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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LAKE

WILLIAM COLEMAN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PROENERGY CRAFTS, INC., a Missouri
corporation; EVAPTECH, INC., a Maryland
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CV423136

[Assigned for all purposes to the Hon. Michael S.
Lunas, Dept. 1]

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

Date: September 23, 2024
Time: 9:00
Dept.: 1

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 September 23, 2024 at 9:00 a.m. in Department 1 of the above-entitled Court, located at 255 N. Forbes
4 Street, 4th Floor, Lakeport, California 95453, Plaintiff William Coleman (“Plaintiff”), individually and
5 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

9 All persons who worked for EvapTech through ProEnergy and/or American
10 Professional Staffing Solutions, LLC as non-exempt, hourly paid employees in
11 California at any time during the Class Period.

12 For purposes of this Settlement Agreement, the “Class Period” shall the period
13 from September 16, 2018, through the date in which the Court signs an order
granting Preliminary Approval of the Settlement.

- 14 3. Preliminary appointment of Plaintiff William Coleman as Class Representative;
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 Settlement Administrators (“Phoenix”) as the third-party
22 Settlement Administrator for mailing notices; and
23 7. Approval of the proposed Court-approved Notice of Class Action Settlement and Hearing
24 Date for Final Court Approval and an order that it be disseminated to the proposed
25 Settlement Class Members as provided in the Settlement Agreement.

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

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

3
4 Dated: July 31, 2024

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



8 Scott M. Lidman
9 Attorneys for Plaintiff
10 WILLIAM COLEMAN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which Defendants have agreed to pay \$380,000.00 to the following
13 Settlement Class:

14 All persons who worked for EvapTech through ProEnergy and/or American
15 Professional Staffing Solutions, LLC as non-exempt, hourly paid employees in
16 California at any time during the Class Period.

17 For purposes of this Settlement Agreement, the “Class Period” shall be the period
18 from September 16, 2018, through the date in which the Court signs an order
granting Preliminary Approval of the Settlement.

19 Settlement Class members do not need to file a claim and will automatically receive a payment
20 unless they affirmatively opt-out. After deducting administration costs, Plaintiff’s service award,
21 attorneys’ fees and costs, and PAGA civil penalties payable to the LWDA and the PAGA Employees,
22 the remaining Net Settlement Amount (“NSA”) of approximately \$185,833.34 will be distributed to all
23 Settlement Class members who do not opt-out. With approximately 430 Settlement Class members, the
24 average payment to each Settlement Class member is currently expected to be approximately **\$432.17**,
25 which does not include the \$5,000 PAGA Amount to the 236 Aggrieved Employees.

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

27 _____
28 ¹ The Stipulation of Class Action and PAGA Settlement (“Settlement”) is attached to the Declaration of Scott Lidman as Exhibit 2. The proposed Court-approved Notice of Class Action Settlement and Hearing Date for Final Court Approval is attached to the Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the Settlement.

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, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-** 6 **LENGTH NEGOTIATIONS**

7 **1. The Parties**

8 Defendant EvapTech, Inc. provides third-party solutions for the energy industry, including
9 technical services, field services, operations and maintenance, asset management, and monitoring and
10 diagnostics. Defendant ProEnergy Crafts, Inc. provided payroll processing services for third-party
11 clients in California. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff asserts he
12 was jointly employed by Defendants as an hourly, non-exempt employee and performed work for
13 Defendant EvapTech, Inc. at its power plant in Middletown California where he was responsible for
14 installing cooling towers, among other job duties. *See* Declaration of William Coleman (“Coleman
15 Decl.”), ¶ 2.

16 **2. Procedural History**

17 On September 16, 2022, Plaintiff filed a putative class action complaint against Defendants in
18 Lake County Superior Court. Lidman Decl., ¶ 10. On September 16, 2022, Plaintiff sent a letter to the
19 California Labor Workforce Development Agency (“LWDA”) regarding Defendants’ alleged Labor
20 Code violations and Plaintiff’s intent to bring a claim for civil penalties under the Labor Code Private
21 Attorneys General Act (“PAGA”). On March 5, 2024, Plaintiff sent a supplemental PAGA letter to the
22 LWDA. Lidman Decl., ¶ 10, Exh. 1. After exhausting his administrative requirements under the PAGA,
23 Plaintiff filed a First Amended Class and Representative Action Complaint on May 9, 2024 adding
24 causes of action for: (i) failure to provide accurate wage statements; (ii) failure to timely pay all wages
25 upon separation of employment; and (iii) civil penalties under the PAGA. As such, Plaintiff’s operative
26 complaint alleges that Defendants: (1) failed to pay all minimum wages owed; (2) failed to pay all
27 overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and
28 permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6)

1 failed to timely pay all wages upon separation of employment; (7) engaged in unlawful business
2 practices; and (8) are liable for civil penalties under the PAGA. *Id.*

3 **3. Discovery**

4 After agreeing to participate in early mediation, Defendants informally produced time records
5 and payroll data for a 20% sampling of the putative class as well as its wage and hour policies and other
6 relevant documents and information relevant to the claims alleged in advance of mediation. Lidman
7 Decl., ¶ 11.

8 Accordingly, a sample of this group is representative of the entire Settlement Class and is
9 statistically significant and reliable for purposes of evaluating a potential settlement. *See e.g., Tyson*
10 *Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016) (The Supreme Court held that statistical evidence
11 was admissible to prove liability and damages across a class, thereby allowing it to support class action
12 certification) In *Tyson*, a case involving a class of employees claiming that they did not receive
13 statutorily mandated overtime pay for time spent “donning and doffing protective gear,” the court
14 upheld the use of statistical evidence to calculate the additional time class members spent donning and
15 doffing, even though differences in the type of gear worn meant that plaintiffs may have taken different
16 amounts of time to don and doff. *Id.* at pp. 1042, 1048–1409.

17 Here, the statistical analysis of the time punch and payroll data was used for the limited purpose
18 of determining the predominance of rounding and meal period violations in support of Plaintiff’s claims
19 that Defendants maintained policies and practices during the relevant time period of not paying its non-
20 exempt employees for all time worked and not providing all legally compliant meal and rest periods.
21 Indeed, based on the time punch data produced which included actual time punches and rounded paid
22 hours, Plaintiff was able to conduct a rounding analysis and conclude that it was widespread during the
23 entire relevant time period. The Settlement Class members did similar work and were paid under the
24 same wage and hour policies and procedures. Given these circumstances, the experiences of a subset
25 of employees – the 20% sampling for each subclass- can be probative as to the experiences of all of the
26 Settlement Class. *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938 (As in *Tyson*, under
27 these circumstances the percentage of the subset of employees who signed meal agreements lacking the
28 required revocation language during a given time period is probative as to the percentage of the class
that signed meal agreements lacking the required revocation language.) Further, if all Settlement Class

1 members brought lawsuits for unpaid wages and/or meal period violations, they would rely on
2 timekeeping records similar to the ones in this sampling which also supports a finding that the sampling
3 is statistically reliable.

4 In addition to the representative sampling, Defendants provided a list of hire and termination
5 dates for Plaintiff to calculate the relevant metrics and data points at issue. This information coupled
6 with the representative data sampling, enabled Plaintiff to extrapolate to the entire class and aided in
7 Plaintiff's creation of a class-wide exposure model for all the claims at issue, including unpaid wages
8 and penalties potentially owed for alleged minimum and overtime wages, and meal and rest and unpaid
9 wages violations. Ultimately, this discovery allowed the parties to assess the merits and value of
10 Plaintiff's claims and Defendants' defenses thereto. Lidman Decl., ¶ 11.

11 **4. Arms-Length Negotiations**

12 On February 28, 2024, after extensive research and analysis, including a detailed analysis of
13 Defendants' potential exposure by Plaintiff, a mediation was held with Tripper Ortman, a well-respected
14 wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the Parties vigorously
15 debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal
16 basis for the claims and defenses, as well as the legal basis for the claims and defenses. *Id.* Ultimately,
17 the Parties agreed in principle on a class-wide resolution. *Id.* Thereafter, in the weeks that followed,
18 the Parties signed the Stipulation of Class Action and PAGA Settlement ("Settlement"). Lidman Decl.,
19 ¶ 12, Exh. 2.

20 **III. ARGUMENT**

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

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

28 As explained below, the Settlement Class satisfies the criteria for certification of a settlement
class under California law because: (1) the Settlement Class is so numerous that joinder would be

1 impractical; (2) common questions of law and fact predominate over individual questions such that
2 class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims
3 are typical of the claims of absent Settlement Class Members; and (4) Plaintiff and his counsel will
4 fairly and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

5 **1. Numerosity is Satisfied.**

6 Here, there are approximately 430 Settlement Class Members. Therefore, numerosity is
7 satisfied. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class
8 representing 10 beneficiaries of a trust sufficiently numerous).

9 Further, a class is "ascertainable" where the members "may be readily identified without
10 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
11 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class
12 is defined as "All persons who worked for EvapTech through ProEnergy and/or American Professional
13 Staffing Solutions, LLC as non-exempt, hourly paid employees in California at any time during the
14 Class Period. For purposes of this Settlement Agreement, the "Class Period" shall the period from
15 September 16, 2018, through the date in which the Court signs an order granting Preliminary Approval
16 of the Settlement." Lidman Decl., ¶ 14.

17 In addition, Aggrieved Employees is defined as: "All persons who worked for EvapTech
18 through ProEnergy and/or American Professional Staffing Solutions, LLC as non-exempt, hourly paid
19 employees in California at any time during the PAGA Period. For purposes of this Settlement
20 Agreement, the "PAGA Period" shall the period from September 16, 2021, through the date in which
21 the Court signs an order granting Preliminary Approval of the Settlement. *Id.*

22 **2. Commonality is Satisfied.**

23 The focus in a certification dispute is not the merits, but rather on what types of questions,
24 "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
25 *Court (Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members' claims arise from
26 Defendants' common, uniform policies and practices that applied to Plaintiff and Settlement Class
27 Members during the class period. Lidman Decl., ¶ 15. As a result of the common and uniform policies
28

1 and practices that applied to all Settlement Class Members, their claims involve common questions of
2 law and fact, including but not limited to:

- 3 1. Whether Defendants properly paid all minimum wages;
- 4 2. Whether Defendants properly paid all overtime wages;
- 5 3. Whether Defendants provided all legally compliant meal periods;
- 6 4. Whether Defendants authorized and permitted all legally required rest periods;
- 7 5. Whether Defendants failed to furnish accurate, itemized wage statements;
- 8 6. Whether Defendants failed to timely pay all wages owed upon separation; and
- 9 7. Whether Defendants' conduct constituted unlawful and/or unfair business practices.

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

12 **3. Typicality is Satisfied.**

13 The typicality requirement is satisfied where class representatives have claims that are typical
14 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
15 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative
16 class in a consumer class action).

17 Here, Plaintiff's claims are typical of those held by the Settlement Class. First, Plaintiff asserts
18 he was employed by Defendants during the Class Period as a non-exempt employee and was subject to
19 Defendants' wage and hour policies at issue in this case. *See Coleman Decl.*, ¶ 2. Second, Plaintiff
20 was injured by the same challenged policies that injured the Settlement Class as a whole. For example,
21 Plaintiff asserts that he, like the Settlement Class, was not paid all legally required minimum wages
22 and overtime wages, was not provided with all required meal periods, was not authorized and permitted
23 to take all required rest periods, did not receive meal and rest period premium wages when he was not
24 provided compliant meal or rest periods, was not provided with accurate, itemized wage statements,
25 and was not paid all of his wages owed upon separation of employment. *Id.* Given that Defendants'
26 policies and practices applied to all non-exempt employees, Settlement Class Members possess a
27 similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's
28 claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

1 **4. Adequacy is Satisfied.**

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

5 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he
6 seeks to represent. See Coleman Decl., ¶ 11. Indeed, Plaintiff’s interests are aligned with those of the
7 Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. *Id.*
8 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. See
9 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was
10 no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic
11 to those of the proposed class). Further, Class Counsel also have extensive experience in wage and
12 hour class action litigation and have vigorously litigated this case. See Lidman Decl., ¶¶2-8;
13 Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Declaration of Milan Moore (“Moore Decl.”),
14 ¶¶ 2-4.

15 **B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE**
16 **PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE, AND**
17 **REASONABLE**

18 Settlement is the preferred means of dispute resolution, particularly in complex class action
19 litigation. See *In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
20 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. See
21 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
22 Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an
23 experienced wage and hour class action mediator. See *e.g. Kullar v. Foot Locker Retail, Inc.* (2008)
24 168 Cal.App.4th 116, 130.

25 **1. The Preliminary Approval Standard is Met**

26 To make a fairness determination, the Court should consider several factors, including: “the
27 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the
28 risk of maintaining class action status through trial, the amount offered in settlement, the extent of

discovery completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. The Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case for the following reasons.

a. The Strength of Plaintiff’s Case

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

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

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

c. Risk of Maintaining Class Action Status

Plaintiff had not yet filed his motion for class certification and as such, the extent to which Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial.

d. Overview of the Settlement Agreement

If the Court approves this Settlement, Defendants will pay a Gross Settlement Amount (“GSA”) of \$380,000.² Lidman Decl., ¶ 13, Exh. 2 (Settlement, ¶ 3.1). Significantly, this Settlement is non-

² If the number of workweeks during the Class Period exceeds 5,306 by more than ten (10) percent, meaning that the actual workweeks are more than 5,836, EvapTech shall have the option of either: (1) increasing the amount of the Gross Settlement Amount proportionally for the excess increase in the total number of workweeks beyond the 5,836 (so that the Gross Settlement Amount will increase by 1% for every 1% increase in workweeks over the 10% threshold, the increase to be paid

reversionary, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* (Settlement, ¶ 3.1). Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$380,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$126,666.66
Minus Court-approved, verified costs (up to):	\$30,000.00
Minus Court-approved Class Representative Service Award (up to):	\$7,500.00
Minus Settlement Administration Costs:	\$10,000.00
Minus PAGA civil penalties:	\$20,000.00
Net Settlement Amount (“NSA”):	\$185,833.34

Defendants shall fund the Gross Settlement Amount and the corresponding amounts necessary to pay the payroll taxes on the Wage Portion of the Individual Class Payments as determined by the Administrator within 30 calendar days of the Effective Date. Lidman Decl., ¶ 13, Exh. 2 Settlement ¶ 4.1.3. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Members object to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members object to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or, (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. Settlement, ¶ 1.19.

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties, the Settlement requires Defendants to pay a Net Settlement Amount (“NSA”) of at least **\$185,833.34** to all Settlement Class Members who do not timely opt out. This amount does not include the \$5,000.00 Aggrieved Amount to be paid to the PAGA Employees.

by EvapTech) or (2) modifying the applicable end date of the Class Period to a date prior to incurring the pro rata increase to keep the maximum workweeks at 5,836 (which is 10% more than 5,306) and not to trigger the escalator clause. See Settlement ¶ 8.

1 According to Defendants, there are approximately 430 total Settlement Class Members. Lidman
2 Decl., ¶ 14. Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is
3 projected to be approximately **\$432.17, exclusive of any PAGA civil penalties.** *Id.* The Individual
4 Settlement Awards shall be determined as follows:

5 i. An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by
6 the total number of Class Workweeks worked by all Participating Class Members during
7 the Class Period and (b) multiplying the result by each Participating Class Member's
8 Class Workweeks. *See* Settlement, ¶ 3.2.4.

9 ii. **PAGA Amount:** The Administrator will calculate each Individual PAGA Payment by (a)
10 dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
11 (\$5,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved
12 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved
13 Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and
14 liability for any taxes owed on their Individual PAGA Payment. *See* Settlement, ¶ 3.2.8.

15 Based on these formulas, with approximately 5,306 workweeks during the Class Period, the
16 Settlement equates to about \$35.02 per workweek (\$185,833.34/5,306).

17 The average individual portion of PAGA Amount is approximately \$21.19. There are about 99
18 pay periods during the PAGA Period, which equates to about \$50.51 per pay period (\$5,000/99).

19 Settlement Class Members will have 45 calendar days from the mailing of the Class Notice to
20 opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without
21 unduly delaying the Settlement. *See* Settlement, ¶ 7.4. Those Settlement Class Members who do not
22 opt-out of the Settlement will be bound by its terms and will release all claims against Defendants
23 included within the Settlement, for the period of September 16, 2018 through the date of preliminary
24 approval. *See* Settlement, ¶ 5.4. Settlement Class Members who opt-out of Settlement will still receive
25 a portion of the PAGA Amount if they are a PAGA Employee during the PAGA Period.

26 As this is a **non-reversionary Settlement, 100% of the NSA shall be consumed in that if a**
27 Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-
28 out shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did
not opt-out.

e. The Parties Engaged in Fair and Honest Negotiations.

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
of a mediator. In connection with mediation, Defendants produced timekeeping and payroll data for

20% sample. Plaintiff conducted an analysis of the payroll data and time records produced by Defendants to calculate Defendants' potential exposure for Plaintiff's claims. Lidman Decl., ¶ 11. After the detailed review of the payroll and time records and other documents and policies produced by Defendants, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendants' defenses thereto, if a settlement could not be reached. *Id.*

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

Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential treatment to the class representative or segments of the class, and is within the range of possible approval, as discussed in detail below. The Settlement will provide monetary relief to Settlement Class Members. The amounts proposed for Class Counsel's attorneys' fees and costs, and service award are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

f. Amount Offered in Settlement Given Realistic Value of Claims

Unpaid Wages: Plaintiff alleges that Defendants, as joint employers, failed to compensate its non-exempt employees for all time worked because Defendants would keep track of Plaintiff's time worked and would unlawfully round/shave time worked such that Plaintiff would not be fully paid for all time worked. Lidman Decl., ¶ 16. This time-shaving and/or rounding practice utilized by Defendants was not even-handed over time and would almost exclusively round and shave in Defendants' favor such that Plaintiff was routinely underpaid for all his time worked. *Id.* Additionally, during the relevant time period, Defendants paid their non-exempt employees bonuses and per diems but failed to include these payments in the regular rate, which resulted in a systematic underpayment of overtime wages to Plaintiff and the other non-exempt employees. As a result of Defendants' failure to properly track the time worked by Plaintiff and other non-exempt employees, Defendants failed to

1 pay Plaintiff and other non-exempt employees for all minimum and overtime wages owed. *Id.*
2 Plaintiff's expert calculated Defendants' exposure at \$382,491. *Id.*

3 Defendant ProEnergy Crafts, Inc. asserts it only provided payroll processing services and did
4 not legally employ Plaintiff or any of the putative class members. To the extent Defendants can be
5 proven to have employed Plaintiff and the putative class, Defendants contend that they compensated
6 Settlement Class members for all of their time worked, and any unpaid time was *de minimis* and
7 therefore non-compensable. Lidman Decl., ¶ 17. Defendants further contend that they did not have a
8 rounding policy or practice during the relevant time period. Further, Defendants contend any bonuses
9 paid during the relevant time period were discretionary and did not need to be included in the regular
10 rate of pay for overtime purposes. See 29 C.F.R. §§778.208, 778.211 (excluding "discretionary"
11 bonuses from the regular rate); see also DLSE Manual § 49.1.2.4(3) (bonuses are discretionary, and
12 therefore excludable, if "both the fact that payment is to be made and the amount of the payment" are
13 discretionary). In light of these defenses, Plaintiff discounted the maximum exposure by 60% for the
14 risk of non-certification, and an additional 45% to account for Defendants' defenses on the merits to
15 arrive at an estimated exposure of approximately \$84,148.02.

16 Meal Period Violations: Plaintiff alleges that he and Settlement Class Members were not
17 provided with all legally-required meal periods in compliance with California law due to Defendants'
18 unlawful meal period policies/practices. Lidman Decl., ¶ 18. Due to Plaintiff's job duties, Plaintiff was
19 often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or
20 which were at least 30 minutes in length. *Id.* Plaintiff's retained expert calculated Defendants'
21 maximum exposure for meal period violations at **\$603,030**. *Id.*

22 To the extent they legally employed Plaintiff and the putative class members, Defendants counter
23 that they have always provided non-exempt employees with an opportunity to take legally compliant
24 meal periods, and any non-compliant meal periods reflected in employee timekeeping records were
25 solely the result of employee choice, rather than any policy or practice of Defendants. Lidman Decl., ¶
26 19. Defendants also point out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th
27 1004, they are only required to "provide" the opportunity to take meal periods, not "ensure" meal periods
28 are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure"

standard). Defendants contend Plaintiff's meal period claim is not suited for class certification and individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an additional 45% to account for Defendants' defenses on the merits to arrive at an estimated exposure of \$198,999.90. *Id.*

Rest Period Violations: Plaintiff alleges that he and other Settlement Class Members were not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices which fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Lidman Decl., ¶ 20. Specifically, Plaintiff worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period worked, or *major fraction thereof* as a result of the work demands imposed by Defendants. *Id.* Plaintiff's retained expert calculated Defendants' maximum exposure for rest period violations at **\$603,030**. *Id.*

To the extent they employed Plaintiff and the putative class, Defendants contend they have always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. Defendants argue that Plaintiff's rest period claims are inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 55% to account for Defendants' defenses on the merits to arrive at an estimated exposure of \$94,977.23. *Id.*

Wage Statement Violations: Plaintiff further alleges that Defendants issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages described above. Lidman Decl., ¶ 22. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff's

1 retained expert calculated Defendants' maximum exposure at **\$6,600**. *Id.*

2 Defendants argue that their alleged wage statement violations could not be shown to be "knowing
3 and intentional," and that Plaintiff cannot show that he or any other putative class member "suffer[ed]
4 injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
5 imposition of penalties. Lidman Decl., ¶ 23. As such, Plaintiff discounted the calculated exposure by
6 50% for a risk of non-certification and an additional 55% for a risk of being unsuccessful on the merits
7 to arrive at an estimated total of \$1,485.00. *Id.*

8 Waiting Time Penalties: Plaintiff alleges that Defendants are also liable for waiting time penalties
9 under Labor Code section 203 as a result of its failure to pay all wages upon separation of employment.
10 Lidman Decl., ¶ 24. Based on the data provided by Defendants, all Settlement Class Members separated
11 their employment with Defendants during the relevant time period who could be entitled to waiting time
12 penalties. *Id.* Therefore, Plaintiff's retained expert calculated Defendants' maximum exposure at
13 **\$3,234,724**. *Id.*

14 Defendants assert they have strong defenses to the waiting time claim because there exist good-
15 faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶
16 25. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude
17 imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding
18 that "good faith dispute" over whether employee was exempt precluded imposition of waiting time
19 penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
20 50% for the risk of non-certification, and an additional 65% to account for Defendants' defenses on the
21 merits to arrive at an estimated exposure of approximately \$566,076.70. *Id.*

22 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
23 foregoing alleged Labor Code violations. Lidman Decl., ¶ 26. Plaintiff calculated Defendants' exposure
24 at approximately **\$9,900** (99 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas Corp.*
25 *No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is
26 notified that it is violating a Labor Code provision).

27 Defendants argue that Plaintiff's PAGA claim will fail for the same reasons that his underlying
28 claims will fail. Lidman Decl., ¶ 27; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147

1 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
2 Defendants also maintain that, given their good faith defenses, this Court would exercise its discretion
3 to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiff’s
4 claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th
5 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case
6 No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8
7 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 50% for a
8 risk of being unsuccessful on the merits, and an additional 35% to account for the possibility of this
9 Court reducing penalties, to arrive at an estimated exposure of approximately \$3,217.50. *Id.*

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

11 Using these estimated figures for each of the claims described above, Plaintiff predicted the
12 realistic total recovery for the Settlement Class would be approximately \$948,904.35. Lidman Decl., ¶
13 28. The proposed settlement of \$380,000.00 therefore represents approximately 40% of the reasonably
14 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
15 will provide tangible monetary relief to Settlement Class Members, and will still provide an average
16 recovery to Settlement Class Members of over \$400.00.

17 The proposed settlement reflects approximately 40% of the estimated recovery the Settlement
18 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
19 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
20 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*
21 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
22 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459
23 (approving settlement representing about one-sixth of potential recovery); *Nat’l Rural Telecomm.*
24 *Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed
25 settlement may be acceptable even though it amounts to only a fraction of the potential recovery that
26 might be available to the Settlement Class members at trial”). Thus, Plaintiff submits the settlement is
27 within the range of possible approval, such that notice should be provided to the Settlement Class so
28 that they can consider the Settlement. The Court will have the opportunity to again assess the

1 reasonably of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

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

3 “Parties represented by competent counsel are better positioned than courts to produce a
4 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
5 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
6 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
7 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*;
8 Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth review of
9 Defendants’ policies and timekeeping and payroll records and drew on their extensive experience in
10 similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Lidman Decl., ¶¶ 10-26.
11 The Settlement was also reached with the assistance of an experienced and respected wage and hour
12 class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See*
13 *Kullar, supra*, 168 Cal.App.4th at 130.

14 **i. Attorneys’ Fees and Costs**

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

22 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
23 is currently estimated to be \$126,666.66, and up to \$30,000 in verified costs reimbursement. *See*
24 Settlement, ¶ 6; Lidman Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for
25 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
26 *Id.* Further, Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman
27 Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
28 analyzing Plaintiff’s claims, conducting legal research, reviewing Defendants’ documents and policies,

analyzing Settlement Class Members’ timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 29. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

Class Counsel submits that the request for attorneys’ fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys’ fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

j. Administration Costs

Phoenix Settlement Administrator’s fees and expenses are estimated not to exceed \$10,000.00. See Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary Approval filed concurrently herewith (“Lawrence Decl.”). This includes sending the Notice in English only due to the nature of Defendants’ workforce. This request is reasonable in light of the proposed class size of approximately 430 Settlement Class Members and the costs and expenses associated with administering the notices in English and distributing the awards.

k. Class Representative Service Award

“[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for his services to the Settlement Class. Lidman Decl., ¶ 31; Settlement, ¶ 3.2.1; Coleman 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, participating in the mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. See Lidman Decl., ¶ 31; Coleman Decl., ¶¶ 3-11. Additionally, Plaintiff agreed to a general release that extends the release of all claims against Defendants. *Id.*

I. PAGA Civil Penalties

The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$15,000.00. Settlement ¶ 3.2.7. This \$20,000.00 represents roughly 5.2% of the \$380,000.00 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts. See, e.g., *In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm’n Cases*, 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).

m. Payroll Taxes

The Settlement provides that the employer’s share of payroll taxes shall be paid separately from, and in addition to, the Gross Settlement Amount. Settlement ¶ 4.1.3.

n. Uncashed Funds

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement ¶ 4.1.7.

C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide monetary relief to participating Settlement Class Members.

1 The amounts proposed for Class Counsel’s attorneys’ fees and costs, and service award are all
2 reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious
3 deficiencies, this factor supports preliminary approval.

4 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
5 **NOTICE TO SETTLEMENT CLASS MEMBERS**

6 Before the final approval hearing, the Court requires adequate notice of the settlement be given
7 to all class members. This Court should order distribution to the Settlement Class of the proposed
8 Court-approved Notice of Class Action Settlement and Hearing Date for Final Court Approval by first-
9 class regular U.S. Mail, postage prepaid, using last known mailing address information provided by
10 Defendant. *See* Settlement, ¶ 7.3, Exh. A. The Notice Packet will be mailed in English only due to the
11 nature of Defendants’ workforce.

12 This manner of giving notice is the “best notice practicable” under the circumstances because
13 it provides “individual notice to all members who can be identified through reasonable effort.” *See*
14 *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement
15 be administered by Phoenix, an experienced class action settlement administrator. *See generally*
16 Lawrence Decl. and attached exhibits. Class Data will be ascertainable through Defendants’ personnel
17 and payroll records, which Defendants will provide to Phoenix within 21 calendar days of preliminary
18 approval of the Settlement. *See* Settlement ¶ 7.3. Within fourteen 21 calendar days of receipt of the
19 Settlement Class Members’ addresses, Phoenix will run the names of all Settlement Class Members
20 through the United States Postal Service Notice of Change of Address database (which provides
21 updated addresses for any individual who has moved in the previous four years and has notified the
22 U.S. Postal Service of a forwarding address), calculate the estimated Settlement Award for each
23 Settlement Class member, and mail the notices to Settlement Class Members. *See* Settlement ¶ 7.3.
24 To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any Class
25 Member’s current mailing address. *See* Settlement ¶ 7.3.3.

26 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
27 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the
28 parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement

1 and the procedures by which to do so, explains the recovery formula and expected recovery amount
2 for each Settlement Class member, provides them the opportunity to contest their total workweeks
3 included in the notice, and advises them that they will be bound by the terms of the Settlement if they
4 do not opt-out. *See* Lidman Decl., Exh. 2 (Settlement, Exh. A). The proposed Class Notice will also
5 notify Settlement Class Members of the final approval hearing date and provides Settlement Class
6 Members the contact information for Class Counsel, and advises Settlement Class Members that they
7 may enter an appearance through counsel if they wish to. Additionally, as stated in the proposed Class
8 Notice, any changes to the Final Approval hearing date, time, or location will be posted on the
9 Settlement Administrator's website. *Id.* Furthermore, the Settlement Administrator will post the notice
10 of final judgment on its website. *Id.* This manner of giving notice satisfies California Rule of Court
11 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

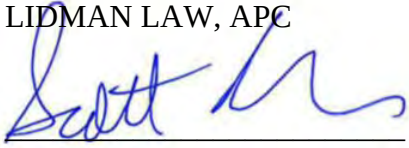
12 **E. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

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

16 **IV. CONCLUSION**

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

20
21
22 Dated: July 31, 2024

23 Respectfully submitted,
LIDMAN LAW, APC
24 
By: _____
25 Scott M. Lidman
26 Attorneys for Plaintiff
27 WILLIAM COLEMAN
28