plaintiff also alleges that this time shaving and/or rounding practice
16 utilized by The Huntington was not-even handed over time and would almost exclusively round and shave
17 in The Huntington's favor such that the employees were routinely underpaid for their time worked and it
18 appeared on average to be an underpayment of approximately 1 minute per shift. *Id.* Additionally,
19 Plaintiff alleges that The Huntington failed to compensate him and other Class Members for undergoing
20 temperature checks and questionnaires related to the COVID-19 pandemic. *Id.* Plaintiff estimates that
21 the temperature checks and questionnaires began in mid-2020 and took about 5 minutes each shift. *Id.*
22 Accordingly, Plaintiff calculated a total wage underpayment of approximately \$320,020 (344,053 shifts
23 x .0167 (1 minute underpaid) x 13.42 average minimum wage² = \$77,107) + (217,297 shifts since mid-
24 2020 x .0833 (5 minutes) x 13.42 average minimum wage = \$242,913). *Id.*

25 The Huntington contends that it compensated Class Members for all of their time worked, and
26 also that many class members were actually overpaid by its rounding practices rather than underpaid.

27
28 ² Minimum wage in 2018 it was \$11.00, in 2019 it was \$12.00, 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 \$13.42.

Lidman Decl., ¶ 17. The Huntington also contends that its rounding practices were lawful, and any unpaid time, if any, was *de minimis* and therefore non-compensable. *Id.* The Huntington also argued that the temperature checks and questionnaires took seconds not minutes and were thus *de minimis*. *Id.* The Huntington further asserts that Plaintiff would be unable to certify given the individualized inquiries that would be required, and also that The Huntington's rounding policy/mechanism was, according to it, neutral on its face and in its application. *Id.* Furthermore, The Huntington asserts that even if Plaintiff could establish violations, their calculations of potential damages grossly overstate the potential recovery, given the limited period of time in which these policies were in effect. For example, Plaintiff's damage theory assumes that the rounding policy was in place throughout the class period, even though the records show that any such policy was discontinued in May of 2021. Similarly, Plaintiff assumes that The Huntington conducted temperature checks at all times since 2020, even though that screening practice lasted for just 14 months. In light of these defenses, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 30% to account for The Huntington's defenses on the merits, to arrive at an estimated exposure of \$123,207.70. *Id.*

Claim That The Huntington Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and the Class Members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 18. Specifically, Plaintiff alleges that due to the work demands imposed by The Huntington, his meal period was often late, short, or missed in violation of California law. *Id.* Additionally, Plaintiff alleges The Huntington failed to provide legally required second meal period on shifts in excess of 10.0 hours. *Id.* Based on Plaintiff's review of the timekeeping records produced in connection with mediation, it appeared The Huntington had a 25% first meal period violation rate and a 96% second meal period violation rate. *Id.* As such, Plaintiff calculated The Huntington's maximum exposure for the meal period claim based on the following violations: (1) late first lunch; (2) missed first meal period; (3) short first meal break; and (4) missed second meal break on shifts over 10 hours is \$1,554,287, inclusive of interest and offset by the meal period premiums paid by Defendants.³ *Id.*

³ Defendants paid about 7,791 meal period premiums or a total of approximately \$152,247 in premiums during the relevant time period.

1 The Huntington counters that it has always maintained a lawful meal period policy and provided
2 non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
3 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
4 than any policy or practice of The Huntington. Lidman Decl., ¶ 19. The Huntington points out that under
5 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the
6 opportunity to take meal periods, not “ensure” meal periods are taken, and that they have always done so.
7 *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). The Huntington also contends that it paid
8 more than \$100,000 in meal period premiums and that Class Members signed second meal period waivers
9 rendering the second meal period violation rate over-valued. Finally, The Huntington contends Plaintiff’s
10 meal period claim is not suited for class certification, since individual inquiries would be required to assess
11 which employees took non-compliant meal periods, how many meal periods were non-compliant or
12 missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
13 period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 55% for
14 the risk of non-certification, and an additional 60% to account for The Huntington’s defenses on the merits
15 to arrive at an estimated exposure of \$279,771.66. *Id.*

16 Claim That The Huntington Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that
17 he and Class Members were also not authorized and permitted to take all required rest periods due to The
18 Huntington’s rest period policies and practices. Lidman Decl., ¶ 20. Specifically, Plaintiff alleges that due
19 to work demands, non-exempt employees were not authorized and permitted to take duty-free net 10
20 minute rest periods. Thus, Plaintiff alleges that he and other non-exempt employees experienced at least
21 one rest period violation on every shift worked in excess of 3.5 hours. *Id.* Thus, at a 100% violation rate
22 on the 303,577 shifts over 3.5 hours plus interest, Plaintiff calculated Defendants’ exposure at \$6,622,811.
23 *Id.*

24 The Huntington contends it has always maintained and enforced lawful rest period policies and
25 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
26 periods in compliance with California law. Lidman Decl., ¶ 21. The Huntington further notes that its
27 policies went beyond the ten-minute rest break requirements of California law by authorizing Settlement
28 Class Members to take 15-minute rest breaks. The Huntington also argues that Plaintiff’s rest period claim

1 is inherently unsuited for class treatment as it requires an individualized inquiry into whether each
2 Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which
3 would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the
4 maximum exposure by 50% for the risk of non-certification, and an additional 55% to account for The
5 Huntington's defenses on the merits to arrive at an estimated exposure of \$1,490,132.48. *Id.*

6 Claim that The Huntington Failed to Reimbursed Business Expenses: Plaintiff alleges that The
7 Huntington failed to reimburse him and Class Members for necessary business expenditures, including the
8 use of their personal cellular phones for work purposes, as required under Labor Code section 2802.
9 Lidman Decl., ¶ 22. Accordingly, Plaintiff estimates employees should have been reimbursed
10 approximately \$30.00/month for reasonable cellular phone related expenses. As such, Plaintiff calculated
11 The Huntington's maximum exposure for this claim at approximately \$746,161, inclusive of interest. *Id.*

12 The Huntington denies that it failed to reimburse for any necessary expenses, notes that its policies
13 authorized reimbursement for cell phone expenses, and that The Huntington actually paid for cell phone
14 reimbursement for numerous employees. Lidman Decl., ¶ 23. The Huntington also argues that this claim
15 is not suitable for class treatment, it maintained a lawful expense reimbursement policy, Plaintiff was not
16 required to use his personal cellular phone, and individualized determinations would be required as to how
17 often each employee used their personal cellular phone. *Id.* Accordingly, Plaintiff discounted the
18 maximum exposure by 55% for the risk of non-certification, and an additional 65% to account for The
19 Huntington's defenses on the merits and financial condition, to arrive at an estimated exposure of
20 \$117,520.36. *Id.*

21 Claim That The Huntington Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges
22 that The Huntington issued inaccurate wage statements in violation of Labor Code § 226 as a result of the
23 alleged unpaid minimum wages and overtime wages, and meal and rest period premium wages described
24 above. Lidman Decl., ¶ 24. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a)
25 because the wage statements issued to Class Members did not include all hours worked and the rate at
26 which they were being paid. *Id.* Plaintiff's data analysis reflected that there were approximately 14,286
27 wage statements issued during the relevant time period. *Id.* Therefore, applying \$50 for the first violation
28 and \$100 for each subsequent violation, Plaintiff calculated The Huntington's exposure is \$1,402,900. *Id.*

1 The Huntington denies that there were any wage statement violations and further argues that its
2 alleged wage statement violations could not be shown to be “knowing and intentional,” and that Plaintiff
3 cannot show that he or any other employee “suffer[ed] injury” as a result of the alleged wage statement
4 violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 25. As such,
5 Plaintiff discounted the calculated exposure by 50% for a risk of non-certification and an additional 55%
6 for a risk of being unsuccessful on the merits, to arrive at an estimated total of \$315,652.50. *Id.*

7 The Huntington is Liable for Waiting Time Penalties: Plaintiff alleges that The Huntington is also
8 liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all
9 wages upon separation. Lidman Decl., ¶ 26. There are approximately 331 Class Members who have
10 separated their employment with Huntington during the relevant time period who could be entitled to
11 waiting time penalties. *Id.* Therefore, Plaintiff calculated The Huntington’s maximum exposure for
12 waiting time penalties at approximately \$1,393,756. *Id.*

13 The Huntington asserts it has strong defenses to the waiting time claim because there exist good-
14 faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 27.
15 *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition
16 of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith
17 dispute” over whether employee was exempt precluded imposition of waiting time penalties over
18 contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of
19 non-certification, and an additional 55% to account for The Huntington’s defenses on the merits, to arrive
20 at an estimated exposure of \$344,954.61. *Id.*

21 The Huntington is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the
22 PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 28. Plaintiff calculated
23 The Huntington’s maximum exposure at \$1,428,600 (14,286 pay periods x \$100 initial violation rate). *Id.*;
24 *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate
25 applies until employer is notified that it is violating a Labor Code provision).

26 The Huntington argues that Plaintiff’s PAGA claim will fail for the same reasons that his
27 underlying claims will fail. Lidman Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
28 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also

fail.”). The Huntington also argues that aspects of the PAGA claim are time-barred, insofar as some of the practices/policies challenged by Plaintiff (e.g., rounding, Covid screenings) were discontinued more than a year before the filing of the PAGA notice. The Huntington also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find The Huntington liable for any of Plaintiff’s claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 50% for a risk of being unsuccessful on the merits, and an additional 55% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$321,435.00. *Id.*

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$2,992,674.30. *Lidman Decl.*, ¶ 30. The proposed settlement of \$1,221,495.00 therefore represents approximately 41% of the reasonably forecasted recovery for the Class. *Id.* Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class Members, and will still provide an average recovery to Settlement Class Members of over \$950.00.

The proposed settlement reflects approximately 41% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus, Plaintiff submits that the proposed settlement is within the range of approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has expired.

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

3 Although the parties engaged in informal discovery throughout this action, the parties still had
4 significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 34.
5 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of
6 a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if
7 the classes were certified, the parties would incur considerably more attorneys' fees and costs through a
8 possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the
9 accompanying expense. Thus, this factor supports preliminary approval.

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

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

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

20 **A. NUMEROSITY IS SATISFIED.**

21 Here, the proposed Class consists of at least 748 members, and is therefore sufficiently numerous
22 as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d
23 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is
24 satisfied.

25 Further, the class is "ascertainable" because it is defined as "all current and former hourly-paid,
26 non-exempt employees who worked for Defendant Henry E. Huntington Library and Art Gallery in
27 California at any time from September 20, 2018 through granting of preliminary approval of Class Action
28 Settlement or September 20, 2023, whichever occurs sooner" and such members can be identified from
29 Defendant's personnel/business records. Lidman Decl., ¶ 14.

1 **B. COMMONALITY IS SATISFIED.**

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

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

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

17 **C. TYPICALITY IS SATISFIED.**

18 The typicality requirement is satisfied where class representatives have claims that are typical of
19 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
20 1347. Here, Plaintiff’s claims are typical of those held by the members of the proposed Class. Plaintiff
21 was employed by The Huntington during the Class Period as a non-exempt employee and was subject to
22 The Huntington’s wage and hour policies at issue in this case. *See Garcia Decl.*, ¶ 2. Further, Plaintiff
23 was allegedly injured by the same challenged policies that allegedly injured the Class as a whole. *Id.*
24 Given that The Huntington’s policies and practices applied to all non-exempt employees, Class Members
25 possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, typicality
26 is satisfied.

27 //

28 //

1 **D. ADEQUACY IS SATISFIED.**

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

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

13 **V. SETTLEMENT AGREEMENT**

14 **A. THE BASICS**

15 1. Class Definition and Release Period

16 The proposed Settlement Class is defined as “current and former hourly-paid, non-exempt
17 employees who worked for Defendant Henry E. Huntington Library and Art Gallery in California at any
18 time from September 20, 2018 through granting of preliminary approval of Class Action Settlement or
19 September 20, 2023, whichever occurs sooner.” Lidman Decl., ¶ 14. For purposes of this Settlement
20 Agreement, the “Class Period” shall mean the time period of September 20, 2018 through granting of
21 preliminary approval of Class Action Settlement or September 20, 2023, whichever occurs sooner.” *Id.*

22 2. Aggrieved Employees and PAGA Period

23 The proposed Aggrieved Employees are defined as “all current and former hourly-paid, non-
24 exempt employees who worked for Defendant Henry E. Huntington Library and Art Gallery in California
25 at any time from September 20, 2021 through granting of preliminary approval of Class Action Settlement
26 or September 20, 2023, whichever occurs sooner.” Nguyen Decl., ¶ 14. For purposes of this Settlement
27 Agreement, the “PAGA Period” shall mean the time period of September 20, 2021 through granting of
28 preliminary approval of Class Action Settlement or September 20, 2023, whichever occurs sooner.” *Id.*

1 **B. RELEASE OF CLAIMS**

2 1. Scope of Participating Class Members' Release

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

20 2. Scope of Aggrieved Employees' Release

21 All Aggrieved Employees are deemed to release, on behalf of themselves and their respective
22 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
23 Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
24 alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice
25 including the (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide
26 meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide
27 premium wages in lieu thereof; (5) wage statement violations under Labor Code section 226, *et seq.*; (6)
28 failure to timely pay all wages due at separation, (7) 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. Settlement, ¶ 5.

C. MONETARY TERMS OF SETTLEMENT

1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, The Huntington will pay a Gross Settlement Amount ("GSA") of \$1,221,495.00.⁴ 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 30 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"):	\$1,221,495.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$407,165.00
Minus Court-approved, verified costs (up to \$30,000.00):	\$30,000.00
Minus Court-approved Class Representative Service Award:	\$7,500.00
Minus Settlement Administration Costs:	\$13,500.00
Minus PAGA payment to the LWDA:	\$37,500.00
Net Settlement Amount ("NSA"):	\$725,830.00

⁴ Based on its records, Defendant estimates that, as of the date of the mediation in this Action, (1) there were 748 Class Members and 81,433 Total Workweeks during the Class period. If the number of workweeks during the Settlement Class Period increases by more than 10% above 81,433 (*i.e.*, if there are more than 89,576 workweeks during the Settlement Class Period), Defendants agree to increase the Gross Settlement Amount on a proportional percentage basis above 10% (*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 1%). Settlement, ¶ 8.

Settlement Class Members

748

Average Individual Payment: NSA/Settlement Class

\$970.36

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 Settlement results in a Net Settlement Amount ("NSA") of at least \$725,830.00 to be paid out to all Settlement Class Members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 2.

Therefore, this calculation of $\$725,830/748 = \970.36 , assumes the Court approves the requested attorneys' fees, maximum attorneys' costs, enhancement award, settlement administration costs, and payment to the LWDA. *Id.* This calculation also assumes that all 748 putative class members participate in the settlement and do not submit timely requests for exclusions. *Id.*

3. Class Representative Service Payment

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

Plaintiff will separately apply for a service payment at the time of seeking final approval in the amount of \$7,500.00. Lidman Decl., ¶ 33, Exh. 2 (Settlement, ¶ 3.2.1.); Garcia Decl., ¶¶ 3-12. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶33; Garcia Decl., ¶¶ 3-12; Settlement ¶ 3.2.1.

The Class Representative Service Payment awarded by the Court shall be paid by the Settlement Administrator to Plaintiff from the Gross Settlement Amount within 14 days after Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

1 4. Attorneys' Fees and Costs

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

6 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
7 is currently estimated to be \$407,165.00, and up to \$30,000.00 in verified costs reimbursement. *See*
8 Settlement, ¶ 3.2.2.; Lidman Decl., ¶ 31. Plaintiff submits the requested fee is fair compensation for
9 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
10 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman
11 Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
12 analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records,
13 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
14 Motion, and otherwise litigating the case. Lidman Decl., ¶ 31. Class Counsel expect to expend additional
15 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions
16 from Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

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

22 5. Payroll Taxes

23 The Settlement provides that The Huntington's payroll taxes shall be paid separately from, and in
24 addition to, and the Class Settlement Amount. Settlement ¶ 4.3. The employer-side taxes shall be
25 deposited when it funds the Gross Settlement Amount. *Id.*

26 6. Payment Formula

27 There were approximately 748 total Class Members as of the date of mediation. Lidman Decl., ¶
28 14. An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
number of Workweeks worked by all Participating Class Members during the Class Period and (b)

1 multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.5. Thus, the
2 average Individual Class Payment is **\$970.36**.

3 Additionally, there were approximately 524 Aggrieved Employees as of the date of mediation.
4 Lidman Decl., ¶ 14. The Administrator will calculate each Individual PAGA Payment by (a) dividing the
5 amount of the Aggrieved Employees' 25% share of PAGA Penalties \$12,500.00 by the total number of
6 PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
7 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees
8 assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement,
9 ¶ 3.2.4.1.

10 Thus, the average Individual PAGA Payment is projected to be approximately **\$23.85**. *Id.*

11 7. Tax Allocation

12 For purposes of calculating applicable taxes and withholdings, Twenty Percent (20%) of each
13 Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims
14 (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS
15 W-2 Form. Eighty Percent (80%) of each Participating Class Member's Individual Class Payment will be
16 allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage
17 Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Settlement, ¶
18 3.2.6.

19 8. PAGA Penalty

20 The parties have agreed to a PAGA award of \$50,000.00 and in accordance with California Labor
21 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or
22 \$37,500.00. Settlement ¶ 3.2.4. This \$37,500.00 represents roughly 3.07% of the \$1,221,495.00 Gross
23 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.
24 *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D.
25 Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom Comm'n Cases*,
26 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA
27 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 \$13,500.00. *See* Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary Approval
5 filed concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the proposed class
6 size of approximately 748 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 25 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 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, ¶ 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, Plaintiff respectfully requests 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: August 15, 2023

Respectfully submitted,
LIDMAN LAW, APC

18
19 By:



20 Scott M. Lidman
21 Attorney for Plaintiff
22 REFUGIO GARCIA
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